

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Regulation of Budget Planning Activities

I.D. No. BNK-14-04-00001-E

Filing No. 321

Filing date: March 19, 2004

Effective date: March 22, 2004

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

Action taken: Addition of Part 404 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-C, section 587

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

Specific reasons underlying the finding of necessity: Chapter 629 of the Laws of 2002, which became effective on April 7, 2003, made substantial changes to the conduct of the business of budget planning in this State. Amendments made to article 12-C of the New York Banking Law and article 28-B of the New York General Business Law necessitated the emergency adoption of Part 402 of the Superintendent's Regulations on that date.

It has come to the attention of the Banking Department that many licensed budget planners utilize third party entities to assist them in distributing the monies of debtors to their creditors. Likewise, many applicants

for a budget planning license have indicated in their application that they intend to conduct their budget planning activities in a similar fashion. This type of "outsourcing", in which an entity other than the licensee which has a contract for budget planning services with a debtor has access to or controls the monies of debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature. The rule is proposed in order to provide protection to debtors when a third party "outsourcer" is used in the process of paying debtor funds to creditors of the debtors. Specifically, if the third party "outsourcer" is another budget planner licensed under article 12-C of the New York Banking Law, the amount of that licensee's bond or assets placed on deposit, as the case may be, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly distributed to their creditors, must be increased to reflect the additional amount of debtors' funds that it has access to or controls as a result of its "outsourcing" activities. However, if the licensed budget planner which utilizes another licensed budget planner as an "outsourcer" places assets on deposit pursuant to section 580(4) of the Banking Law in an amount sufficient to cover the debtors' funds that the licensed "outsourcer" has access to or controls, then the licensed "outsourcer" would not be required to obtain a surety bond in a greater amount, or place additional assets on deposit to cover the additional amount of debtors' funds that it has access to or controls, as a result of its outsourcing activities. In such case, the monies of debtors would be fully protected by the original licensee's asset deposit.

If the third party "outsourcer" is not a licensed budget planner in New York State, the issue of the safety of the monies of the debtors becomes more paramount as an entity unregulated by and probably unknown to the Banking Department will have access to or control of the monies of debtors. In such case, unless the licensed budget planner places assets on deposit sufficient to cover the debtors' funds that the non-licensed "outsourcer" has access to or controls, the non-licensed "outsourcer" would be required to place assets on deposit sufficient to protect the monies of the debtors that it has access to or controls as a result of its "outsourcing" activities.

The proposal also contains provisions relating to the contractual relationship between the licensed budget planner and the service provider, which give protection to debtors who may be adversely affected if the contract between the licensee and the service provider is terminated.

The primary legislative objective of chapter 629 is to provide greater consumer protection to New York residents who contract with licensed budget planners for budget planning services. Accordingly, considering the foregoing, emergency adoption of this Proposal is necessary and appropriate.

Subject: Regulation of budget planning activities conducted by entities licensed under article 12-C of the Banking Law.

Purpose: To set forth the regulatory requirements and standards of operation for entities licensed under article 12-C of the Banking Law to conduct the business of budget planning when the licensees use the services of third-party entities in making payments of debtor funds to creditors of the debtors.

Text of emergency rule:

Part 404

Budget Planners/Delegation of Certain Activities

§ 404.1 Definitions.

For purposes of this Part:

(a) The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.

(b) The term "licensee" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individual or entity that has a 10% or more ownership interest in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

§ 404.2 Explanatory note.

Section 580.4 of Article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under Article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to Section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law Section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law Section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law Section 580.4.

§ 404.3 Servicing By a Licensee Service Provider.

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

- (1) Name and address of the licensee service provider.
- (2) A description of the services to be provided by the licensee service provider.
- (3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by

the licensee service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the Superintendent confirming that the Superintendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under Section 404.3(c) of this Part.

(e) Notwithstanding the provisions of Section 404.3(c) of this Part, if a licensee maintains a surety bond and seeks to utilize a licensee service provider, as defined in section 404.1(c) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(f) If the use of an alternate mechanism pursuant to Section 404.3(e) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(g) If a licensee proposes the use of an alternate mechanism to a licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, pursuant to Section 404(3)(e) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.4 Servicing By A Non-Licensee Service Provider.

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

- (1) Name and address of the non-licensee service provider.
- (2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

- (1) The non-licensee service provider gives the Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under Section 404.4(c)(2) of this Part, have been provided to the Superintendent, and the licensee receives written notice from the Superintendent confirming that the Superintendent has received all such information.

(d) Notwithstanding the provisions of Section 404.4(c)(2) of this Part, if a licensee maintains a surety bond and seeks to utilize a non-licensee service provider, as defined in Section 404.1(d) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the non-licensee service provider maintaining assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(e) If the use of an alternate mechanism pursuant to Section 404.4(d) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(f) If a licensee proposes the use of an alternate mechanism to a non-licensee service provider maintaining assets on deposit pursuant to Section 404.4(d) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.5 Termination of Agreements or Contracts.

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) A licensee shall immediately notify the Superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.

§ 404.6 Compliance.

Compliance with this Part shall be required on or before May 18, 2004.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 16, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the Superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

2. Legislative Objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms

set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in such consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of persons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature addressed, among other things, the inherent risks associated with the payment of Debtor funds to creditors when Debtors choose to have such payments made via the services of a licensed budget planner instead of paying their creditors directly. Specifically, as one way of increasing consumer protections for the Debtors who contract with licensed budget planners in order to pay the debts they owe to creditors, Article 12-C was amended to require licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not properly been paid to their creditors.

In addition to the amendments to Article 12-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed new Part 404 sets forth a framework for the regulation of entities licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning, when such licensees use third party entities in distributing the monies of Debtors to creditors. New Part 404 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law, in particular, Section 580(4), by providing protection when third party entities are used in distributing Debtor monies to creditors.

3. Needs and Benefits:

Proposed new Part 404 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. Specifically, when Banking Law Section 580(4) was recently enacted, it placed the requirement upon licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by Debtors that have not been properly paid to their creditors. Since the enactment of the legislation, members of the Banking Department staff have received numerous applications from prospective licensees. Extensive discussions were had at meetings and in telephone conversations with a number of the prospective licensees, as well as with current licensees, regarding the operations of their budget planning businesses. This was

done in order to assess whether the business practices of the budget planning industry conformed to the consumer protections standards set forth in the new laws. The Department learned from many of the prospective and current licensees that with respect to the Debtors that they are in contract with for budget planning services, it is their practice to use third party entities in distributing the Debtors' monies to creditors. The third party entities that they contract with for such services are generally for-profit entities that are not, themselves, licensed to conduct the business of budget planning. However, one current licensee indicated that it uses the services of another New York State licensed budget planner in order to distribute Debtors' monies to creditors. The current and prospective licensees explained that it is necessary for them to use the services of third party entities in this way primarily because they do not have the computerized technology, staffing, and budgetary resources to provide the critical services performed by the third party entities.

Nevertheless, this type of "outsourcing" to a third party entity, in which an entity other than the licensee which has a contract for budget planning services with a Debtor, holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's Debtors, or distribute, or is in the chain of distribution of such monies, to the creditors of such Debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature when it put into law the bond/asset deposit requirement as set forth in Section 580(4) of New York's Banking Law.

The rule is proposed in order to accommodate the budget planning industry's operational need to use the third party entities in distributing Debtor funds to creditors. At the same time, the rule provides the consumer protections afforded by the recently enacted budget planning legislation as set forth in Banking Law Section 580(4). In particular, if the licensee uses a third party entity in distributing Debtor funds to creditors, and the licensee elects to place assets on deposit, which assets constitute a trust fund to reimburse payments made by Debtors if not properly paid to their creditors, the rule allows for the use of such a third party entity and places no additional bond/asset deposit requirements on the third party entity. If, on the other hand, the licensee elects to obtain a surety bond rather than place assets on deposit, the licensee may only use a third party entity in distributing Debtor funds if the third party entity places assets on deposit or obtains a surety bond, as the case may be.

Budget Planning is a regulated financial service in New York State. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services. It is the Banking Department's belief that the rule as proposed is necessary. It provides the mechanism by which the budget planning entities that are currently licensed, as well as those seeking to obtain such a license, can continue to operate using the services of third party entities in distributing Debtor funds to creditors. At the same time, the rule satisfies the legislative requirement as set forth in Banking Law Section 580(4) to provide certain protection to Debtors in contract with licensees, in cases where third party entities are used by the licensees in distributing Debtor funds to creditors.

4. Costs:

(a) Costs to State Government:

None.

Any and all additional examination costs that may be incurred by the Banking Department, as a result of the requirements of the rule imposed on the licensees that use third party entities in the distributing Debtor funds to creditors, will be borne by the licensees.

(b) Costs to Local Government:

None.

(c) Costs to Regulated Entities:

The proposed rule allows licensees to use third party entities in distributing Debtor funds to creditors. In summary, Part 404 provides the following. If a licensee elects to maintain assets on deposit and utilizes the services of a third party entity in distributing Debtor funds to creditors, (whether or not the third party entity is, or is not, another budget planner licensed in New York) there is no requirement that the third party entity obtain a surety bond or place assets on deposit with respect to the business of the licensee that it is servicing. If a licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is also a licensed budget planner in New York, the third party entity must either obtain a surety bond or maintain assets on deposit with respect to the business of the licensee that it is servicing. If the licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is not a New York

licensed budget planner, the third party entity must maintain assets on deposit with respect to the business of the licensee that it is servicing.

A licensee is likely to incur no costs if it uses a third party entity in distributing Debtor funds and elects to maintain assets on deposit, rather than a surety bond. The reason being, that a licensee has to purchase a surety bond, whereas, by placing assets on deposit, the licensee does not have to make such a purchase. Moreover, when assets are placed on deposit, the licensee has the ability to earn interest on the deposited funds.

It is possible, however, that in circumstances where a licensee may not have all, or part of, the necessary funds to place on deposit, that it could incur some costs in connection with borrowing funds for its required deposit. The Banking Department is unable to determine what the costs to the licensees would be under those circumstances since the cost of borrowing funds is typically dependent upon factors such as, the amount of the borrowing and the financial condition of the entity doing the borrowing. Therefore, it is not possible to estimate, even in a general way, such borrowing costs. However, should costs be incurred to make the asset deposit, those costs will not outweigh the benefits derived by maintaining the assets on deposit should Debtor funds not be properly paid to creditors.

(d) Costs to the Banking Department for Implementation and Continued Administration of the Rule:

The rule requires Banking Department staff to review contracts or agreements that licensees have entered into, or plan to enter into, regarding the licensees use of third party entities in distributing Debtor funds to creditors. This review is done in order to assess compliance with rule to ensure, that where third party entities are involved, the Debtors in contract with the licensees are afforded the consumer protections provided by the bond/asset deposit requirements of Section 580(4) of the New York Banking Law. The Banking Department expects that its costs to implement and administer the rule will be minimal.

5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

The reporting requirements as set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees, in furtherance of the legislative objective to provide more consumer protections for debtors in contract with licensees for budget planning services.

Under the proposed rule, licensed budget planners will have to provide the Banking Department with the following information: a) the name and address of the third party entity used in distributing Debtor funds to creditors, b) a description of the services being provided by the third party entity, c) a copy of the agreement or contract entered into with the third party entity, d) information regarding the highest daily amount of Debtor funds that the third party entity will be providing services for under the contract or agreement, and e) information with respect to the termination of any such agreement or contract. All of this information is of the type that licensees using third party entities in distributing Debtor funds will have readily available to provide to the Banking Department.

7. Duplication:

None.

8. Alternatives:

(a) Proposal—As is previously discussed in the Legislative Objective Section contained herein, the recent amendments to Article 12-C, Section 580(4) of New York's Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse payments made by Debtors that have not been properly distributed to creditors. Since the enactment of the legislation, Banking Department staff met with current and prospective licensees and learned that these businesses require the use of the services provided by third party entities in distributing Debtor funds. The rule was proposed keeping in mind both the legislative intent in enacting the bond/asset deposit requirements to provide increased consumer protection to New York residents in contract with licensees should their payments not be properly distributed to creditors, and the need that current and prospective licensees have in using the services of third party entities in distributing such payments. The rule allows licensees to use the services of third party entities in this way, and also provides the Debtors in contract with the licensee the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature.

(b) Do not propose the rule.

If this alternative were considered, the Banking Department would have to require that licensees not use the services of third party entities in distributing Debtor funds to creditors, in order to provide Debtors the consumer protections afforded under Section 580(4) of the Banking Law.

This alternative is not feasible because, as many current and prospective licensees explained to the Banking Department, they need to use the services of the third party providers in distributing Debtor funds. The need results primarily because they do not have the computerized technology, staffing and budgetary resources to provide the critical services that they perform.

Under these circumstances, the Banking Department believes that if the rule was not proposed, licensed budget planners would have to be prohibited from using third party entities in distributing Debtor funds. This could be severely harmful to the budget planning industry, particularly since, the inability to use the third party entities may prevent the licensees from continuing to operate their businesses. Moreover, the inability to use the third party entities may prevent many prospective licensees from seeking a budget planning license in New York because they may not be able to operate without the services of the third party entities. Accordingly, the proposed rule is needed not only to provide consumer protection to Debtors as mandated by Section 580(4) of the Banking Law, but also to prevent putting certain current licensees out of business, and to enable certain prospective licensees the opportunity to conduct the business of budget planning in New York.

9. Federal Standards:

None.

10. Compliance Schedule:

Compliance with the rule is required on or before May 18, 2004.

Regulatory Flexibility Analysis

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under New York's Not-For-Profit Corporation Law. Under New York's Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York.

No local governments are licensed to conduct the business of budget planning, and all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

When the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law, it established a more rigorous regulatory environment within which entities licensed under New York Law were to engage in the business of budget planning. This was done in order to provide increased consumer protection to New York residents that contract for budget planning services with licensees.

The recent amendments to Article 12-C of the New York Banking Law include the bonding/asset deposit requirements set forth under Section 580(4) of Article 12-C. In particular, Section 580(4) requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

In response to the legislation, members of the Banking Department staff met with and/or had conversations with current and prospective licensees. As is more fully described in the Regulatory Impact Statement, the Banking Department learned that many of the current and prospective licensees require the services of certain third party entities in distributing debtor funds to creditors. Accordingly, the rule was proposed in response to the industry need to use third party entities in this way. The rule is flexible in that it allows licensees to use the services of third party entities, who may be small business, in distributing debtor funds to creditors. At the same time, it provides the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature, to the Debtors in contract with the licensees for budget planning services. The rule ensures that debtors' funds will be protected, as mandated by the statute, irrespective of which entity has control over and/or access to the funds.

Specifically, due to the servicing relationship between the licensee and the third party entities, when a licensee elects to use a third party entity in distributing debtors funds to creditors, under the proposed rule, the licensee can choose to either place assets on deposit, or obtain a surety bond. If the licensee places assets on deposit, there are no bond/asset deposit requirements placed on the third party entity. If the licensee elects to obtain a bond, the third party entity can either place assets on deposit or obtain a surety bond, as the case may be, with respect to the budget planning business of the licensee that it services.

Based on the dialogue that the Banking Department had with current and prospective licensees regarding their need to use third party entities in distributing debtor funds to creditors, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse impact on entities licensed under New York Law to conduct the business of budget planning.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. The legislature mandated under Section 580(4) of the New York Banking Law, that licensees obtain a surety bond or place certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly paid to creditors. In order to provide debtors with the consumer protections afforded under Section 580(4), the proposed rule allows licensees that use third party entities in distributing debtor funds to creditors to either place assets on deposit or obtain a surety bond. If the licensee elects to obtain the surety bond, it must only use the services of a third party entity that also places assets on deposit or obtains a surety bond, as the case may be, in connection with the licensees business that it is servicing. If the licensee elects to place assets on deposit, no bond/asset deposit requirements are placed on the third party entity.

There is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from complying with the rule based on a particular office location. Accordingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to debtors residing in rural areas who enter into contracts with licensees for budget planning services, when such licensees use the services of third party entities in distributing debtors funds to creditors.

Job Impact Statement

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York Banking Law and Article 28-B of New York's General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 580(4) of Article 12-C of the New York Banking Law was recently amended in connection with budget planning in New York State. It requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, to maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

As is explained in the Regulatory Impact Statement, it has come to the attention of the Banking Department that both current and prospective licensees require the services of third party entities in distributing debtors to creditors. The rule has been proposed in order to allow the licensees to continue using such third party entities in the operations of their businesses. At the same time, the rule provides the consumer protections afforded under Section 580(4) to debtors that contract with licensees for budget planning services when the licensees use third party entities in distributing the funds of the debtors to creditors.

Under the rule, if a licensee elects to use a third party entity in distributing debtor funds to creditors, a licensee can choose to either place certain assets on deposit or obtain a surety bond, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly paid to creditors. If a licensee places assets on deposit, there is no bond/asset deposit requirement placed on the third party entity. If a licensee, instead, chooses to obtain a surety bond, the rule requires that the third party entity place certain assets on deposit, or obtain a surety bond, as the case may be, with respect to licensees business that it services.

Accordingly, based on the rule's requirements, it will have no impact on jobs in New York State.

EMERGENCY RULE MAKING

Regulation of Budget Planning Activities

I.D. No. BNK-14-04-00002-E

Filing No. 322

Filing date: March 19, 2004

Effective date: March 22, 2004

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

Action taken: Repeal of Part 402 and addition of new Part 402 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-C, section 587

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

Specific reasons underlying the finding of necessity: Chapter 629 of the laws of 2002 is effective April 7, 2003. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

As a result of the amendments to Article 12-C of the New York Banking Law, the operations of entities currently licensed in New York to conduct the business of budget planning may be extensively affected, on or after April 7, 2003. In addition, due to the amendment of Section 455 of Article 28-B of New York's General Business Law, the operations of out-of-state entities that will be newly subject to New York's licensing requirements in order to conduct the business of budget planning with New York residents will be similarly affected.

Specifically, the amendments to the rule known as Part 402 of Title 3 NYCRR, include new requirements established by Chapter 629, as well as expanded regulatory requirements developed by the Banking Department, the majority of which are intended to effectuate stronger consumer protection for existing and potential clients of licensed budget planners. In addition, the amendments to Part 402 include various requirements currently imposed on licensed budget planners under existing law and Superintendent's Regulations, as well as administratively. Accordingly, the amendments to Part 402 establish a significantly broader regulatory scheme pursuant to which licensees and potential licensees will be required to conduct the business of budget planning.

The primary legislative objective of chapter 629 is to provide greater consumer protections to clients of licensed budget planners. Such protections are provided in various ways, including the regulation of out-of-state entities engaging in budget planning activities with residents of this State. Industry representatives have informed the Banking Department that a significant number of out-of-state entities are expected to seek licenses under the Banking Law to conduct the business of budget planning. Therefore, it is paramount that not only current licensees be made aware of the expanded regulatory requirements prior to the effective date of chapter 629 in order that their business operations, especially those aspect of their operations that provide consumer protections conform to the new statutory and regulatory standards, but that potential licensees from out-of-state and in-state be put on notice as well. Accordingly, emergency adoption of this rule is necessary.

Subject: Regulation of budget planning activities conducted by entities licensed under article 12-C of the Banking Law.

Purpose: To set forth the regulatory requirements and standards of operation for entities licensed under article 12-C of the Banking Law to conduct the business of budget planning.

Text of emergency rule: Part 402 is repealed and a new Part 402 is added to read as follows:

Part 402 Budget Planners.

§ 402.1 Definitions.

For purposes of this Part:

(a) The term "control party" shall mean any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee.

(b) The term "director" shall mean any member of the governing board of the licensee whether designated as a director, officer, trustee, manager, governor or by any other title.

(c) The term "capital certificate" shall have the same meaning as is set forth in Article 5 of the New York Not For Profit Corporation Law.

(d) The term "debtor" shall mean an individual who enters into a contract with a licensee while the individual is a New York resident.

(e) The term "licensee" shall mean any entity licensed pursuant to Article 12-C of the New York Banking Law.

§ 402.2 Application for a license.

(a) *Application form.* Application for a license shall be made upon a form provided by the New York State Banking Department ("Banking Department"). Each application shall be signed by every individual or entity that will be a control party if a license is granted.

(b) *Application procedure.* Applications should be delivered to the New York State Banking Department, Attn: Licensed Financial Services Division, and must be accompanied by check payable to the order of "Superintendent of Banks of the State of New York", for an investigation fee in the statutory amount. The application shall include the following information:

(1) The exact name and the address of the applicant and its date of incorporation.

(2) The name and the complete business and residential address and occupation of each director, whether or not a member of the governing board, and any other individual who supervises the daily operations of the applicant.

(3) The complete address where the business of the applicant is to be conducted, showing the street and number, if any, post office and building and room number, if any, the office building and room number, if any, and the municipality, county and state.

(4) If the applicant engages in the business of budget planning, as defined in Section 455(1) of the New York General Business Law, in another state(s), identify such state(s) and provide the name and address of the regulatory agency, if any.

(5) A copy of the applicant's filing receipt, certified by the Secretary of State of New York, or, for out of state budget planners, a certificate of qualification to do business certified by the Secretary of State of New York.

(6) A copy of the applicants bylaws.

(7) Letter of Tax Exemption from the Internal Revenue Service indicating 501(c)(3) tax status, if applicable.

(8) Charities Registration Statement from the State of New York Office of the Attorney General, Charities Bureau.

(9) Schedule providing the following information with respect to each control party: name, prospective corporate title with licensee, employer's name, occupation and title, business address, and residential address.

(10) The name and residence of each holder of capital certificate whether voting or non-voting and/or subvention certificate.

(11) Documentation demonstrating that a director, whether or not a member of the governing board, of such applicant has at least one year of experience in financial services or related fields applicable to budget planning. The superintendent may require that a director have more than one year experience if it is determined that such enhanced experience is in accordance with the purposes of Article 12-C of the New York Banking Law.

(12) A set of completed fingerprint cards must be submitted by each individual who signs the application. In the case of an applicant which is not a natural person, each control party shall submit completed fingerprint cards.

(13) A background report prepared by an independent licensed private investigation firm for every applicant. In the case in which an individual is signing an application on behalf of an applicant that is not a natural person, a background report shall be prepared for both such individual and the entity for which he or she is signing the application.

(14) A description of the services that will be provided to the debtor by the applicant citing specifically the topics to be discussed and the related timeframes involved.

(15) A litigation affidavit prepared for each applicant.

(16) A statement of merit describing the proposed operation including but not limited to: 1) a list of all fees to be charged by the applicant 2) the sources of funding and financing available to the applicant and 3) a business plan which describes in detail the budgeting, educational, and counseling services to be offered; the policies and procedures governing each such service including the curriculum to be utilized to provide the educational services; the person(s) responsible for administering each such service and the training to be provided to employees engaged in the rendering of each such service.

(17) The applicant's financial statements for the past three years or, for new corporations, a pro-forma financial statement. Financial state-

ments shall include a balance sheet, a statement of revenues and expenses, and a statement of cash flows.

(18) A copy of the contract to be used with debtors or potential debtors which shall at a minimum include:

(i) a complete list of the debtor's obligations to be adjusted, including the name of each creditor;

(ii) the total fees agreed to for such services, including any adjustments for estimated available rebates from creditors, provided that nothing in this subdivision shall require a licensee to share rebates with its clients;

(iii) the commencement and termination date of the contract;

(iv) a pro forma statement of the total fees to be charged, including expected available rebates from creditors, expressed as a percentage of the total obligations, principal and interest to be adjusted under such contract.

§ 402.3 Services to be provided by licensee.

(a) Every licensee shall make an initial assessment of the potential debtor's financial situation taking into account at a minimum, the potential debtor's available and projected income and the existence of other liquid assets as well as the potential debtor's indebtedness to determine if it is in the best economic interest of the potential debtor to enter into a budget planner contract. If not, the licensee shall recommend that the potential debtor seek legal or other appropriate advice as to other alternatives, including bankruptcy.

(b) Every licensee shall provide adequate budgeting, educational and counseling services directly to the debtor, consistent with the purposes of Article 12-C of the New York Banking Law.

(c) Upon receipt of funds from the debtor, the licensee shall promptly transmit such funds, less any contractual fees which are due and owing to it from the debtor, to the creditor(s).

§ 402.4 Duration of qualifier experience.

If at any time the licensee ceases to be in compliance with the requirement of section 402.2(b)(11) of this Part, it shall notify the superintendent within ten calendar days of such noncompliance. Within three calendar days of making such notification, the licensee shall submit to the superintendent, the name and qualifications of any other director, whether or not a member of the governing board, who has been engaged by the licensee to satisfy the requirements of section 402.2(b)(11).

§ 402.5 Provision for surety bond.

(a) Except as provided in section 402.6 below, every licensee shall file with the superintendent a corporate surety bond in the principal amount of \$250,000, or such larger or smaller amount as the superintendent may require. If the licensee is notified that a larger bond is required, such larger bond shall be in full force within 30 days. A copy of the larger bond shall be submitted to the superintendent. The corporate surety bond required by the section shall be issued by a bonding company or insurance company authorized to do business in this State. The form of the bond shall be obtained from the Licensed Financial Services Division of the Banking Department.

(b) Such bond shall be in favor of the superintendent. The bond, or deposit agreement entered into pursuant to section 402.7 below, shall contain substantially the following language: "The proceeds of this [bond/ deposit agreement] shall constitute a trust fund in favor of the superintendent to be used exclusively to reimburse payments by debtors that have not been properly distributed to creditors or to reimburse fees determined by the superintendent to be improperly charged or collected and, in the event of the insolvency, liquidation or bankruptcy of such licensee, to pay outstanding banking department examination costs and assessments."

(d) Within 90 days of the effective date of Banking Law Section 580, as amended by Chapter 629 of the Laws of 2002, which date is April 7, 2003, each licensee shall comply with the provisions of this section.

§ 402.6 Deposit of assets in lieu of surety bond; assets eligible for deposit.

(a) A licensee, in lieu of obtaining a bond pursuant to this Part, may keep on deposit in a branch of a bank, savings bank, savings and loan association, trust company, private banker, national bank, federal savings bank, or federal savings and loan association, located in this State, regardless of whether the principal office of the foregoing institution is located within or without this State, subject to the approval of the superintendent, interest-bearing bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district, or instrumentality of this State or guaranteed by this State, or dollar deposits. The amount of the deposit shall be \$250,000 (based on

the lower of principal amount or market value), or such larger or smaller amount as the superintendent may require.

(b) In addition to the assets described in paragraph (a) of this section, the following assets are eligible for deposit for purposes of this Part:

(1) commercial paper payable in dollars in the United States provided such paper is accorded the highest rating of a rating service designated by the Banking Board pursuant to section 61.1 of Part 61 of this Title. In the event that an issue of commercial paper is rated by more than one designated rating service, it must have the highest rating of each;

(2) negotiable certificates of deposit that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation;

(3) banker's acceptances that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation;

(4) bonds which have an investment grade rating from either Moody's Investors Services, Inc., Standard & Poor's Corporation or Fitch Investors' Service, Inc.; and

(5) such other assets as approved by the superintendent upon written application.

(c) If the superintendent determines that an asset which otherwise qualifies under subdivisions (1) through (5) of this section is valued for purposes of this Part at less than the amount otherwise required by this Part, the superintendent shall so notify the licensee which shall thereafter value such asset for purposes of this Part as directed by the superintendent.

(d) Within 90 days of the effective date of Banking Law Section 580, as amended by Chapter 629 of the laws of 2002, which date is April 7, 2003, each licensee shall comply with the provisions of this section.

§ 402.7 Deposit agreement; certificate of licensee.

A licensee, which elects to deposit assets of the type listed in section 402.6, shall execute with an approved depository a deposit agreement, which shall be in the form prescribed by the Licensed Financial Services Division of the Banking Department. An executed copy of such deposit agreement shall be filed with the superintendent. As part of the deposit agreement, the licensee shall agree that prior to the release or substitution of any pledged assets subject to the deposit agreement, the licensee shall file a certificate with the depository which shall specify the following:

(a) the complete title of each pledged asset being withdrawn;

(b) the complete title of each pledged asset being deposited in place thereof;

(c) the interest rate, series, serial number (if any), face value, maturity date, call date, principal amount and market value of each replacement pledged asset;

(d) the aggregate principal amount of all such replacement pledged assets;

(e) the amount, if any, of the funds being withdrawn or deposited; and

(f) a certification that any pledged assets being deposited in exchange for pledged assets being withdrawn comply as to type with the provisions of section 402.6, and that, after giving effect to the exchange, the aggregate of all pledged assets remaining on deposit by the licensee, based in the case of such pledged assets upon the principal amount or market value, whichever is lower, shall be \$250,000, or such larger or smaller amount as the superintendent may require.

§ 402.8 Reports of changes in directors, bylaws and certificate of incorporation of licensee.

(a) The licensee shall notify the superintendent in writing, within 10 days of the following: (1) the name and address of any director or individual who supervises the daily operations of the licensee who terminates or alters his or her status with the licensee; and (2) the name of any individual who becomes associated with the business of the licensee as a director or any new individual who supervises the daily operations of the licensee. Any new director or individual shall also furnish a resume. The superintendent may request other information and documentation from the licensee in determining whether to approve any such director or individual. If the superintendent objects to any new director or individual, the superintendent shall notify the licensee of such objection setting forth the reasons therefore.

(b) If the superintendent finds that a proposed new director, who is not a control party, fails to meet the standards set forth in section 581 of the New York Banking Law, the superintendent may prohibit such person from serving in any capacity on behalf of the licensee or, in the case of an application for a change of control, deny such application. The superintendent may request other information and documentation from the licensee in determining whether to approve any such director. If the superintendent

objects to any new director, the superintendent shall notify the licensee of such objection setting forth the reasons therefore.

(c) The licensee shall submit to the superintendent changes to its bylaws or certificate of incorporation within 30 days of such change.

§ 402.9 Debtors contact with licensees and Banking Department.

(a) Every licensee must establish either (i) a toll-free number or (ii) a phone number which may be called "collect" for the purpose of enabling debtors to make inquiries of or complaints to the licensee. Every debtor must be informed, in writing, of this phone number and the Banking Department's toll-free phone number at the time he or she executes the contract.

(b) Every licensee shall furnish to the debtor at least quarterly a periodic statement of account on which the Banking Department's toll-free telephone number, 1-800-522-3330, shall be set forth conspicuously in at least ten point bold type.

§ 402.10 Right of debtors to rescind contract.

(a) Every contract between a licensee and a debtor must provide that the debtor may rescind the contract until midnight of the third business day after the day on which the debtor signed the contract. The licensee shall expressly inform every debtor of such provision prior to or simultaneously with the execution of the contract.

(b) Notice of rescission is effective when it is given in writing to the licensee by the debtor.

(c) Notice of rescission, if given by mail, shall be deemed given when deposited in a mailbox with the correct address and proper postage.

(d) If a debtor exercises the right of rescission within the timeframe specified in this section, the licensee shall promptly return to the debtor all fees associated with the contract that were paid to it by the debtor. Such fees shall not include reasonable counseling fees imposed on debtors separate and apart from the execution of a budget planner contract.

§ 402.11 Term and termination; assignment.

(a) Every contract between a licensee and a debtor shall be limited to a payment period not to exceed 60 months.

(b) Every contract between a licensee and a debtor shall contain a provision which states that the debtor may terminate the contract upon 10 days written notice to the licensee without any fee or penalty. Upon receiving such notice, the licensee shall return to the debtor all monies received from the debtor which are in its possession. No licensee shall communicate any derogatory information about a debtor to a creditor based solely on the fact that a debtor has terminated his or her contract with the licensee. Derogatory information does not include notification that the debtor is no longer a client.

(c) Every contract between a licensee and a debtor shall contain a provision which states that the contract may not be assigned without the written consent of the debtor.

§ 402.12 Unfair or deceptive acts or practices.

No licensee shall seek to avoid compliance with this Part by any device, subterfuge or pretense whatsoever.

§ 402.13 Reports to be filed with the superintendent.

(a) Each licensee shall annually, on or before the first day of February, furnish a report containing the following information and documentation, which shall be certified as accurate by a control party:

(1) Number of clients nationwide and number of debtors in the preceding calendar year;

(2) Number of new clients nationwide and number of new debtors in the preceding calendar year;

(3) For debtors, a schedule of fees charged, including initial fee, monthly fee and specific details as to how these fees are computed;

(4) The agreement utilized for debtors if it has been modified since the date of application or subsequently and has not been previously submitted.

(b) Each licensee shall, on a quarterly basis, report to the superintendent the highest daily amount of debtor funds held by the licensee for disbursement to creditors. This information shall be certified as accurate by a control party and shall be provided by no later than 10 business days after the end of the preceding quarter.

(c) Each licensee shall, within 90 days of the close of the licensee's fiscal year, submit an independently audited financial statement to the superintendent.

§ 402.14 Changes to licensee's fee structure.

Any modification of the licensee's fee structure for debtors shall require that the licensee notify the superintendent in writing of the proposed change(s) at least thirty calendar days prior to implementation. The superintendent shall review the fee structure taking into consideration the expenses of the operation, the financial status of the debtor(s) and such other

factors as the superintendent shall deem relevant. The licensee may implement the modified fee structure unless the superintendent disapproves of the change(s) in writing within thirty days of notification of the proposed change(s) unless such time period is extended in writing by the superintendent.

§ 402.15 No commingling of licensee's funds.

(a) Accounts established by the licensee to maintain debtor(s) funds must be held in the title of "Budget Planner as Agent for the Benefit of Principal(s) (i.e. Debtor(s))." The licensee must maintain, at all times, debtor records in such a manner as to make ascertainable the interests of the debtors, i.e., the records must sufficiently identify the deposit balance of each debtor on any given day.

(b) Accounts must be maintained in a branch of a bank, savings bank, savings and loan association, trust company, private banker, national bank, federal savings bank, or federal savings and loan association, located in this State, regardless of whether the principal office of the foregoing institution is located within or without this State.

§ 402.16 Licensee's privacy policy.

Each licensee shall comply with the privacy provisions contained in Title V of the "Gramm-Leach-Bliley Act" of 1999, which is found in 15 United States Code Section 6801 et seq., and the regulations promulgated thereunder by the Federal Trade Commission, which are found in Title 16, Code of Federal Regulations, Part 313 et seq. 15 United States Code Section 6801 et seq. and Title 16, Code of Federal Regulations referred to herein, may be viewed at the New York State Banking Department, located at One State Street, New York, NY 10004 and the Department of State located at 41 State Street, Albany, NY 12231. The United States Code is published by the Office of the Law Revision Council of the House of Representatives. This publication is for sale by the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328. The Code of Federal Regulations is published by the Office of the Federal Register; National Archives and Records Administration. The Code of Federal Regulations is for sale by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-0001.

§ 402.17 Office Display.

(a) Every licensed budget planner shall display in full public view at both its principal office and any branch office in New York State, a sign(s) which shall be no less than 20 inches wide and 12 inches high with letters one-half inch in size indicating:

(1) the name and principal address of the licensee;

(2) that the budget planner is licensed and regulated by the New York State Banking Department; and

(3) that if a debtor has any inquiries or complaints, he or she may call the Banking Department's toll-free number, 1-800-522-3330, write to the New York State Banking Department, c/o Consumer Services Division, One State Street, New York, New York 10004, or submit a complaint filed electronically via the Banking Department's website at www.banking.state.ny.us.

(b) The sign required in subdivision (a) of this section must be in the English language and in any other predominant language(s) spoken by the debtors of the licensee.

(c) The above information shall be conspicuously displayed in at least ten point bold type in the appropriate language(s) on the front page of every contract with every debtor.

§ 402.18 Change of location.

A licensee seeking to change the location of one of its offices must give written notice to the superintendent at least 30 days prior to such change. The notice shall:

(a) state the reason(s) for the change;

(b) provide a projection of any increased expenses which may be incurred; and

(c) state the extent, if any, to which the licensee intends to increase fees to its debtors as a result of the change in location.

If the superintendent determines that there is no reasonable objection to such change of location, the superintendent shall attach a rider to the license setting forth the change in location.

§ 402.19 Reports of arrests, convictions, etc.

A written report shall be made to the superintendent of any arrest, indictment or conviction (including any plea bargaining agreement) of any control party, director, or employee of the licensee, for the violation of any law within 10 days after such arrest, indictment or conviction becomes known to the licensee.

§ 402.20 Reports of misconduct.

Every licensee shall submit a report to the superintendent immediately upon the discovery of any of the events listed in Part 300 of the superintendent's regulations. Such report shall be submitted as set forth in Part 300.

§ 402.21 Books and records.

(a) Every licensee shall keep its books and records in a manner which will allow the superintendent to determine whether the licensee is complying with article 12-C of the Banking Law. Every licensee shall preserve its books and records for inspection for a minimum of six years. Specifically, every licensee shall establish and maintain the following to be kept readily available for review by the superintendent:

(1) All rejected debtor application files which shall contain all documentation relating to the applications. A list of rejected files shall be maintained.

(2) All cancelled debtor application files which shall contain all documentation relating to the applications. A list of cancelled files shall be maintained.

(3) A correspondence folder to contain all correspondence to and from the Banking Department, or copies thereof.

(4) A separate file for all written debtor complaints to contain the original complaint, documentation of actions taken and any related correspondence.

(5) A current business plan which describes in detail the budgeting, educational and counseling services offered; the policies and procedures governing each service including the curriculum utilized that provides the educational and counseling services; the person(s) responsible for administering each such service and the training provided to employees engaged in the rendering of each such service.

(b) Ledgers. Each licensee shall maintain a general ledger and such subsidiary ledgers as is necessary to accurately record all assets, liabilities, net assets, income and expenses, and contingencies. Such ledgers shall be posted at least monthly. As of the end of each month a trial balance shall be prepared and kept readily available for inspection by Banking Department personnel.

(c) In the event the licensee conducts business in more than one state, New York debtor files are to be kept separate from the individual client files of other states. Upon request, the New York client files are to be made readily available to the superintendent or the superintendent's duly appointed representative.

(d) In the event that books and records are maintained at a location that is not within the dominion and control of the licensee, the licensee shall provide the superintendent with a written authorization to examine, have access to, and retain copies of all its books and records relating to its budget planning business.

§ 402.22 Licensee's return of unused debtor funds.

The licensee must demonstrate a 'good faith effort' to locate and refund any monies to the debtor that, for whatever reason, cannot be sent to a creditor.

§ 402.23 Effective date.

The effective date of these amendments to Part 402 shall be April 7, 2003.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. BNK-06-04-00005-P, Issue of February 11, 2004. The emergency rule will expire June 16, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

2. Legislative Objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into

contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in the consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of persons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature, among other things, addressed financial and experience standards, contractual conditions, advertisement parameters and public representations made by licensed budget planners.

Notably, the amendments to Article 12-C intended to increase consumer protections for the Debtors who contract with licensed budget planners include, but are not limited to: a) requiring licensed budget planners to obtain a surety bond to be used to reimburse Debtors for payments that may not have been properly distributed to their creditors, or to reimburse fees determined by the superintendent to be improperly charged or collected; b) specifying that a written contract is required between a licensee and a Debtor and that it must specify all debts and all creditors, disclose the fees agreed to for the services, include the commencement and termination dates of the contract, disclose the settlement terms in the event of cancellation of the contract or prepayment of the debt, disclose the Debtor's statutory right to rescind the contract, and set forth the terms under which payments are to be made by the Debtor; c) specifying prohibited practices, which include prohibiting any media advertisement that is false or deceptive, prohibiting the use of the title "budget planner" or "licensed budget planner" or the term "budget planning" in any public advertisement, business card or letterhead by any person or entity, other than a licensee; and d) prohibiting the licensee from commingling monies received from Debtors with funds associated with the operation of the budget planning business.

In addition to the amendments to Article 12-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed New Part 402 sets forth a comprehensive framework for the regulation of entities licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. New Part 402 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New

York Banking Law and Article 28-B of New York's General Business Law.

3. Needs and Benefits:

Proposed New Part 402 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. In response to the recent legislation in this area, the rule facilitates the stricter regulation of budget planning activities to provide more consumer protections for the clients of licensed budget planners. Notably, in this regard, Section 455 of Article 28-B of New York's General Business Law was recently amended to require the licensing of out-of-state entities that enter into budget planning contracts with New York residents. Since the out-of-state entities that enter into budget planning contracts with New York residents are now subject to the same licensing requirements as the in-state entities that enter into similar contracts, the reporting/disclosure, recordkeeping and compliance requirements that make up New Part 402 will also apply to these entities. Having regulatory standards now applicable to the in-state as well as the out-of-state entities in budget planning contracts with New York residents, will provide the increased consumer protections envisioned by the Legislature otherwise not previously afforded to New York residents, party to budget planning contracts with the out-of-state entities.

Budget Planning is a regulated financial service in this state. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services.

While the proposed rule is primarily needed because its provisions provide for the greater consumer protections envisioned by the Legislature with respect to the business of budget planning, the rule is also needed in the form proposed because it sets forth more effectively, the regulatory requirements and standards of operation for New York licensed budget planners. Specifically, certain reporting/disclosure, recordkeeping and compliance requirements that make up new Part 402 are currently imposed on licensed budget planners under the following: a) Article 12-C or other provisions of New York's Banking Law and General Business Law; b) current Superintendent's regulations; or c) as administrative requirements of the Banking Department. However, to the extent that certain requirements are mandated elsewhere, they have been purposefully brought together under the proposed new Part 402, along with the necessary new requirements resulting from the recent legislative amendments. This was done to enable licensed budget planners to understand, in a clear and concise way, the scope of the activities that they are permitted to partake in, as well as those activities that are prohibited, in addition to the reporting/disclosure, recordkeeping and other compliance requirements that they must adhere to.

It is the Banking Department's belief that the rule as proposed is necessary to eliminate any confusion that licensed budget planners may have with respect to the regulatory framework within which they must conduct their business. Notably, the rule has been updated to provide clarity in that it sets forth definitions as well as all of the new reporting/disclosure, recordkeeping and compliance requirements that are reflective of the increased consumer protections afforded to clients of budget planners based on recently enacted legislation intended for that purpose. At the same time, the proposed rule is reflective of reporting/disclosure, recordkeeping and other requirements currently followed by licensed budget planners.

4. Costs:

- (a) Costs to State Government:
None.

Any and all additional examination costs that may be incurred by the Banking Department as a result of the requirement to regulate and supervise out-of-state persons or entities newly licensed in New York to conduct the business of budget planning will be borne by the licensees.

- (b) Costs to Local Government:
None.

- (c) Costs to Regulated Entities:
Reporting/Disclosure and Recordkeeping

The proposed rule contains certain recordkeeping and reporting/disclosure requirements not currently required of licensed budget planners either under New York's Banking Law, the Superintendent's regulations, or administratively by the Banking Department. It is anticipated that costs will be incurred by the regulated entities to comply with the new requirements, but that the costs will be minimal. In particular, most of the infor-

mation newly required by the proposed rule to be maintained and reported is of the type likely to already be maintained by the licensees for their management and operational purposes. For example, for examination and supervisory purposes, the proposed rule requires that licensees maintain general ledgers, subsidiary ledgers, and individual client files. In addition, the rule requires licensees to report certain information regarding changes in fee structure, and the number of New York clients, and the amount of client funds held by the licensee for disbursement to creditors. These types of records and information are fundamental to the operation of a budget planning business. As such, they should be readily available for reporting/disclosure as required by proposed new Part 402. The annual cost of continued compliance should also be minimal for the same reason.

Budgeting, Educational and Counseling Services

The proposed rule requires licensed entities to provide adequate budgeting, educational and counseling services directly to their clients, consistent with the purposes of Article 12-C of the New York Banking Law. It is anticipated that there will be minimal, if any new costs to the current licensed budget planners to provide these services. Specifically, most, if not all of the current New York State licensed budget planners are already presumed to be providing some type of educational services to their clients, since they are Type B not-for-profit corporations formed for an educational purpose under New York's Not-for-Profit Corporation Law.

Recent information obtained from the current licensees indicates that all but two of the licensees already provide some educational counseling to consumers. The licensees that do not provide educational counseling indicated that it could cost them up to approximately \$1,000 to provide educational pamphlets for clients. It is possible, however, that the current licensees may incur some additional costs to perhaps reorganize or make additional plans to provide the level of budgeting, educational and counseling services required by this rule, in the event that such services currently offered by the licensees do not satisfy the requirement.

For entities that will be newly licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning, it is possible that they will incur some costs to comply with this requirement. This may be particularly true for the out-of-state entities seeking New York budget planning licenses, if in the course of their current businesses, they do not provide the budgeting, educational and counseling services referred to above. However, since the Banking Department has no way of knowing for certain how many such out-of-state entities will seek and obtain budget planning licenses under Article 12-C, much less the extent to which any such entities currently have budgeting, educational and counseling services in place, it is impossible to estimate the costs that may be incurred in this area.

Establishment of Toll Free Number or "Collect" Calling Number

The proposed rule requires licensed budget planners to establish either a toll free number or a phone number that may be called on a "collect" basis. This requirement was put in place to facilitate the ease with which clients who are in budget planning contracts with licensees may make inquiries of, or complaints to, the licensee. With respect to the current licensees, they reported that prior to the recent amendments to the budget planning laws and the proposal of this rule, they already had in place a toll free number system for client calls. Therefore, there should be no new costs to the current licensed budget planners in this respect.

The Banking Department is unable to estimate what the cost will be for future licensees to comply with this requirement for the following reasons. First, as the Banking Department understands the billing arrangements for the establishment of toll free numbers, rates to establish such are negotiable based upon, among other things, the particular service provider, and the services that a company may already obtain with the provider. Second, the cost per minute for such a call is negotiable as well. Finally, the volume of calls made either to a toll free number or on a "collect" basis to a particular licensee is not certain. Therefore, based on factors that are unknown, it is not possible to develop an estimate of the costs for such calling arrangements.

(d) Costs to the Banking Department for Implementation and Continued Administration of the Rule: Since out-of-state persons or entities that enter into contracts with New York residents for budget planning services will now have to be licensed under Article 12-C of New York's Banking Law, the Banking Department may incur certain initial administrative costs with respect to the processing of applications, and the providing of regulatory services by Banking Department staff for these newly licensed entities. It is not possible to estimate these costs at this time since the Banking Department is not certain of the number of such new licensees.

5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

Under the proposed rule, licensed budget planners will have to comply with existing reporting/disclosure and recordkeeping requirements in addition to newly established reporting/disclosure and recordkeeping requirements. The newly established requirements include providing to the Superintendent the following, as described in the proposed rule: a) a business plan that details the budgeting, educational, counseling services to be offered to clients; b) documentation demonstrating that at a minimum one required individual in the employ of the licensee has at least one year of experience in financial services, or a related field that is applicable to the business of budget planning, and notification of changes with respect to the person meeting such qualifications; c) a copy of the deposit agreement with respect to assets on deposit in lieu of obtaining a bond; d) notice of changes in by-laws or certificates of incorporation; e) the number of clients nationwide and the number of new clients nationwide, both to be given on an annual basis; f) the highest daily amount of debtor funds held by the licensee for disbursement to creditors for the licensees New York budget planning business, to be given quarterly; g) changes to the licensees fee structure; h) a written report of any arrest or conviction of any individual who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the licensee; and i) a list of states in which they conduct the business of budget planning and the name and address of the applicable regulator for those states.

In addition, a new requirement in the proposed rule mandates that licensed budget planners furnish certain information to the clients of their New York budget planning businesses, including quarterly statements of account. Licensed budget planners who choose to keep assets on deposit in lieu of obtaining a surety bond, are also required to file a certificate with their depository prior to the release of, or substitution of, any pledged asset on deposit specifying the details of assets being deposited or withdrawn.

With respect to recordkeeping, the newly established requirements under the proposed rule mandate that licensed budget planners maintain certain records for review by the Superintendent including the following: a) rejected application files; b) cancelled client application files; c) general and subsidiary ledgers; d) monthly trial balances; and e) separate client files for the New York budget planning business.

The addition of new reporting/disclosure recordkeeping and compliance requirements set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees in furtherance of the legislative objective to provide more consumer protections for clients of licensed budget planners.

7. Duplication:

The proposed New Part 402 repeals the existing regulation at the State level with respect to licensed budget planners and adds a new regulation at the State level with respect to licensed budget planners. As is more fully explained in the Needs and Benefits discussion contained herein, New Part 402 repeals the existing regulation at the State level and adds a new regulation because the rule was needed in the form proposed because it sets forth, in one place, in a clear and concise way, the scope of the activities that budget planners are permitted to partake in, as well as those activities that are prohibited, in addition to the reporting/disclosure, recordkeeping and other compliance requirements that they must adhere to. The Banking Department believes that this will eliminate confusion that licensed budget planners may have with respect to the regulatory framework within which they must conduct their business.

8. Alternatives:

(a) Proposal—During the drafting of the proposed rule, the Banking Department asked the law firm of Traiger & Hinckley LLP to comment on the proposal. The firm represents and advises budget planners. The draft proposal was also shared for comment with Budget & Credit Counseling Services, Inc., an entity licensed under the New York Banking Law to conduct the business of budget planning. Representatives from both concerns were generally pleased with the proposal. To the extent that they had a few comments or suggestions, some of which sought clarity with respect to certain aspects of the rulemaking, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposal to address the suggestions and comments.

The Banking Department recently received comments from Paul Kaplan, counsel to Cambridge/Brighton Budget Planning Corp. (“Cambridge”), which is currently licensed in New York to conduct the business of budget planning. In the context of the way in which Cambridge conducts its business of budget planning, the comments focused on the following: a) the requirement that a licensee include in its contracts with its debtor

clients a pro forma statement of the total fees to be charged to the debtor clients, as set forth in Section 584-a of the Banking Law; b) the prohibition against a licensee paying any bonus or other consideration to any person for the referral of a debtor to its business, as mandated in Banking Law Section 584-b; and c) New Part 402’s requirement that every contract between a licensee and a debtor client be limited to a payment period not to exceed 60 months. Cambridge has certain concerns regarding its ability to comply with these requirements set forth in the newly enacted law and the proposed rule. Cambridge has asked the Banking Department to consider making changes to rule in order to resolve the issues. The Banking Department is reviewing and considering the comments and suggestions made by Cambridge.

As was previously discussed in the Legislative Objective section contained herein, the recent amendments to Article 12-C of New York’s Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse their New York resident clients in contract with them for budget planning services, should payments not be properly distributed to their creditors. Additionally, the bond or assets on deposit may be used to reimburse fees determined by the superintendent to be improperly charged or collected. The requirement under the law to obtain a bond, or in the alternative, to place assets on deposit has been restated in the proposed rule. The Banking Department has been informed by a few licensees and some prospective licensees that the number of years that they have been in the budget planning business and their willingness to put up personal guarantees have presented issues in obtaining a bond from the bonding companies. While these issues exist, the requirement to obtain the bond, or place assets on deposit, is not imposed by the rule, but rather is a statutory requirement.

(b) Do not propose the rule.

If this alternative were considered, failure to propose the rule would mean that the newly proposed reporting, recordkeeping/disclosure and other compliance requirements set forth therein would be non-existent or unclear. From a regulatory and supervisory perspective, it would be irresponsible for the Superintendent of Banks, as the State financial regulator to do this. This is true, particularly since, the new reporting, recordkeeping/disclosure and other compliance requirements in the proposal were purposefully formulated in furtherance of the legislative intent to provide increased consumer protection for the clients of licensed budget planners, as reflected in recent amendments to the budget planning laws.

Additionally, if this rule is not proposed, the ability to provide a comprehensive framework to enable licensed budget planners to understand, in a clear and concise way, the scope of the activities that they are permitted to partake in, as well as those that are prohibited in addition to all of the reporting/disclosure, recordkeeping and other compliance requirements that they must adhere to, would not be realized.

9. Federal Standards:

None.

10. Compliance Schedule:

As was explained in the section on Costs to Regulated Entities contained herein, most of the information newly required by the proposed rule to be maintained and reported/disclosed is of the type likely to be already maintained by licensed budget planners for management and operational purposes. As such, the Banking Department anticipates that the current licensees will be able to come into compliance with these newly imposed requirements within the time frames required by the rule.

With regard to the establishment of a toll free, or a “collect” calling number, the Banking Department’s outreach to current licensees has revealed that prior to the recent amendments to the budget planning laws and the proposal of this rule, they already had in place a toll free number system for client calls. The Banking Department does not anticipate that newly licensed entities coming into compliance with this requirement would take more than a day or two in order to arrange for the required telephone systems.

With respect to the requirement that licensed budget planners provide adequate budgeting, educational and counseling services to their clients, most, if not all of the current licensees already provide some type of educational services to their clients, as Type B not-for-profit corporations formed for an educational purpose under New York’s Not-for-Profit Corporation Law. Recent information obtained from the current licensees indicates that all but two of the licensees already provide some educational counseling to consumers. The licensees that do not currently provide budgeting, educational and counseling services would need to do so. In this regard, it is possible that the current licensees may need a short period of time to perhaps reorganize or make some additional plans to provide the

level of budgeting, educational and counseling services required by this rule, in the event that the services they currently offer in this area do not satisfy the requirement. It is possible that the same may hold true for budget planners from out-of-state who may become licensed in New York to conduct the business of budget planning, presuming that they currently offer some form of budgeting, educational and counseling services.

In the case of entities newly licensed in New York to conduct the business of budget planning and out-of-state entities now under the requirement to obtain a New York budget planning license that do not offer any budgeting, educational or counseling services, it may take several weeks to plan for, design programs, and train personnel to provide the budgeting, educational and counseling services required by the rule.

Regulatory Flexibility Analysis

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under the New York Not-for-Profit Corporation Law. Under New York's Not-for-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York. However, all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

Prior to the enactment of recent amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law relating to the business of budget planning, members of the Banking Department had a number of conversations with budget planning industry representatives regarding changes to the State's budget planning laws. In particular, in January 2002, a meeting was held with representatives of the New York State Association of Licensed Budget Planners (the "Association"), whose members represent New York State licensed budget planners. At the meeting, issues regarding the business of budget planning in New York State and elsewhere were discussed, including a proposal to amend New York's budget planning laws to require the licensing, in New York, of out-of-state entities that enter into budget planning contracts with New York residents. The Association was in favor of such licensing of out-of-state entities. By doing so, all entities that entered into budget planning contracts with New York residents, regardless of the entities' location, would be subject to New York's regulatory and supervisory standards designed to provide consumer protections for New York residents, party to budget planning contracts. Absent a licensing requirement for the out-of-state entities, New York residents contracting with such entities for budget planning services would continue to do so without the benefits of regulatory oversight.

Ultimately, when the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law, it established a more rigorous regulatory environment within which entities licensed under New York law were to engage in the business of budget planning. This was done in order to provide for increased consumer protection. The amendments included the requirement that out-of-state entities in contract with New York residents for budget planning services be licensed in New York. In addition, laws were put in place that addressed, among other things, financial and experience standards of certain employees of budget planners, contractual terms and conditions, advertising parameters and public representations made by license budget planners.

In response to the legislation, the rule was drafted to facilitate the stricter regulation of budget planning activities in furtherance of the legislative objective to provide more consumer protections for New York residents in contract for budget planning services with licensees. During the drafting of the rule, the Banking Department asked the law firm of Traeger and Hinckley LLP to comment on the proposed rule. The firm represents and advises budget planners. The proposed rule was also shared for comment with Budget & Credit Counseling Services, Inc., and entity currently licensed in New York to conduct the business of budget planning. Representatives from both concerns were generally pleased with the proposed rule. To the extent that they had a few comments or suggestions, some of which sought clarity with respect to certain aspects of the rulemaking, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposal to address the suggestions and comments.

Based on the aforementioned policy dialogue that the Banking Department has had with the industry representatives during the legislative and proposed rulemaking process, it is not apparent, thus far, that the rule will

impose any appreciable or substantial adverse economic impact on entities licensed under New York law to conduct the business of budget planning.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. Specifically, the rule contains certain reporting, recordkeeping and compliance requirements currently imposed on licensed budget planners, as well as new reporting, recordkeeping and compliance requirements related to recent legislation in this area enacted in response to the need for increased consumer protection for the clients of licensed budget planners. However, there is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from complying with the rule based on a particular office location. Therefore, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to residents in rural areas who enter into contracts with licensees for budget planning services.

Job Impact Statement

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York's Banking Law and Article 28-B of New York's General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 455 of Article 28-B of the New York General Business Law was recently amended in connection with budget planning in New York State. It now requires a person or entity, wherever located, to first obtain a license from the Superintendent of Banks before entering into contracts for budget planning with individuals then resident in New York State. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Out-of-state entities that obtain licenses in New York to conduct the business of budget planning will also have to comply with the reporting/disclosure, recordkeeping and compliance requirements set forth in the rule.

It is possible that new jobs will be created in New York State if the newly licensed out-of-state budget planners decide to establish office locations in the State in order to conduct their New York budget planning business. In particular, it is possible that persons will be newly employed at the New York locations of these licensed entities to perform tasks necessary to comply with the reporting/disclosure, recordkeeping and compliance requirements under the proposed regulation.

Department of Correctional Services

NOTICE OF ADOPTION

Marriages During Confinement

I.D. No. COR-04-04-00006-A

Filing No. 328

Filing date: March 23, 2004

Effective date: April 7, 2004

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

Action taken: Amendment of section 711.3 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Marriages during confinement.

Purpose: To change the title of the central office official to be notified.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-04-04-00006-P, Issue of January 28, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Local Government Records Management

I.D. No. EDU-14-04-00012-P

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

Proposed action: Amendment of sections 185.5 and 185.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and Arts and Cultural Affairs Law, section 57.25(2)

Subject: Local government records management.

Purpose: To make necessary changes and additions in order to update Records Retention and Disposition Schedule ED-1.

Substance of proposed rule (Full text is not posted on a State website): The State Education Department proposes to amend sections 185.5 and 185.12 of the Regulations of the Commissioner of Education, effective July 15, 2004, to revise and update Records Retention and Disposition Schedule ED-1 (8 NYCRR, section 185.12 - Appendix I).

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

Data, views or arguments may be submitted to: Carole Huxley, Deputy Commissioner, Education Department, Cultural Education Center, Rm. 10A33, Albany, NY 474-5976, e-mail: chuxley@mail.nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

STATUTORY AUTHORITY:

General rule making authority for the Board of Regents and the Commissioner of Education is granted by section 207 of the Education Law. Article 57-A of the Arts and Cultural Affairs Law provides for the systematic management of local government records. Arts and Cultural Affairs Law section 57.25(2) covers the retention and legal disposition of local government records and further authorizes the Commissioner of Education to adopt local government records retention and disposition schedules by regulation.

LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by updating Records Retention and Disposition Schedule ED-1 by issuing amendments to sections 185.5(a)(3) and 185.12.

NEEDS AND BENEFITS:

The proposed amendment is needed to issue amendments to Records Retention and Disposition Schedule ED-1, thus providing school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards with means to dispose of records not listed on the existing schedule, to maintain voluminous records for no longer than the records are needed, and to make the schedule easier to understand.

The proposed amendment has been recommended by the State Education Department after consultation with and review by the New York State Local Government Records Advisory Council. Schedule ED-1 has been substantially revised since it was last issued in 1997. The revised Schedule ED-1 contains 105 new items and 163 substantially revised items. Working closely with other SED staff and receiving valuable input from local governments, State Archives staff added and revised items based on requirements of the No Child Left Behind Act. For the first time, records in

certain automated systems used in many local governments are now covered by these schedules. Indices were updated to cover all new and revised items on the Schedule.

COSTS:

(a) Costs to the State: none, other than those inherent in Article 57-A of the Arts and Cultural Affairs Law.

(b) Costs to local governments: None. The proposed amendments to the Records Retention and Disposition Schedule ED-1 will, in fact, reduce record keeping costs by school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards by providing legal minimum retention periods for certain series of records not listed on the existing version of this schedule. More specifically, 105 new items and 163 substantially revised items will be included on the proposed amendment to Records Retention and Disposition Schedule ED-1.

(c) Costs to private, regulated parties: none.

(d) Costs to agency for implementation and continued administration of the rule: none, other than those inherent in Article 57-A of the Arts and Cultural Affairs Law.

LOCAL GOVERNMENT MANDATES:

The proposed amendments of sections 185.5(a)(3) and 185.12 update Records Retention and Disposition Schedule ED-1, which contains legal minimum retention periods for all series of records held by school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards for which this schedule is intended. These minimum legal retention periods reflect legal, fiscal, administrative, historical and other research needs for records in their custody. While each of these retention periods could be interpreted as a mandate, state law would require permanent retention of all records, valueless as well as important, of these local governments if these legal minimum retention periods were not established and contained in this schedule.

PAPERWORK:

The proposed amendment will reduce paperwork because the revisions to Records Retention and Disposition Schedule ED-1 will reduce the volume of valueless records that school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards are required to maintain.

DUPLICATION:

The proposed amendment duplicates no existing State or Federal requirements for local government records.

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment is promulgated pursuant to the specific requirements of Article 57-A of the Arts and Cultural Affairs Law. The Federal government has issued no records retention and disposition schedules specifically intended for use by local governments of the State.

COMPLIANCE SCHEDULE:

It is anticipated that local governments will be able to immediately comply with the proposed amendment upon its effective date.

Regulatory Flexibility Analysis

(a) Small Businesses:

The proposed amendment relates solely to local government records management and does not impose any reporting, recordkeeping or other compliance requirements on small businesses, nor will it impose any adverse economic impact on them. Because it is evident from the nature of the proposed amendment that it will not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one was not prepared.

(b) Local Government:

EFFECT OF RULE:

The proposed amendment will affect all school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards that use Records Retention and Disposition Schedule ED-1.

COMPLIANCE REQUIREMENTS:

The proposed amendment requires all local governments affected by Records Retention and Disposition Schedule ED-1 to maintain any records listed therein for stated minimum legal retention periods. This compliance requirement is already in place and affected local governments currently are required to follow the 1997 edition of the same retention schedule. The proposed amendment merely provides an updated and more comprehensive retention schedule for their use.

PROFESSIONAL SERVICES:

The proposed amendment proposes no additional professional service requirements on local governments, other than those already required by law.

COMPLIANCE COSTS:

The proposed amendment will not impose any compliance costs on local governments other than those inherent in Article 57-A of the Arts and Cultural Affairs Law. The proposed amendments to Records Retention and Disposition Schedule ED-1 will in fact reduce record keeping costs to all school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards by providing legal minimum retention periods for certain series of records not listed on the existing version of this schedule. More specifically, 105 new items and 163 substantially revised items will be included on the proposed amendment to Records Retention and Disposition Schedule ED-1.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendments to Records Retention and Disposition Schedule ED-1, more so than the present edition, specifically cover records contained in some automated systems maintained by local governments, thus facilitating local governments in identifying and disposing of valueless records contained in and produced by these automated systems. In addition, the Department is now able to provide copies of Schedule ED-1 to local governments, for their convenience, in electronic as well as paper format. Economic feasibility is addressed under the Compliance Costs section set forth above.

MINIMIZING ADVERSE IMPACT:

The proposed amendment will have no adverse impact on school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards in rural areas or elsewhere in New York State. The proposed amendment will reduce the volume of records that affected local governments are required to maintain and permit the destruction of valueless records.

LOCAL GOVERNMENT PARTICIPATION:

New and revised items contained in Records Retention and Disposition Schedule ED-1, revised by the proposed amendment, were reviewed in draft by representatives of local governments across the state, including a number of persons from rural areas. Their comments were taken into account in production of the final regulation. In addition, New York State Education Department personnel visited selected local governments, including some located in rural areas, to conduct analytical research necessary for the schedule to be produced. In addition, the Local Government Records Advisory Council, established by State law to advise the Commissioner of Education in records management matters, reviewed and approved the schedule prior to its finalization. In addition, counsels' offices of State agencies reviewed sections of the schedule containing new and revised items and considered their potential impact in reviewing those sections.

Rural Area Flexibility Analysis**TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment will apply to all school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards in New York State, including those located in the 44 rural counties with less than 200,000 inhabitants, or located in the urban counties with a population density of 150 per square mile or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment requires all local governments affected by Records Retention and Disposition Schedule ED-1 to maintain any records listed therein for stated minimum legal retention periods. This compliance requirement is already in place and affected local governments currently are required to follow the 1997 edition of the same retention schedule. The proposed amendment merely provides an updated and more comprehensive retention schedule for their use. The proposed amendment proposes no additional professional service requirements on local governments, other than those already required by law.

COMPLIANCE COSTS:

The proposed amendment will not impose any compliance costs on local governments other than those inherent in Article 57-A of the Arts and Cultural Affairs Law. The proposed amendments to Records Retention and Disposition Schedule ED-1 will in fact reduce recordkeeping costs to all school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and

extension boards by providing legal minimum retention periods for certain series of valueless records not listed on the existing version of this schedule. More specifically, 105 new items and 163 substantially revised items will be included on the proposed amendment to Records Retention and Disposition Schedule ED-1.

MINIMIZING ADVERSE IMPACT:

The proposed amendment will have no adverse impact on school districts, boards of cooperative educational services, teacher resource and computer training centers, and county vocational education and extension boards in rural areas or elsewhere in New York State. The proposed amendment will reduce the volume of records that affected local governments are required to maintain and permit the destruction of valueless records.

RURAL AREA PARTICIPATION:

New and revised items contained in Records Retention and Disposition Schedule ED-1, revised by the proposed amendment, were reviewed in draft by representatives of local governments across the state, including a number of persons from rural areas. Their comments were taken into account in production of the final regulation. In addition, New York State Education Department personnel visited selected local governments, including some located in rural areas, to conduct analytical research necessary for the schedule to be produced. In addition, the Local Government Records Advisory Council, established by State law to advise the Commissioner of Education in records management matters, and which includes members from rural areas, reviewed and approved the schedule prior to its finalization. In addition, counsels' offices of State agencies reviewed sections of the schedule containing new and revised items and considered potential impact on rural areas in reviewing those sections.

Job Impact Statement

The proposed amendment relates solely to local government records management and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Emission Standards for Motor Vehicles and Motor Vehicle Engines

I.D. No. ENV-14-04-00003-E

Filing No. 324

Filing date: March 22, 2004

Effective date: March 22, 2004

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

Action taken: Amendment of sections 200.9, 218-4.1 and 218-4.2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

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

Specific reasons underlying the finding of necessity: New York first adopted the California Low Emission Vehicle (LEV) program in 1990 pursuant to the provisions of section 177 of the Clean Air Act (42 USC 7507) (CAA), and has maintained the program since that time. The LEV program results in significant emission reduction benefits as compared to its Federal counterpart, and those reductions are an integral part of New York's State Implementation Plan (SIP). Failure to maintain the program would result in a need to find and implement additional emission control programs which would produce similar or greater levels of emissions

reductions. New York has already implemented controls on a broad array of emissions sources, and further reductions of a magnitude similar to that available from the LEV program would be difficult and costly to implement.

New York is in nonattainment of Federal health based air quality standards for ozone. Consequently the State has implemented a wide range of emissions control programs to reduce emissions of ozone precursors to provide healthy air for our citizens. In addition, the US Environmental Protection Agency (EPA) oversees and enforces the provisions of the State's SIP. Failure to implement a program included in the State's approved SIP can result in Federal enforcement actions that can include implementation of onerous offset provisions for new stationary sources, and withholding of Federal highway funds. The potential impact of such sanctions could be as much as \$3 billion per year, over the next five years.

The CAA specifies that states adopting the California motor vehicle emissions control program must, among other requirements, maintain the program as identical to California's so as not to create a "third car," and must provide two years of lead time to manufacturers. Since California has modified the zero emission vehicle sales mandate, it is incumbent upon New York to also adopt those changes before the commencement of the next model year or be at risk of violating the CAA provisions for identicality and lead time. Such a condition could seriously impair implementation of the ZEV sales mandate New York. This would result in health and welfare effects on New Yorkers as a result of increased emissions from automobiles, and from the potential sanctions for failure to implement the approved SIP provisions.

It is necessary for the preservation of the health and general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedures Act, effective immediately upon filing with the Department of State.

Subject: Emission standards for motor vehicles and motor vehicle engines.

Purpose: To incorporate modifications that California has made to its vehicle emission control program relating to the ZEV mandate to reduce emissions in New York State and revise New York's ZEV alternative compliance plan provisions.

Text of emergency rule: (Section 200.1 through 200.8 remains unchanged)

Section 200.9, Table 1 is amended to read as follows:

218-1.2(d)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Public Law 101-549 (1990)	**
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**
218-1.2(e)	California Health and Safety Code, Section 39003 (2000)	**

218-1.2(j)	California Vehicle Code, Section 165 (2000)	**

218-1.2(k)	California Code of Regulations, Title 13, Section 1900(b)(3) (12-22-99)	**

218-1.2(v)	California Code of Regulations, Title 13, Section 1961 (5-30-01)	**
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	**
		***+
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	**
		***+
		++
218-1.2(w)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	**
		***+
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	**

	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	**
		***+
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	**
		***+
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	**
		***+
		++
218-1.2(x)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	**

218-1.2(ad)	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	**

218-1.2(ai)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	**
		***+
		++
218-1.2(al)	40 CFR Section 86.1827-01 (July 1, 2000)	*

218-1.2(aq)	California Code of Regulations, Title 13, Section 2112 (11-27-99)	**

218-1.2(at)	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	**
		***+
		++
218-1.2(au)	California Code of Regulations, Title 13, Section 1900(b)(21) (12-07-01) and (5-24-02)	**
		***+
		++
218-2.1(a)	California Code of Regulations, Title 13, Section 1956.8 (7-25-01)	**

	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	**

	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	**
		***+
		++
	California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	**

	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	**

	California Code of Regulations, Title 13, Section 1961 (5-30-01)	**

	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	**
		***+
		++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	**
		***+
		++
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	**
		***+
		++
	California Code of Regulations, Title 13, Section 1964 (2-23-90)	**

	California Code of Regulations, Title 13, Section 1965 (12-22-99)	**

	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	**

	California Code of Regulations, Title 13, Section 1976 (11-27-99)	**

	California Code of Regulations, Title 13, Section 1978 (11-27-99)	**

	California Code of Regulations, Title 13, Section 2030 (9-25-97)	**

	California Code of Regulations, Title 13, Section 2031 (9-25-97)	**

	California Code of Regulations, Title 13, Section 2047 (5-31-88)	**

	California Code of Regulations, Title 13, Section 2065 (7-25-01)	**

	California Code of Regulations, Title 13, Section 2235 (9-17-91)	**

	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	**

218-2.1(a)	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Public Law 101-549 (1990)	**
218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	**
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (2000)	***
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**
218-3.1	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	**
		***+
		++
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	**

	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	**
		***+
		++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	**
		***+
218-3.1(a)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	**
		***+
		++
218-3.1(b)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	**

		++
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	**

	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	**
		***+
		++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	**
		***+
		++

218-4.1	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	** ***+ [++]
218-4.2	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	** ***+ [++]
218-5.1(a)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2107 (11-27-99)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.1(b)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.2(a)	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 2109 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.2(b)(1)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
218-5.3(b)	California Code of Regulations, Title 13, Section 2101 (11-27-99)	** ***
218-6.2	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	**
218-7.3(a)(1)	California Code of Regulations, Title 13, Section 2221 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 2224 (8-16-90)	** ***
218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***

Large Volume Manufacturers as identified in the California Code of Regulations, title 13, section 1962(b)(2)(B).

Table 1: Northeast Phase In Multiplier

Model Year	Requirement	PZEV Credit Multiplier	ATPZEV Credit Multiplier	ZEV Credit Multiplier
2002	Voluntary Early Introduction	1.5		3
2003	Voluntary Early Introduction	1.5		3
2004	[Mandatory Compliance] Voluntary Early Introduction	1.5	2.25	3
2005	Mandatory Compliance	1.3	1.7	2
2006	Mandatory Compliance	1.15	1.3	1.5
2007	[Equivalency with California program] Mandatory Compliance	[1] 1.15	1.3	[1] 1.5
2008	Mandatory Compliance	1.15	1.3	1.5
2009	Equivalency with California program	1	1	1

(c) Percentage requirements. An automobile manufacturer's ACP must comply with the following percentage phase-in requirements:

Table 2: Percentage Requirements for ZEVs, AT PZEVs, and PZEVs

Model Year	Minimum Percent ZEV Credit	Minimum Percent AT PZEV Credit	Maximum Percent PZEV Credit
[2004]	[0]	[0]	[10]
2005	[Combined] 0	[1] 0	[9] 10
2006*	[1] Combined	[2] 1	[7] 9
2007	[2] 1	2	[6] 7
2008	1	2	7

* In MY 2006, 1 percent of a manufacturer's sales must be ZEV, AT PZEV or some combination thereof.

Intermediate volume manufacturers may meet the entire ZEV requirement with 100 percent PZEV credits. Small and independent low volume manufacturers are not required to meet the ZEV percentage requirements but are able to generate and trade credits.

(d) Infrastructure and transportation system projects. Automobile manufacturers may meet a total of 25 percent of their 10 percent ZEV requirement by implementing infrastructure and transportation demonstration projects in accordance with the following requirements. Manufacturers may seek credits for project that advance infrastructure to encourage full development of alternative vehicle program. Such projects may include alternative fuel refueling, fuel cells and home recharging for electric vehicles. Manufacturers may also seek credits for projects that result in the placement of advanced technology vehicles in innovative transportation systems. The commissioner shall take into account associated project costs and the relationship to supporting increased usage of advanced technology vehicles.

(e) Generation and use of credits. Credits life, banking and trading will be calculated as per California Code of Regulations, title 13, section 1962. A manufacturer who generates twice as many credits from model-year [2004] 2005 or earlier PZEVs as required for model-year [2004] 2005 has through model-year [2007] 2008 to comply with the model-year [2005] 2006 AT PZEV/ZEV requirement. A manufacturer who qualifies for the [2004] 2005 AT PZEV/ZEV carryforward and generates twice as many PZEV credits as necessary for model-year [2005] 2006 has through model-year [2008] 2009 to comply with the model-year [2006] 2007 AT PZEV/ZEV requirement.

(f) Reporting. (1) Projected compliance reports will be due by the commencement of the model year. This report will include projected vehicle sales organized by engine family, marketing plans, dealerships targeted for advanced technology vehicle sales and support, plans for infrastructure and transportation system projects and credits proposed to be earned, and manufacturer projected compliance rates including potential credits or debits.

(2) Compliance reports will be required and due with annual sales reports by March 31st (with the potential to amend, based on late sales) following the completed model year. This report will include vehicle sales organized by engine family, descriptions of infrastructure and transportation system projects, manufacturer compliance rates including credits or debits earned and the way the manufacturer plans to erase any debits.

(g) Such ACP shall include, at a minimum:

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines

Subpart 4 ZERO EMISSION VEHICLE SALES MANDATE

§ 218-4.1 ZEV percentages.

Commencing in model-year [2005] 2007, each manufacturer's sales fleet of passenger cars and light-duty trucks, produced and delivered for sale in New York, must, at minimum, contain at least [10 percent] the same percentage of ZEVs subject to the same requirement set forth in California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title) using New York specific vehicle numbers.

§ 218-4.2. Voluntary alternative compliance plan (ACP).

An automobile manufacturer may implement a voluntary alternative compliance plan (ACP) to section 218-4.1 of this Subpart, provided such plan complies with the following and has been approved by the commissioner.

(a) Core credit scheme. The core vehicle credit values for the ACP shall be the same as California Code of Regulations, title 13, section 1962 (See Table 1, section 200.9 of this Title).

(b) New York multiplier. After the core credit value for a vehicle is established by CARB pursuant to California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title), a New York specific multiplier will be applied to that vehicle in accordance with [the following:] Table 1. The New York multiplier shall not be applied to type III ZEVs placed in service pursuant to the California Alternative Requirements for

(1) a demonstration that the emissions reductions from the alternative program equal or exceed those which would result from the compliance with section 218-4.1 of this Subpart;

(2) a demonstration that the alternative compliance program will lead to full compliance with all elements of section 218-4.1 of this Subpart starting no later than model year [2007] 2009; and

(3) actions by the manufacturers that advance the sale and use of ZEV (including PZEV) and advanced technologies beyond that which would otherwise occur as a result of the fleet average requirements in Subpart 218-3 of this Part.

(h) Such ACP shall provide that advanced technology vehicle models, including ZEV's, sold or leased in California shall be available for purchase or lease in New York except for *type III ZEVs placed in service pursuant to section 1962(b)(2)(B) of the California Code of Regulations (see Table 1, section 200.9 of this Title)*.

(i) Failure to meet the terms of the approved alternative compliance program will subject a manufacturer to all applicable penalties, and will require compliance with the ZEV mandate as prescribed in section 218-4.1 of this Subpart.

(j) A manufacturer shall notify the department of its intent to file an alternative compliance program within 60 days after the effective date of this regulation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. ENV-14-04-00003-P, Issue of April 7, 2004. The emergency rule will expire May 20, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Steven E. Flint, P.E., Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8292, e-mail: seflint@gw.dec.state.ny.us

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The purpose of the rule amendment is to revise the existing Low Emission Vehicle (LEV) program to incorporate modifications that California has made to its vehicle emission control program relating to the Zero Emission Vehicle (ZEV) mandate. New York will also amend the Alternative Compliance Plan option in Part 218 to extend the expiration date of the option and to revise plan flexibilities. Adoption of these modifications is necessary to reduce emissions of air contaminants from new motor vehicles, and will also provide for continuing advancement of motor vehicle emissions control technology.

By statutory authority of, and pursuant to, Environmental Conservation Law (ECL), the Commissioner of Environmental Conservation is responsible for protecting the air resources of New York State. The Commissioner is authorized to adopt rules and regulations to enforce the ECL. The Legislature bestowed on the Department the power to formulate, adopt, promulgate, amend and repeal regulations for preventing, controlling or prohibiting air pollution.

The main purpose of enacting this program is to protect the health of New York State residents and its visitors. The revised emissions standards, developed to reduce air pollution from mobile sources, will have a positive impact by decreasing emissions of ozone precursor compounds. Exposure to motor vehicle emissions has caused or has been associated with eye, throat and bronchial irritation, headaches, nausea and lightheadedness. Deterioration in the health condition of those individuals with respiratory ailments may also occur. The primary compounds emitted from vehicle exhaust, and the secondary compounds that may form, can be detrimental to human health. Several studies have found evidence to support this.

The ZEV revisions: adopt regulations identical to California's; remove all references to fuel economy; modify the 15-year, 150,000-mile Partial ZEV (PZEV) warranty required for hybrid electric vehicles; modify the compliance requirements and options in response to the current state of ZEV technology; and define three fuel cell development stages which start in 2003.

The regulations are also modified to include revisions to the Zero Emission Vehicle (ZEV) mandate which would delay the ZEV percentage requirements until 2007, but allow full use of credits earned prior to that date. For the 2007-2011 transition period, the ZEV obligation is reduced to one-half of the current level, and the remaining half can be met with AT PZEVs or hydrogen infrastructure. In addition, five types of hybrid electric vehicles are defined qualifying for additional allowances or allowances that may be used in the AT PZEV category. The ZEV calculation method has also been amended and five ZEV types are created that are the basis for

the ZEV credits. Type III ZEVs placed in any state that is administering the California ZEV program (for example, New York State) pursuant to section 177 of the federal Clean Air Act count towards California's ZEV requirement, with the effect that the ZEV requirements of any section 177 state allow the counting of Type III ZEVs placed in California or other section 177 states.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. Under the ACP, manufacturers notify the Department of their intent to be governed by the ACP. The ACP requires manufacturers to meet a 10 percent ZEV level, based on a credit mechanism specified in the ACP. In addition, the ACP includes early introduction and phase in credit multipliers, which decline until the program fully matches up with the California program. The ACP requires that vehicles sold or leased in California must be available for purchase or lease in New York, and that manufacturers must identify in their proposed ACP how such vehicles will be marketed. The ACP allows manufacturers to generate up to 25 percent of their credits from infrastructure and transportation projects provided such projects are identified in their approved ACP. Credits can be applied to the vehicle category (PZEV, AT PZEV, or ZEV) which the project affects. The ACP includes specific reporting requirements, both in terms of forecasting as well as progress reports. The ACP commences with model year 2005, and ends with the end of the 2008 model year.

California has projected that the incremental cost of PZEVs relative to SULEVs is likely to be less than \$100 as vehicles are optimized in the next few years. The additional cost would cover some improvement in components should manufacturers design for less than a 150,000 mile life currently, and an additional \$10 for zero evaporative emission control system upgrades. Similarly, California projects that the incremental cost for an AT PZEV is \$1,500 in 2007-2008, \$1,200 in 2009-2011 and \$700 in 2012 and beyond. For Battery EVs, it is estimated that the incremental cost for full function EVs is \$17,000 from 2007-2012, and City EVs have an incremental cost of \$8,000 from 2007-2012. Regarding Fuel Cell EVs, the incremental costs are estimated to be \$300,000 in 2007-2008, \$120,000 in 2009-2011 and \$9,300 in 2012 to 2020. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

Businesses involved in manufacturing, selling, or purchasing passenger cars or trucks could be affected by the regulations. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements. The ZEV requirements are not expected to have a major cost impact on automobile dealers. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

The changes to the LEV regulations also result in no significant changes in paperwork requirements for dealers. While dealers must assure that the vehicles they sell are California certified, most manufacturers include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York State dealers.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air

benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

Many aspects of New York LEV regulations are more stringent than their federal counterpart. Examples include the zero-emission vehicle program. Because of this, adoption of all the Tier 2 standards would provide fewer emission benefits. The federal programs do not include a specific ZEV program. Thus, acceptance of the federal program could deprive New York of some or all of the advanced technology and air quality benefits associated with the ZEV program.

This regulatory amendment will take effect immediately and the ZEV mandate is effective in model year 2007. The New York ACP is a voluntary element of this regulation, and includes required actions in model year 2005.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, purchasing or repairing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

State and local governments are also consumers of vehicles that will be regulated under the LEV amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles in New York State; *i.e.*, they must purchase California certified vehicles.

The changes are a revision and extension of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to small businesses or local governments as a result.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, recordkeeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars, are required to sell or offer for sale only California certified vehicles. Also, some automobile dealerships will be selling and servicing advanced technology vehicles (ATV). These amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles, they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be \$8,000. A full function ZEV cost increment is projected at \$17,000. A fuel cell ZEV cost increment is projected at \$300,000 in 2007-2008, \$120,000 in 2009-2011, and \$9,300 in 2012 and beyond. The projected incremental cost for partial ZEVs (PZEVs) is projected to be \$100. Advanced Technology PZEVs are projected to have a cost increment of \$500 in 2007-2008 and \$200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed upon privately owned vehicles.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment. Furthermore, the LEV program is not applicable to vehicles with an odometer reading of 7,500 miles or more when sold.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

7. Economic and technological feasibility:

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The changes to the regulations modify New York State's current zero emission vehicle sales requirement. There are no requirements in the regulation which apply only to rural areas. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

The changes are revisions and extensions of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to rural areas as a result. The beneficial emissions impact of the program accrues to all areas of the state.

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

There are no specific requirements in the amended regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles and some engines are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be \$8,000. A full function ZEV is projected to have an incremental cost of \$17,000. A fuel cell ZEV incremental cost is projected at \$300,000 in 2007-2008 and \$120,000 in 2009-2011. The projected incremental cost for partial ZEVs (PZEVs) is projected to be

\$100. Advanced Technology PZEVs are projected to have an incremental cost of \$500 in 2007-2008 and \$200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas. As a result of the changes to the current ZEV requirements, rural areas may benefit by seeing an improvement in the air quality.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (DEC) is unaware of any adverse impact to jobs and employment opportunities as a result.

2. Categories and numbers affected:

The changes to this regulation may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards). Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out of state, but may be able to buy complying vehicles out of state.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The ZEV requirements are not expected to have a major cost impact on automobile dealers. A principal element of the revisions is that in order for a vehicle to qualify for any of a wide range of credit multipliers, the vehicle must actually be placed in service. Thus, while dealers have historically expressed concern that manufacturers would simply "dump" ZEVs on dealerships, there is now an incentive for manufacturers and dealers to work together to ensure that the vehicles are actually placed into service. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a

technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

5. Self-employment opportunities:

None.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Emission Standards for Motor Vehicles and Motor Vehicle Engines

I.D. No. ENV-14-04-00003-P

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

Proposed action: Amendment of sections 200.9, 218-4.1 and 218-4.2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Emission standards for motor vehicles and motor vehicle engines.

Purpose: To incorporate modifications that California has made to its vehicle emission control program relating to the ZEV mandate to reduce emissions in New York State and revise New York's ZEV alternative compliance plan provisions.

Public hearing(s) will be held at: 11:00 a.m., May 12, 2004 at Department of Environmental Conservation, Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; 1:00 p.m., May 13, 2004 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm., 129B, Albany, NY; 10:00 a.m., May 14, 2003 at Department of Environmental Conservation, Annex, Region 2, Rm. 106, 11-15 47th Ave., Long Island City, 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: (Section 200.1 through 200.8 remains unchanged) Section 200.9, Table 1 is amended to read as follows:

218-1.2(d)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Public Law 101-549 (1990)	**
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**
218-1.2(e)	California Health and Safety Code, Section 39003 (2000)	** ***
218-1.2(j)	California Vehicle Code, Section 165 (2000)	** ***
218-1.2(k)	California Code of Regulations, Title 13, Section 1900(b)(3) (12-22-99)	** ***
218-1.2(v)	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	++ ** ***+
218-1.2(w)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	++ ** ***+
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	++ ** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	++ ** ***+
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	++ ** ***+
218-1.2(x)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***

218-1.2(ad)	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	** ***		California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+
218-1.2(ai)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** *** ++		California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	++ ** ***+
218-1.2(al)	40 CFR Section 86.1827-01 (July 1, 2000)	*			++
218-1.2(aq)	California Code of Regulations, Title 13, Section 2112 (11-27-99)	** ***	218-4.1	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	** ***+
218-1.2(at)	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	** *** ++	218-4.2	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	[++] ** ***+
218-1.2(au)	California Code of Regulations, Title 13, Section 1900(b)(21) (12-07-01) and (5-24-02)	** *** ++	218-5.1(a)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	[++] ** ***
218-2.1(a)	California Code of Regulations, Title 13, Section 1956.8 (7-25-01)	** ***		California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***		California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** *** ++		California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	** ***		California Code of Regulations, Title 13, Section 2107 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	** ***	218-5.1(b)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***		California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** *** ++		California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** *** ++	218-5.2(a)	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	** *** ++		California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1964 (2-23-90)	** ***		California Code of Regulations, Title 13, Section 2109 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 1965 (12-22-99)	** ***		California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	** ***	218-5.2(b)(1)	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1976 (11-27-99)	** ***	218-5.3(b)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1978 (11-27-99)	** ***	218-6.2	Clean Air Act 42 U.S.C. Section 2101 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2030 (9-25-97)	** ***	218-7.3(a)(1)	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	** ***
	California Code of Regulations, Title 13, Section 2031 (9-25-97)	** ***		California Code of Regulations, Title 13, Section 2221 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 2047 (5-31-88)	** ***	218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224 (8-16-90)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***	218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
	California Code of Regulations, Title 13, Section 2235 (9-17-91)	** ***	218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***	218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
218-2.1(a)	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Public Law 101-549 (1990)	**		6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines	
218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	**		Subpart 4 ZERO EMISSION VEHICLE SALES MANDATE Section 218-4.1 ZEV percentages.	
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (2000)	***		Commencing in model-year [2005] 2007, each manufacturer's sales fleet of passenger cars and light-duty trucks, produced and delivered for sale in New York, must, at minimum, contain at least [10 percent] the same percentage of ZEVs subject to the same requirements set forth in California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title) using New York specific vehicle numbers.	
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**		Section 218-4.2. Voluntary alternative compliance plan (ACP).	
218-3.1	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** *** ++		An automobile manufacturer may implement a voluntary alternative compliance plan (ACP) to section 218-4.1 of this Subpart, provided such plan complies with the following and has been approved by the commissioner.	
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***		(a) Core credit scheme. The core vehicle credit values for the ACP shall be the same as California Code of Regulations, title 13, section 1962 (See Table 1, section 200.9 of this Title).	
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** *** ++		(b) New York multiplier. After the core credit value for a vehicle is established by CARB pursuant to California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title), a New York specific multiplier will be applied to that vehicle in accordance with [the following:] Table 1. The New York multiplier shall not be applied to type III ZEVs placed in service pursuant to the California Alternative Requirements for	
218-3.1(a)	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** *** ++			
218-3.1(b)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** *** ++			
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***			

Large Volume Manufacturers as identified in the California Code of Regulations, title 13, section 1962(b)(2)(B).

Table 1: [Northeast]New York Phase In Multiplier

Model Year	Requirement	PZEV Credit Multiplier	ATPZEV Credit Multiplier	ZEV Credit Multiplier
2002	Voluntary Early Introduction	1.5	1.5	3
2003	Voluntary Early Introduction	1.5	1.5	3
2004	[Mandatory Compliance] Voluntary Early Introduction	1.5	2.25	3
2005	Mandatory Compliance	1.3	1.7	2
2006	Mandatory Compliance	1.15	1.3	1.5
2007	[Equivalency with California program] Mandatory Compliance	[1] 1.15	1.3	[1] 1.5
2008	Mandatory Compliance	1.15	1.3	1.5
2009	Equivalency with California program	1	1	1

(c) Percentage requirements. An automobile manufacturer's ACP must comply with the following percentage phase-in requirements *except that if such manufacturer opts into California's alternative requirements for large volume manufacturers as provided in California Code of Regulations, title 13, section 1962(b)(2)(B), model year 2007 and 2008 minimum ZEV percentage requirements may be met in the manner identified in California Code of Regulations, title 13, section 1962(b)(2)(B)(2):*

Table 2: Percentage Requirements for ZEVs, AT PZEVs, and PZEVs

Model Year	Minimum Percent ZEV Credit	Minimum Percent AT PZEV Credit	Maximum Percent PZEV Credit
[2004]	[0]	[0]	[10]
2005	[Combined] 0	[1] 0	[9] 10
2006*	[1] Combined	[2] 1	[7] 9
2007	[2] 1	2	[6] 7
2008	1	2	7

* In MY 2006, 1 percent of a manufacturer's sales must be ZEV, AT PZEV or some combination thereof.

Intermediate volume manufacturers may meet the entire ZEV requirement with 100 percent PZEV credits. Small and independent low volume manufacturers are not required to meet the ZEV percentage requirements but are able to generate and trade credits.

(d) Infrastructure and transportation system projects. Automobile manufacturers may meet a total of 25 percent of their 10 percent ZEV requirement by implementing infrastructure and transportation demonstration projects in accordance with the following requirements. Manufacturers may seek credits for projects that advance infrastructure to encourage full development of alternative vehicle programs. Such projects may include alternative fuel refueling, fuel cells and home recharging for electric vehicles. Manufacturers may also seek credits for projects that result in the placement of advanced technology vehicles in innovative transportation systems. The commissioner shall take into account associated project costs and the relationship to supporting increased usage of advanced technology vehicles.

(e) Generation and use of credits. Credit life, banking and trading will be calculated as per California Code of Regulations, title 13, section 1962. A manufacturer who generates twice as many credits from model-year [2004] 2005 or earlier PZEVs as required for model-year [2004] 2005 has through model-year [2007] 2008 to comply with the model-year [2005] 2006 AT PZEV/ZEV requirement. A manufacturer who qualifies for the [2004] 2005 AT PZEV/ZEV carryforward and generates twice as many PZEV credits as necessary for model-year [2005] 2006 has through model-year [2008] 2009 to comply with the model-year [2006] 2007 AT PZEV/ZEV requirement.

(f) Reporting. (1) Projected compliance reports will be due by the commencement of the model year. This report will include projected vehicle sales organized by engine family, marketing plans, dealerships targeted for advanced technology vehicle sales and support, plans for infrastructure and transportation system projects and credits proposed to be earned, and manufacturer projected compliance rates including potential credits or debits.

(2) Compliance reports will be required and due with annual sales reports by March 31st (with the potential to amend, based on late sales) following the completed model year. This report will include vehicle sales

organized by engine family, descriptions of infrastructure and transportation system projects, manufacturer compliance rates including credits or debits earned and the way the manufacturer plans to erase any debits.

(g) Such ACP shall include, at a minimum:

(1) a demonstration that the emissions reductions from the alternative program equal or exceed those which would result from the compliance with section 218-4.1 of this Subpart;

(2) a demonstration that the alternative compliance program will lead to full compliance with all elements of section 218-4.1 of this Subpart starting no later than model year [2007] 2009; and

(3) actions by the manufacturers that advance the sale and use of ZEV (including PZEV) and advanced technologies beyond that which would otherwise occur as a result of the fleet average requirements in Subpart 218-3 of this Part.

(h) Such ACP shall provide that advanced technology vehicle models, including ZEV's, sold or leased in California shall be available for purchase or lease in New York *except for type III ZEVs placed in service pursuant to section 1962(b)(2)(B) of the California Code of Regulations (see Table 1, section 200.9 of this Title).*

(i) Failure to meet the terms of the approved alternative compliance program will subject a manufacturer to all applicable penalties, and will require compliance with the ZEV mandate as prescribed in section 218-4.1 of this Subpart.

(j) A manufacturer shall notify the department of its intent to file an alternative compliance program within 60 days after the effective date of this regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Steven E. Flint, P.E., Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8292, e-mail: seflint@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.

Summary Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The purpose of the rule amendment is to revise the existing Low Emission Vehicle (LEV) program to incorporate modifications that California has made to its vehicle emission control program relating to the Zero Emission Vehicle (ZEV) mandate. New York is also proposing to amend the Alternative Compliance Plan option in Part 218 to extend the expiration date of the option and to revise plan flexibilities. Adoption of these modifications is necessary to reduce emissions of air contaminants from new motor vehicles, and will also provide for continuing advancement of motor vehicle emissions control technology.

By statutory authority of, and pursuant to, Environmental Conservation Law (ECL), the Commissioner of Environmental Conservation is responsible for protecting the air resources of New York State. The Commissioner is authorized to adopt rules and regulations to enforce the ECL. The Legislature bestowed on the Department the power to formulate, adopt, promulgate, amend and repeal regulations for preventing, controlling or prohibiting air pollution.

The main purpose of enacting this program is to protect the health of New York State residents and its visitors. The revised emissions standards, developed to reduce air pollution from mobile sources, will have a positive impact by decreasing emissions of ozone precursor compounds. Exposure to motor vehicle emissions has caused or has been associated with eye, throat and bronchial irritation, headaches, nausea and lightheadedness. Deterioration in the health condition of those individuals with respiratory ailments may also occur. The primary compounds emitted from vehicle exhaust, and the secondary compounds that may form, can be detrimental to human health. Several studies have found evidence to support this.

The ZEV revisions: adopt regulations identical to California's; remove all references to fuel economy; modify the 15-year, 150,000-mile Partial ZEV (PZEV) warranty required for hybrid electric vehicles; modify the compliance requirements and options in response to the current state of ZEV technology; and define three fuel cell development stages which start in 2003.

The regulations are also modified to include revisions to the Zero Emission Vehicle (ZEV) mandate which would delay the ZEV percentage requirements until 2007, but allow full use of credits earned prior to that date. For the 2007-2011 transition period, the ZEV obligation is reduced to one-half of the current level, and the remaining half can be met with AT PZEVs or hydrogen infrastructure. In addition, five types of hybrid electric vehicles are defined qualifying for additional allowances or allowances

that may be used in the AT PZEV category. The ZEV calculation method will also be amended and five ZEV types are created that are the basis for the ZEV credits. Type III ZEVs placed in any state that is administering the California ZEV program (for example, New York State) pursuant to section 177 of the federal Clean Air Act count towards California's ZEV requirement, with the effect that the ZEV requirements of any section 177 state allow the counting of Type III ZEVs placed in California or other section 177 states.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. Under the ACP, manufacturers notify the Department of their intent to be governed by the ACP. The ACP requires manufacturers to meet a 10 percent ZEV level, based on a credit mechanism specified in the ACP. In addition, the ACP includes early introduction and phase in credit multipliers, which decline until the program fully matches up with the California program. The ACP requires that vehicles sold or leased in California must be available for purchase or lease in New York, and that manufacturers must identify in their proposed ACP how such vehicles will be marketed. The ACP allows manufacturers to generate up to 25 percent of their credits from infrastructure and transportation projects provided such projects are identified in their approved ACP. Credits can be applied to the vehicle category (PZEV, AT PZEV, or ZEV) which the project affects. The ACP includes specific reporting requirements, both in terms of forecasting as well as progress reports. The ACP commences with model year 2005, and ends with the end of the 2008 model year.

California has projected that the incremental cost of PZEVs relative to SULEVs is likely to be less than \$100 as vehicles are optimized in the next few years. The additional cost would cover some improvement in components should manufacturers design for less than a 150,000 mile life currently, and an additional \$10 for zero evaporative emission control system upgrades. Similarly, California projects that the incremental cost for an AT PZEV is \$1,500 in 2007-2008, \$1,200 in 2009-2011 and \$700 in 2012 and beyond. For Battery EVs, it is estimated that the incremental cost for full function EVs is \$17,000 from 2007-2012, and City EVs have an incremental cost of \$8,000 from 2007-2012. Regarding Fuel Cell EVs, the incremental costs are estimated to be \$300,000 in 2007-2008, \$120,000 in 2009-2011 and \$9,300 in 2012 to 2020. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

Businesses involved in manufacturing, selling, or purchasing passenger cars or trucks could be affected by the regulations. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements. The ZEV requirements are not expected to have a major cost impact on automobile dealers. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

The changes to the LEV regulations also result in no significant changes in paperwork requirements for dealers. While dealers must assure that the vehicles they sell are California certified, most manufacturers include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York State dealers.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems,

zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

Many aspects of New York LEV regulations are more stringent than their federal counterpart. Examples include the zero-emission vehicle program. Because of this, adoption of all the Tier 2 standards would provide fewer emission benefits. The federal programs do not include a specific ZEV program. Thus, acceptance of the federal program could deprive New York of some or all of the advanced technology and air quality benefits associated with the ZEV program.

The New York ACP is a voluntary element of this regulation, and includes required actions in model year 2005.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, purchasing or repairing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

State and local governments are also consumers of vehicles that will be regulated under the proposed LEV amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles in New York State; i.e., they must purchase California certified vehicles.

The changes are a revision and extension of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to small businesses or local governments as a result.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, recordkeeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars, are required to sell or offer for sale only California certified vehicles. Also, some automobile dealerships will be selling and servicing advanced technology vehicles (ATV). These proposed amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles, they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be \$8,000. A full function ZEV cost increment is projected at \$17,000. A fuel cell ZEV cost increment is projected at \$300,000 in 2007-2008, \$120,000 in 2009-2011, and \$9,300 in 2012 and beyond. The projected incremental cost for partial ZEVs (PZEVs) is projected to be \$100. Advanced Technology PZEVs are projected to have a cost increment of \$500 in 2007-2008 and \$200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed upon privately owned vehicles.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment. Furthermore, the LEV program is not applicable to vehicles with an odometer reading of 7,500 miles or more when sold.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

7. Economic and technological feasibility:

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The changes to the regulations modify New York State's current zero emission vehicle sales requirement. There are no requirements in the regulation which apply only to rural areas. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

The changes are revisions and extensions of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to rural areas as a result. The beneficial emissions impact of the program accrues to all areas of the state.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles and some engines are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be \$8,000. A full function ZEV is projected to have an incremental cost of \$17,000. A fuel cell ZEV incremental cost is projected at \$300,000 in 2007-2008 and \$120,000 in 2009-2011. The projected incremental cost for partial ZEVs (PZEVs) is projected to be

\$100. Advanced Technology PZEVs are projected to have an incremental cost of \$500 in 2007-2008 and \$200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas. As a result of the changes to the current ZEV requirements, rural areas may benefit by seeing an improvement in the air quality.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (DEC) is unaware of any adverse impact to jobs and employment opportunities as a result.

2. Categories and numbers affected:

The changes to this regulation may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards). Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out of state, but may be able to buy complying vehicles out of state.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The ZEV requirements are not expected to have a major cost impact on automobile dealers. A principal element of the revisions is that in order for a vehicle to qualify for any of a wide range of credit multipliers, the vehicle must actually be placed in service. Thus, while dealers have historically expressed concern that manufacturers would simply "dump" ZEVs on dealerships, there is now an incentive for manufacturers and dealers to work together to ensure that the vehicles are actually placed into service. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these

are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

5. Self-employment opportunities:
None.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Resuscitation Equipment in Public Places

I.D. No. HLT-14-04-00013-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 801 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 3000-d

Subject: Resuscitation equipment in public places.

Purpose: To provide for the availability of resuscitation equipment in certain public places.

Text of proposed rule:

Part 801

Availability of Resuscitation Equipment in Certain Public Places

801.1 Definitions. For the purposes of this Part, the following terms shall be defined as follows:

(a) "Accessible Area" means any area, which can be easily identified by, and is readily accessible to, patrons. "Accessible areas" may include but shall not be limited to the following: bar area, service counter area, host/hostess station, registration desk, and concession stand.

(b) "Bar" means any establishment which is devoted to the sale and service of alcoholic beverages for on-premises consumption and in which the service of food, if served at all, is incidental to the consumption of such beverages.

(c) "Health Club" means any commercial establishment offering instruction, training or assistance and/or the facilities for the preservation, maintenance, encouragement or development of physical fitness or well-being. "Health Club" as defined herein shall include, but not be limited to, health spas, health studios, gymnasiums, weight control studios, martial arts and self-defense schools or any other commercial establishment offering a similar course of physical training.

(d) "Owner or Operator" means the owner, manager, operator or other person having control of an establishment.

(e) "Package" means the sealed manufacturer-provided packaging containing an exhaled air resuscitation mask.

(f) "Public place" means a restaurant, bar, theater or health club.

(g) "Restaurant" means any commercial eating establishment with is devoted, wholly or in part, to the sale of food for on-premises consumption.

(h) "Resuscitation equipment" means:

(1) an adult exhaled air resuscitation mask, for which the Federal Food and Drug Administration has granted permission to market, accompanied by a pair of disposable gloves; and

(2) a pediatric exhaled air resuscitation mask, for which the Federal Food and Drug Administration has granted permission to market, accompanied by a pair of disposable gloves.

(i) "Suitable location" means any location where the resuscitation equipment is readily available to the public for use at all times.

(j) "Theater" means a motion picture theater, concert hall, auditorium or other building used for, or designed for, the primary purpose of exhibiting movies, stage dramas, musical recitals, dance or other similar performances.

801.2 Requirement.

The owner or operator of a public place as defined in section 801.1(a) of this Part shall have available, in an accessible area of such public place, resuscitation equipment sufficient to assure that patrons and/or staff can access it for use and bring it to the victim within 3 minutes of onset of an incident, and, in any event, no less than two (2) adult exhaled air resuscitation masks, two (2) pediatric exhaled air resuscitation masks, all

in their original package, and four (4) pairs of disposable gloves. Exhaled air resuscitation masks and gloves shall be discarded after a single use and replaced within 96 hours.

801.3 Labeling Requirements.

(a) The following written statement shall be stored with the resuscitation equipment or affixed to the envelope or container in which such equipment is stored:

IN THE EVENT OF AN EMERGENCY, REQUEST ASSISTANCE BY
DIALING 911 DO NOT ATTEMPT TO USE UNLESS TRAINED IN
CARDIOPULMONARY RESUSCITATION (CPR) AND IN THE USE OF
EXHALED AIR RESUSCITATION MASKS
RESUSCITATION EQUIPMENT CONTENTS INCLUDE:
TWO ADULT EXHALED AIR RESUSCITATION MASKS
TWO CHILD EXHALED AIR RESUSCITATION MASKS
FOUR PAIRS DISPOSABLE GLOVES
DISCARD MASK AND GLOVES AFTER ONE USE
REPLACE EQUIPMENT AS INDICATED

(b) The written statement shall be presented in a manner which is readily visible. Lettering on the statement shall not be less than 1/2 inch in height.

801.4 Required Notice.

(a) The owner or operator of a public place shall provide clear and conspicuous notice to all patrons which indicates that resuscitation equipment for emergency use is available, its location, and information on how to receive cardiopulmonary resuscitation (CPR) training. This notice shall be in the form of a sign, or shall be included as part of an information brochure, as long as the owner or operator provides the opportunity for all patrons to read the notice upon entering or shortly after being seated, and to do so without incurring a monetary charge.

(b) The notice shall include the following statements:

(1) In the event of an emergency, call 911 or (insert name of the local Emergency Medical Services (EMS)) at (insert phone number of local EMS system).

(2) Resuscitation masks and disposable gloves are available at (insert name of location(s) where resuscitation equipment is provided).

(3) Learn CPR. For information contact – (insert name(s) of organization(s) qualified to offer CPR training, which may include but are not limited to the American Red Cross and American Heart Association).

(c) Lettering and Graphics. The lettering on signs or informational handouts shall be of sufficient size so that all information is clear, conspicuous, and easily read. Signs and informational handouts shall be printed on durable material with a light-colored background. The required information on signs and informational handouts shall be highly visible color, with lettering on signs a minimum of 3/16 inches in height, and the lettering on informational handouts a minimum of 1/16 inch in height.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for these regulations is Public Health Law Section 3000-d as added by Chapter 349 of the Laws of 2001 to encourage public participation and aid in a medical emergency. The statute requires owners or operators of certain public places to have specific resuscitative equipment readily available for use in a medical emergency. Section 3000-d(3) authorizes the Commissioner of Health to adopt certain regulations necessary to implement the statute.

Legislative Objectives:

The Legislature recognizes the need to develop and support policies promoting the good health of all the people of the State of New York. One essential element of such policies is to encourage public intervention and aid during a medical emergency. The legislative objective of Section 3000-d of the Public Health Law is to encourage emergency response by individuals who are trained in cardiopulmonary resuscitation (CPR) and who may not otherwise respond for fear of personal health risks.

Needs and Benefits:

Emergency medical professionals have discovered that many individuals who are otherwise qualified to provide life saving assistance, such as mouth-to-mouth resuscitation, are afraid to do so because of the perceived

health risks of such activities. Such hesitation can cost the lives of the individuals in need of prompt medical attention to ensure recovery.

In order to encourage qualified persons to provide life saving assistance, while reducing the risk of potential exposure to disease, the Legislature has found it necessary for the health, safety and well-being of the public, to require the ready availability of exhaled air resuscitation masks and disposable gloves in certain public places. The location of this equipment and a contact for CPR training must be made known to the patrons in these places.

Public Health Law Section 3000-d requires restaurants, bars, theatres and health clubs to make available resuscitation equipment in quantities deemed adequate by the Department of Health and provides that a notice of the availability and location of such resuscitation equipment shall be given at such public places by means of signs, printed material or other written communication as determined by the Commissioner of Health. These rules and regulations pertain to the quantity and equipment, information to be provided with the equipment, and the type, size, style, location and wording of the required written notice to patrons.

In 1999 there were 21,242 Emergency Medical Service (EMS) calls from recreational sites such as, but not limited to, the public places regulated by this act according to the permanent Pre-hospital Care Report (PCR) data file. When a victim is not breathing, restoring oxygen to the brain as soon as possible is essential for the best chance of recovery and for limiting further damage. Universal precautions in the form of a properly fitted exhaled air resuscitation mask with a one-way valve and disposable gloves are used to reduce the potential risk of infection to the responder from such sources as bacterial and respiratory infection, Hepatitis B and C, and AIDS. Trained responders would be among those individuals most aware of the health risks from providing aid without using universal precautions. Therefore knowledgeable individuals most able to respond in an emergency situation may be the most reluctant to spontaneously become involved when proper protective equipment is not available.

The statute also specifically provides immunity from liability pursuant to Article 30 Section three thousand-a of the Public Health Law, to any "good Samaritan" who voluntarily and without expectation of monetary compensation renders emergency assistance to a person who is unconscious, ill or injured.

Costs:

Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:

The operators of "public places" such as bars, restaurants, theatres and health clubs, are required to provide at least two (2) adult-size and two (2) child-size exhaled air resuscitation masks each with a pair of disposable gloves, which will be disposed of after use and replaced promptly within ninety-six (96) hours. There must be a cache of this equipment that patrons and/or staff can access as quickly as possible, and so that it may be brought to the victim within three (3) minutes of the start of the incident from wherever it is located in the facility. Therefore there may need to be more than one set of equipment in a large facility. Cost per mask is estimated at approximately \$12. Cost of disposable gloves is minimal and restaurants often have a supply on hand for use in their food service operation. Cost of required signage will be variable as the operator may produce it in-house or may have signs made. Maintaining the inventory of four (4) masks plus gloves at each site/cache will cost at least \$48. The law and regulation will have no cost impact on facilities in New York City where a similar regulation is already in effect.

Costs to State and Local Government:

There will be no additional costs to local governments. These entities are not required to provide any services as a result of this regulation. If they operate a restaurant, bar, theatre, or health club, local governments will incur costs as a regulated entity.

Costs to the Department of Health:

There are no additional costs to the Department of Health. Oversight of affected entities will be conducted by existing staff.

Local Government Mandates:

This regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district as a governmental entity. If they operate a restaurant, bar, theatre or health club they will be required to make resuscitative equipment and notices available as required by the regulation. The statute makes clear that "nothing in this section shall be construed to restrict the power of any county, city, town or village to adopt and enforce additional local laws, ordinances or regulations which comply with at least the minimum applicable standards set forth in this article".

Paperwork:

This proposed amendment will not have a major effect on paperwork for regulated parties. Such parties are expected to maintain the necessary emergency equipment and signage as described. No reports are required.

Duplication:

This regulation does not duplicate any other State or federal law or regulation. This regulation is patterned after a similar regulation already implemented by New York City Department of Health (24 RCNY 18). This act will not impose an additional burden on the public places/businesses in New York City, but rather will guarantee the same possibility/capability for resuscitative action for upstate residents who find themselves in an emergency situation in one of the public places addressed by the law.

Alternatives:

Without the availability of resuscitative equipment, many or most individuals who are competent to provide resuscitative measures would be reluctant to do so and the victim would have to wait precious minutes until emergency medical personnel arrive at the scene. The time lapse is critical in restoring oxygen to the brain to limit further damage to the victim.

Alternative quantities of equipment were considered. Two masks in each size (adult and child) were determined to be a necessary and sufficient quantity to meet the unlikely circumstance of more than one emergency incident within a short period. The 96-hour equipment replacement period accommodates weekends/holidays when replacement might be more difficult. Two mask sizes ensure an adequate air seal for potential victim(s) of various ages/sizes. Use of a convertible mask was considered but felt that it would encourage unnecessary dispute regarding the number of masks required. Moreover, not everyone trained in CPR has had experience with convertible masks.

Regulated requirements for the signage ensure that the information is consistent and clearly readable. Details of materials and production, which influence cost, and of exact placement in the establishment are left to the discretion of the operator.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

These proposed regulations will become effective upon publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This regulation will apply to restaurants, bars, theaters and health clubs employing 100 or less individuals and to any local government which operates a restaurant, bar, theater or health club. Exact numbers were not available but the Department estimates there are thousands of such entities.

Compliance Requirements:

There are no recordkeeping or reporting requirements associated with the proposed rule. Regulated parties must acquire and maintain resuscitation equipment and signage as provided in the regulation.

Professional Services:

No professional services are necessary in order to comply with the proposed rule.

Compliance Costs:

There are no capital costs of compliance. The initial cost to comply with the regulation is estimated at slightly more than \$48 for 2 adult and 2 pediatric masks @ approximately \$12 each. The cost of disposable gloves is minimal and places serving food generally would have a supply on hand already. Cost of required signage will vary as this may be produced in-house or commercially. Additional expense for continued compliance will be only to replace used equipment as necessary. The regulation requires that resuscitation equipment be located such that it can be brought to the emergency victim within three (3) minutes of the onset of the incident. Therefore, if a "small business" covers a large physical area, or is one in which access to the equipment is restricted, an additional cache of resuscitation equipment might be necessary in order to meet this performance standard.

The law and regulation will have no cost impact on New York City where a similar regulation is already in effect with no distinction made for the size of the business.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

The Department of Health considered the approaches in section 202-b(1) of the State Administrative Procedure Act. In view of the implementing statute, there are no acceptable alternatives. Without the availability of

resuscitative equipment, many or most individuals who are competent to provide resuscitative measures would be reluctant to do so and the victim would have to wait precious minutes until emergency medical personnel arrive at the scene. The time lapse is critical in restoring oxygen to the brain to limit further damage to the victim. The effect of the regulation is to provide a safety measure, which should be more beneficial than detrimental to the business in the event of an unfortunate emergency requiring its use. In any event, the minimal costs involved can be attributed to the legislation, rather than to the regulation.

Small Business and Local Government Participation:

The Department conducted outreach to entities that will be impacted by these regulations. A copy of the regulations and request for comments were sent to the following organizations in April, 2002: Empire State Restaurant and Tavern Association; International Health Racquet and Sportsclub Association; National Association of Theater Owners; NYS Hospitality and Tourism Association; NYS Restaurant Association; and TriCon Global Restaurants, Inc., representing the National Council of Chain Restaurants. Issues raised by these parties have been considered in the current revision of the regulations where deemed appropriate. Some latitude regarding the signage and the location of the equipment is left to the discretion of the establishment's owner/operator, as to what will best work in their individual situations. Specifications of actual equipment to be provided and parameters for its storage are more exact.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

The proposed rule will apply to the "public places" as defined in the law, *i.e.*, restaurants, bars, theaters, and health clubs, whether located in rural or urban areas. Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, and Yates. The following 9 counties have certain townships with population densities of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, and Orange.

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

The proposed regulations do not impose any new reporting requirements, forms or other paperwork. No additional professional services will be necessary to comply with the proposed rule. Regulated parties must acquire and maintain signage as provided in the regulation.

Costs:

There are no capital costs of compliance. The initial cost to implement this regulation is estimated to be little more than approximately \$48 total for 2 adult and two pediatric masks (\$12 each). Disposable gloves are minimal cost and already should be on site at each "public places" covered by the regulation. Cost of required signage is at the operator's discretion as long as it meets requirements for size and content. Additional costs will only be to replace any used equipment as necessary. There would not be variation in these minimal costs for different types of public and private entities in rural areas.

Minimizing adverse impact:

In general, the regulations attempt to minimize the adverse impact on all providers, including those operating in rural areas. The Department of Health considered the approaches in section 202-bb(2) of the State Administrative Procedure Act. This regulation simply provides for the availability of at least four exhaled air resuscitation masks and disposable gloves in "public places such as bars, restaurants, theaters and health clubs", so that trained persons will not be reluctant to provide CPR if necessary in an emergency. Exemption of rural providers from the proposed rule would not serve the purposes of the legislation to facilitate response by trained individuals in an emergency requiring CPR. People in rural areas have the right to expect the availability of this safety equipment just as people in non-rural areas have such right. The minimal cost involved should not prove a deterrent to provision of the necessary equipment.

Rural area participation:

The Department conducted outreach to entities that will be impacted by these regulations, including those that operate in rural areas. A copy of the regulations and request for comments were sent to the following organiza-

tions in April, 2002: Empire State Restaurant and Tavern Association; International Health Racquet and Sportsclub Association; National Association of Theater Owners; NYS Hospitality and Tourism Association; NYS Restaurant Association; and TriCon Global Restaurants, Inc., representing the National Council of Chain Restaurants. Issues raised by these parties have been considered in the current revision of the regulations where deemed appropriate. Some latitude regarding the signage and the location of the equipment is left to the discretion of the establishment's owner/operator, as to what will best work in their individual situations. Specifications of actual equipment to be provided and parameters for its storage are more exact. Exemption of operators of these businesses in rural areas from the proposed rule would not serve the purpose of encouraging participation of trained individuals in an emergency.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of this amendment that it will not have a substantial adverse impact on jobs and employment opportunities.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recognition of the 2001 CSO Mortality Table

I.D. No. INS-14-04-00014-P

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

Proposed action: Addition of new Part 100 (Regulation 179) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240 and 4517, and arts. 24 and 26

Subject: Recognition of the 2001 CSO mortality table.

Purpose: To recognize, permit and prescribe the use of the 2001 commissioners standard ordinary (CSO) mortality table for life insurance in accordance with sections 4217, 4221 and 4517 of the Insurance Law.

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

Section 100.1 lists the main purpose of the regulation, recognizing and prescribing the use of a new mortality table for the valuation of life insurance.

Section 100.2 is the applicability section. The regulation applies to all life insurers, fraternal benefit societies, and accredited reinsurers doing business in the State of New York.

Section 100.3 is the definitions section.

Section 100.4 sets forth the general requirements for the use of the mortality table. The mortality table may be used for ordinary life insurance policies issued on or after January 1, 2004, but must be used for all ordinary life insurance policies issued on or after January 1, 2009.

Section 100.5 defines the conditions for the use of the mortality table for the following: (1) plans of insurance with separate rates for smokers and nonsmokers and (2) plans of insurance without separate rates for smokers and nonsmokers. This section requires that insurers submit an Actuarial Opinion based on asset adequacy analysis in accordance with Part 95 of this Title when the 2001 CSO table is used as the minimum standard for valuing life insurance.

Section 100.6 defines when the 2001 CSO table is an acceptable table for meeting the requirements of Part 98 of this Title.

Section 100.7 prescribes the use of gender-blended tables for those ordinary life insurance policies that utilize the same premium rates and charges for male and female lives or those policies issued where applicable law does not permit distinctions on the basis of gender.

Section 100.8 establishes the severability provision of the regulation.

Appendix 25 contains the 2001 CSO mortality table. Rates of mortality in Tables 1-24 are non-gender blended. Rates of mortality in Tables 25-84 are gender-blended.

Text of proposed rule and any required statements and analyses may be obtained from: Theresa Marchon, Insurance Department, 25 Beaver

St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

Data, views or arguments may be submitted to: Michael D. Cebula, Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 486-6805, e-mail: mcebula@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the adoption of Regulation 179 (11 NYCRR 100) is derived from sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240, 4517, Article 24, and Article 26 of the Insurance Law.

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

Section 1304 of the Insurance Law requires insurers to maintain reserves for life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Section 4217(c)(2)(A)(iii) permits, as a minimum standard of valuation for life insurance policies, any ordinary mortality table adopted by the National Association of Insurance Commissioners (NAIC) after 1980, and approved by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4221(k)(9)(B)(vi) permits, for policies of ordinary insurance, the use of any ordinary mortality table, adopted by the NAIC after 1980, and approved by the Superintendent, for use in determining the minimum nonforfeiture standard.

Section 4224(a)(1) prohibits unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for life insurance policies.

Section 4240(d)(7) states the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section, which covers various issues related to separate accounts of insurance companies, including reserve issues.

For Fraternal Benefit Societies, section 4517(c)(2) requires societies to comply with the minimum valuation standards of section 4217 of the Insurance Law for life insurance certificates issued on or after January 1, 1980.

Article 24 describes unfair methods of competition and unfair and deceptive acts and practices.

Article 26 describes unfair claim settlement practices, other misconduct and discrimination.

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers licensed to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves.

3. Needs and benefits:

The current statutory valuation standard, the 1980 Commissioners Standard Ordinary (CSO) table is more than 20 years old. Since the time the 1980 CSO table was developed there have been improvements in mortality levels. The 2001 CSO table is based on mortality experience from the 1990s supplied by insurers that participated in a Society of Actuaries study on mortality. This table is intended to replace the existing 1980 CSO table for valuing the minimum standards for ordinary life insurance. According to the American Academy of Actuaries Task Force Report, it is expected that the 2001 CSO table will produce overall reserves (excluding deficiency reserves) that will be approximately 20 percent lower than those produced by the 1980 CSO table. Since the use of this table will lower the reserves on ordinary life business, insurers may use the 2001 CSO table only if they provide an Actuarial Opinion based on asset

adequacy analysis which is in compliance with Part 95 of this Title. This Regulation will give domestic insurance companies and foreign insurance companies licensed to do business in New York State the ability to compete effectively with companies not so licensed. The 2001 CSO mortality table is supported by the actuarial profession.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which incorporate the new mortality table. Some insurers already have in place the mortality table due to the Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation adopted by National Association of Insurance Commissioners (NAIC) in December 2002. This regulation is expected to lower reserve levels for a number of products which use the new table, therefore additional costs will be minimal. An insurer that needs to modify its current system to include this table could produce modifications internally or purchase services from a consultant. Once the new table is incorporated into the insurers systems, no additional costs should be incurred due to the new table.

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

5. Local government mandates:

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

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

The only significant alternative to be considered was to keep the current minimum standard for the valuation of ordinary life insurance as the 1980 CSO table, which would result in higher reserves for New York licensed life insurers.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

Compliance with this regulation is voluntary for all ordinary life insurance policies issued between January 1, 2004 and December 31, 2008. Insurers must use the 2001 CSO table for all ordinary life insurance policies issued on or after January 1, 2009, which allows insurers subject to the regulation ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

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

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

The regulation recognizes and prescribes the use of a new mortality table for life insurance.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which incorporate the new mortality table. The new table is not required for use until January 1, 2009. Some insurers already have in place the mortality table due to the Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation adopted by National Association of Insurance Commis-

sioners (NAIC) in December 2002. This regulation is expected to lower reserve levels for a number of products which use the new table, therefore additional costs will be minimal. An insurer that needs to modify its current system to include this table could produce modifications internally or purchase services from a consultant. Once the new table is incorporated into the insurers systems, no additional costs should be incurred due to the new table.

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with an advisory group made up of members of the American Academy of Actuaries, the public policy organization for actuaries practicing in all specialties within the United States. The Academy worked with both the Society of Actuaries and the NAIC's Life and Health Actuarial Task Force to develop the 2001 CSO tables. Additionally, the Department had numerous discussions with both the Life Insurance Council of New York (LICONY) and the American Council of Life Insurers regarding this regulation. A copy of the draft was distributed to LICONY in September, 2003. A discussion of the proposed regulation was included in the Insurance Department's regulatory agenda which was published in the January 2004 issue of the *State Register*.

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 adopts a new mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits. This rule will lower reserve requirements 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 licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

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

Self-employment opportunities:

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

or in any other position allocated to a salary grade in section 130 of the Civil Service Law for the two-month period during which his/her regular salary is not paid shall receive additional compensation for such service.

A new paragraph 11 is added to subdivision (a) of § 250.6 to read as follows:

(11) Education director I, G-22

Part 251 is amended to read as follows:

Subdivision (a) of § 251.6 is amended to read as follows:

(a) These attendance rules shall apply to the employees in the department who are employed in [one of] the position[s] listed below and whose principal duties involve teaching or instruction of patients or inmates, or the direct supervision of such teaching or instruction; and who are employed on the basis of a calendar year similar to the school calendar year of public school teachers in New York State; and who are compensated in accordance with section 136 of the New York State Civil Service law; and who are designated as managerial/confidential under section 201, article 14 of the Civil Service Law:

[(1) Education director I, G-22.

(2)] Education director II, G-24

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

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

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

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

Consensus Rule Making Determination

No person is likely to object to these amendments because they merely are intended to conform the regulations to labor management agreements in effect since October 1, 1990. These amendments revise Parts 250 and 251 of Title 14 NYCRR to reflect that teachers, in titles assigned to grade 22 and below, employed by the Office of Mental Health, are eligible for overtime and that the title Education Director I, G-22 is no longer in the Management Confidential unit. (Part 250 relates to titles in the teacher series in the Professional, Scientific and Technical (PS&T) bargaining unit and Part 251 relates to titles in the teacher series in the Management Confidential unit.)

Effective since 10/1/90, there has been a provision in the PS&T Agreement that provides that compensation for overtime work will continue to be subject to all applicable statutes, rules and regulations, except that all positions in the PS&T Unit, allocated or equated to grades 22 and below, shall be deemed to be eligible to receive overtime compensation. This requirement is currently found in 7.17 of the most recent PS&T Agreement. To conform Part 250 to this provision, § 250.1(c) will be amended to indicate that all positions subject to Part 250 are overtime eligible.

The title Education Director I, G-22, will be moved from § 251.6 to § 250.6 reflecting its correct bargaining unit. The remaining Management Confidential title in Part 251, Education Director II, G-24, continues to be ineligible for overtime.

Section 250.6(c) of Title 14 NYCRR states that in the event the provisions of attendance regulations or rules and an agreement between the state and an employee organization, reached pursuant to Article 14 of the Civil Service Law, are different, the provisions of the agreement shall be controlling.

These revisions will also make Parts 250 and 251 consistent with the determination by the Division of Budget of positions eligible for overtime as set forth in § 135.3 of 9 NYCRR Part 135, Overtime Compensation.

As set forth in 14 NYCRR §§ 250.5 and 251.5, these Parts may not be amended except on approval by the New York State Civil Service Commission. Evidence of such approval shall be submitted when this rule is adopted.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because these amendments will have no negative impact on jobs and employment opportunities. The changes merely conform these Parts to labor management agreements in effect since October 1, 1990 and will make them consistent with the determination by the Division of the Budget of positions eligible for overtime.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Attendance Rules for Teachers

I.D. No. OMH-14-04-00004-P

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

Proposed action: This is a consensus rule making to amend sections 250.1, 250.6 and 251.6 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a); and Civil Service Law, section 136

Subject: Attendance rules for teachers.

Purpose: To conform overtime eligibility rules to labor management agreements.

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

Subdivision (c) of § 250.1 is amended to read as follows:

(c) Overtime. Overtime shall [not] be earned for time worked in excess of the basic work-week during the 10-month period an employee is paid his regular salary. An employee who is required to work in his/her position

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Rate/Fee Setting

I.D. No. MRD-03-04-00002-E

Filing No. 327

Filing date: March 23, 2004

Effective date: March 30, 2004

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

Action taken: Amendment of sections 635-10.5, 671.7, 680.12, 681.14 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09 and 43.07

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

Specific reasons underlying the finding of necessity: Fiscal uncertainties precluded OMRDD from securing necessary control agency approvals to allow for timely proposal and promulgation of these amendments within the regular SAPA procedural time frames. The emergency amendments revise the rates/fees of reimbursement of the referenced facilities and services. If OMRDD did not file this emergency adoption and maintain the regulatory authority to pay the revised rates and fees effective January 1, 2004 and February 1, 2004, the loss of revenues could have a deleterious effect on the fiscal viability of some providers, especially those which have smaller operations. This potential negative effect could translate into compromised services for citizens with developmental disabilities who need such services.

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

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs for the periods of Jan. 1, 2004 to Dec. 31, 2004 and July 1, 2004 to June 30, 2005. More specifically, the amendments are concerned with establishing trend factors to be applied within the context of the referenced reimbursement methodologies, effective Jan. 1, 2004 and Feb. 1, 2004.

Text of emergency rule: ◦ Paragraph 635-10.5(i) (1) - Add new subparagraphs (xix) and (xx):

(xix) *Effective February 1, 2004, facilities will receive an amount that they would have received if the trend factor in subparagraph (xviii) of this paragraph for the fee period July 1, 2003 to June 30, 2004 were increased in the amount of 3.12 percent. The trend factor in effect for the fee period ending June 30, 2004 shall be deemed to be increased in the amount of 3.12 percent. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section.*

(xx) *3.20 percent to trend 2003-2004 costs to 2004-2005. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.*

Note: Rest of paragraph is renumbered accordingly.

◦ Paragraph 635-10.5(i)(2) - Add new subparagraphs (xix) and (xx):

(xix) *Effective February 1, 2004, facilities will receive an amount that they would have received if the trend factor in subparagraph (xviii) of this paragraph for calendar year 2003 were increased in the amount of 3.12 percent. The trend factor in effect for the fee period ending December 31, 2003 shall be deemed to be increased in the amount of 3.12 percent. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section.*

(xx) *3.20 percent to trend calendar 2003 costs to calendar year 2004. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency*

sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.

Note: Rest of paragraph is renumbered accordingly.

◦ Clause 671.7(a)(1)(vi)(a) - Add new subclause (12):

(12) *For calendar year 2004:*

NYC and Nassau, Rockland, Suffolk, \$28.07 per day
and Westchester Counties

Rest of State \$28.07 per day

Note: Rest of clause remains unchanged.

◦ Clause 671.7(a)(1)(xvi)(a) - Add new subclause (10):

(10) *0.00 percent from January 1, 2004 through December 31,*

2004.

◦ Clause 671.7(a)(1)(xvi)(b) - Add new subclause (10):

(10) *0.00 percent from July 1, 2004 through June 30, 2005.*

◦ Paragraph 680.12(d)(3) - Add new subparagraph (xvii):

(xvii) *3.02 percent for 2004.*

◦ Subparagraphs 681.14(g)(1)(x) -(xiii) are amended as follows:

(x) *Effective February 1, 2003, facilities will receive an amount*

that they would have received if the trend factor in subparagraph (ix) of this paragraph for the rate period of July 1, 2002 to June 30, 2003 were increased in the amount of 3.0 percent. The trend factor in effect for the rate period ending June 30, 2003 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xi) *3.43 percent for 2002-2003 to 2003-2004 [.] ;*

(xii) *Effective February 1, 2004, facilities will receive an amount that they would have received if the trend factor in subparagraph (xi) of this paragraph for the rate period of July 1, 2003 to June 30, 2004 were increased in the amount of 3.12 percent. The trend factor in effect for the rate period ending June 30, 2004 shall be deemed to be increased in the amount of 3.12 percent; and*

(xiii) *3.20 percent for 2003-2004 to 2004-2005.*

◦ Subparagraphs 681.14(g)(2)(x) -(xiii) are amended as follows:

(x) *Effective February 1, 2003, facilities will receive an amount*

that they would have received if the trend factor in subparagraph (ix) of this paragraph for calendar year 2002 were increased in the amount of 3.0 percent. The trend factor for the rate year ending December 31, 2002 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xi) *3.43 percent for 2002 to 2003 [.] ;*

(xii) *Effective February 1, 2004, facilities will receive an amount that they would have received if the trend factor in subparagraph (xi) of this paragraph for calendar year 2003 were increased in the amount of 3.12 percent. The trend factor for the rate year ending December 31, 2003 shall be deemed to be increased in the amount of 3.12 percent; and*

(xiii) *3.20 percent for 2003 to 2004.*

◦ Subparagraphs 681.14(g)(3)(xviii) -(xxi) are amended as follows:

(xviii) *Effective February 1, 2003, facilities will receive an*

amount that they would have received if the trend factor in subparagraph (xvii) of this paragraph for the rate period of July 1, 2002 to June 30, 2003 were increased in the amount of 3.0 percent. The trend factor in effect for the rate period ending June 30, 2003 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xix) *3.43 percent for 2002-2003 to 2003-2004 [.] ;*

(xx) *Effective February 1, 2004, facilities will receive an amount that they would have received if the trend factor in subparagraph (xix) of this paragraph for the rate period of July 1, 2003 to June 30, 2004 were increased in the amount of 3.12 percent. The trend factor in effect for the rate period ending June 30, 2004 shall be deemed to be increased in the amount of 3.12 percent; and*

(xxi) *3.20 percent for 2003-2004 to 2004-2005.*

◦ Subparagraphs 681.14(g)(4)(xviii) -(xxi) are amended as follows:

(xviii) *Effective February 1, 2003, facilities will receive an*

amount that they would have received if the trend factor in subparagraph (xvii) of this paragraph for calendar year 2002 were increased in the amount of 3.0 percent. The trend factor for the rate year ending December 31, 2002 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xix) *3.43 percent for 2002 to 2003 [.] ;*

(xx) *Effective February 1, 2004, facilities will receive an amount that they would have received if the trend factor in subparagraph (xix) of this paragraph for calendar year 2003 were increased in the amount of 3.12 percent. The trend factor for the rate year ending December 31, 2003 shall be deemed to be increased in the amount of 3.12 percent; and*

(xxi) *3.20 percent for 2003 to 2004.*

◦ Subparagraph 690.7(d)(6)(i) - Add new clause (p):

(p) 0.00 percent for 2003-2004 to 2004-2005, including those facilities in Regions II and III designated or elected to a Region I reporting year-end and fiscal cycle and excluding those facilities in Region I designated or elected to a Region II or III reporting year-end and fiscal cycle in accordance with subparagraph (b)(1)(iv) of this section.

◦ Subparagraph 690.7(d)(6)(ii) - Add new clause (p):

(p) 0.00 percent for 2003 to 2004, including those facilities in Region I designated or elected to Region II or III and excluding those facilities in Region II or III designated or elected to Region I in accordance with subparagraph (b)(1)(iv) of this section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. MRD-03-04-00002-EP, Issue of January 21, 2004. The emergency rule will expire on the publication date of simultaneously filed notice of adoption.

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative Objectives: These emergency amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law. The enactment of these emergency amendments will ensure the funding to voluntary agency providers of the following services:

a. Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5).

b. Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7).

c. Specialty Hospitals (amendments to section 680.12).

d. Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD) (amendments to section 681.14).

e. Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7).

This funding is necessary in order to enable voluntary agencies that operate the above facilities to maintain services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and developmental disabilities.

3. Needs and Benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities. The emergency amendments are primarily concerned with identifying the respective trend factors applicable to these facilities and services, effective January 1, 2004 and February 1, 2004.

Fiscal uncertainties precluded OMRDD from securing necessary control agency approval to allow for previous proposal and timely promulgation of these amendments within the regular SAPA procedural time frames. The loss of revenues, if OMRDD did not file these emergency amendments and maintain the regulatory authority to reimburse providers of the above referenced facilities and services at revised rates/fees for the periods beginning January 1, 2004, and July 1, 2004, could have a negative

effect on the fiscal viability of some providers, especially those which have smaller operations.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

◦ For Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite, and prevocational services for the approximately 57,400 persons receiving such services as of December 2003.

The emergency amendments implement a trend factor of 3.20 percent. The estimated cost for implementation the trend factor contained in the amendments on an annual aggregate basis is approximately \$44.0 million for the fee periods beginning January 1, 2004 and July 1, 2004. This represents approximately \$21.7 million in State share and \$20.4 million in federal funds. The estimated cost of the 3.20 percent trend factor to local governments is approximately \$1.9 million on an annual aggregate basis and divided among the counties.

The amendments contained in this emergency rule making also add new subparagraphs 635-10.5(i)(1)(xix) and (i)(2)(xix) to establish a supplemental trend factor of 3.12 percent for the immediately preceding fee periods. Effective February 1, 2004, providers of these services will receive an amount that they would have received if the trend factor in effect for the fee periods ending December 31, 2003 and June 30, 2004 were increased by 3.12 percent. The estimated cost for implementation of this supplemental trend factor contained in the emergency amendments on an annual aggregate basis is approximately \$40.0 million. This represents approximately \$19.7 million in State share and \$18.5 million in federal funds. The estimated cost of the 3.12 percent supplemental trend factor to local governments is approximately \$1.8 million on an annual aggregate basis and divided among the counties.

◦ For Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which are providing services to approximately 1,900 persons as of December 2003. The amendments implement a trend factor of zero percent. There are therefore no costs attributable to this amendment, either to the State or to local governments.

The amendments to section 671.7 also update the SSI per diem allowances consistent with levels determined by the Federal Social Security Administration. There are no additional costs attributable to this conforming amendment, either to the State or to local governments.

◦ For Specialty Hospitals (amendments to section 680.12). New York State funds the one such facility currently in operation. The emergency amendments implement a trend factor of 3.02 percent. The estimated total cost for implementation of this trend factor on an aggregate annualized basis is approximately \$437,000 for the period beginning January 1, 2004. This represents approximately \$218,500 in State share and \$218,500 in federal funds. There are no costs to local governments as a result of the amendments.

◦ For Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2003, there were 623 voluntary-operated sites certified by OMRDD to provide ICF/DD services in New York State. The emergency amendments implement a trend factor of 3.20 percent. The estimated cost for implementation of the trend factor contained in the amendments on an annual aggregate basis is approximately \$22.8 million for the rate periods beginning January 1, 2004 and July 1, 2004. This represents approximately \$11.4 million in State share and \$11.4 million in federal funds.

The amendments contained in this emergency rule making also add new subparagraphs 681.14(g)(1)(xii); (g)(2)(xii); (g)(3)(xx) and (g)(4)(xx) to establish a supplemental trend factor of 3.12 percent for the immediately preceding rate periods. Effective February 1, 2004, ICF/DD facilities will receive an amount that they would have received if the trend factor in effect for the rate periods ending December 31, 2003 and June 30, 2004 were increased by 3.12 percent. The estimated cost for implementation of this supplemental trend factor contained in the emergency amendments on an annual aggregate basis is approximately \$20.4 million. This represents approximately \$10.2 million in State share and \$10.2 million in federal funds.

There are no costs to local governments resulting from amendments to section 681.14.

◦ For Day Treatment facilities serving persons with developmental disabilities (amendments to section 690.7). As of December 2003, there were 206 sites certified by OMRDD to provide day treatment services

statewide. The amendments implement a trend factor of zero percent for the periods beginning January 1, 2004 and July 1, 2004. There is therefore no fiscal impact, State or federal, associated with the amendments. There are also no costs to local governments resulting from these amendments.

Pursuant to the Social Services Law, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. As previously discussed on a facility/service specific basis, an unreimbursed local government share is involved for only a portion of the consumers receiving HCBS waiver services (section 635-10.5). These are consumers who live with their families or on their own and who do not qualify for local share relief under State law.

In all instances, these estimated cost impacts have been derived by applying the trend factor provisions of the amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of December, 2003.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency amendments are necessary to maintain funding of the above cited facilities at revised levels of reimbursement in effect as of January 1, 2004 and February 1, 2004. To the extent that the amendments provide trend factor increases to the providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

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

6. Paperwork: No additional paperwork will be required by the amendments.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these trend factors were considered. The amendments are being readopted on an emergency basis in order to maintain them in effect until the simultaneously filed Notice of Adoption is published in the *State Register*.

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

10. Compliance Schedule: The original emergency/proposed rule was effective January 1, 2004. A subsequent emergency/revised rule making was adopted effective February 1, 2004. The emergency amendments are readopted effective March 30, 2004 to maintain them in force and effect until the simultaneously filed Notice of Adoption for these same amendments is published in the *State Register*. The amendments are primarily concerned with revising the various reimbursement methodologies to implement trend factor adjustments for facilities and providers of services to persons with developmental disabilities. These amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These emergency regulatory amendments will apply to voluntary not-for-profit corporations that operate the following facilities and/or provide the following services for persons with developmental disabilities in New York State:

- Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite and prevocational services for the approximately 57,400 persons receiving such services as of December 2003.

- Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which serve approximately 1,900 persons.

- Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2003, there were 623 voluntary-operated sites certified by OMRDD to provide ICF/DD services in New York State.

- Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7). As of December 2003, there were 206

voluntary-operated sites certified by OMRDD to provide day treatment services statewide.

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

There is only one Specialty Hospital (amendments to section 680.12) certified to operate in New York State. It employs more than 100 persons and would therefore not be considered a small business as contemplated under the State Administrative Procedure Act (SAPA).

The emergency amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements. In fact, the provisions contained in the amendments will either have no fiscal impact, or they will provide for increased reimbursements to small business providers of services, due to the application of the trend factors established by the amendments. Specific impacts of the increased funding are set forth in the accompanying Regulatory Impact Statement as costs to State and Federal government.

Pursuant to the Social Services Law, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. As discussed on a facility/service specific basis in the Regulatory Impact Statement, an unreimbursed local government share is involved for only a portion of the consumers receiving HCBS waiver services (section 635-10.5). These are consumers who live with their families or on their own and who do not qualify for local share relief under State law. For these people receiving HCBS waiver services, the implementation of the 3.20 percent trend factor contained in the emergency amendments will result in a county share of approximately \$1.9 million in the aggregate. The emergency amendments also establish a supplemental trend factor of 3.12 percent which will result in a county share of approximately \$1.8 million in the aggregate. These aggregate cost impacts are divided among all the counties.

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these amendments.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these amendments.

5. Economic and technological feasibility:

The amendments are concerned with rate/fee setting in the affected facilities or services, and only revise the reimbursement methodologies which describe the ways in which OMRDD calculates the appropriate reimbursement of such facilities and services. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: The purpose of these amendments is to allow OMRDD to reimburse providers of the referenced services at revised levels in effect as of January 1, 2004 and February 1, 2004. Specifically, these amendments establish trend factor adjustments for the regulations governing the reimbursement of the referenced facilities/services for the rate/fee periods beginning January 1, 2004 and July 1, 2004. The trend factor provisions will either have no impact on funding of small business providers of services, or will have positive impacts resulting from increased reimbursements to the providers.

As previously stated, the amendments will only have a relatively minimal fiscal impact on local governments due to the implementation of the 3.20 percent trend factor and the 3.12 percent supplemental trend factor contained in the amendments for reimbursements to HCBS waiver services.

These amendments impose no adverse economic impact on regulated parties, and no compliance response. The local government share of Medicaid funded programs is established by State law. Therefore, the ap-

proaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

7. Small business and local government participation: To the extent that information regarding provider reimbursement has been available, OMRDD has shared and discussed such information with provider representatives.

Further, OMRDD has complied with relevant Federal notice requirements concerning changes in certain Medicaid funded facilities and services. Thus, known information concerning regulatory amendments involving changes to the reimbursement methodology of Day Treatment facilities was published in a Public Notice that appeared in the State Register prior to the emergency adoption of these amendments.

In addition, OMRDD is required to hold public hearings only on those amendments to section 671.7 as they may affect reimbursement of the room and board components of the community residence fees. However, it has been OMRDD's long-standing practice to enlarge the scope of these scheduled public hearings so as to include all of the amendments contained in this rule making, as well as to provide an opportunity to comment on any aspect of the various rate and fee setting methodologies. These hearings were held on March 8, 2004 (Buffalo), March 10, 2004 (Albany), and March 12, 2004 (NYC). No testimony was presented at these hearings.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these emergency amendments is not submitted because the amendments will not impose any adverse impact or reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with providing necessary revisions to the reimbursement methodologies which OMRDD uses in determining the reimbursement of the affected developmental disabilities services or facilities. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodologies are primarily based upon reported costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these emergency amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with providing revisions to the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. More specifically, the amendments establish trend factors to be applied within the context of reimbursement methodologies for the various facility/program types. These trend factor increases are not expected to result in changes in reimbursements significant enough to affect staffing patterns within the regulated facilities or programs. They will, however, not have any adverse impacts. Therefore, it is reasonable to expect that the amendments will have a positive impact on jobs in New York State.

Assessment of Public Comment

Related to the emergency/proposed regulations effective January 1, 2004 and the emergency/revised regulations effective February 1, 2004, OMRDD received one written comment from an Article 16 clinic provider expressing concern that Article 16 clinics will not receive the supplemental trend factor of 3.12 percent that other OMRDD-reimbursed programs will receive. The current proposed Executive Budget for New York State does not include Article 16 clinics in the language for this supplemental trend factor.

The Legislature has, however approved increases to Article 16 clinic fees in recent years. On January 1, 2003, a three percent cost of living increase to the personal service portion of allowed clinic reimbursement was granted for the recruitment and retention of staff. Similar cost of living increases were authorized in July of 2000 and April of 1999. Other fee-based programs such as day treatment and community residences, which likewise have not received regular or supplemental trend factors, have also been granted these cost of living increases.

NOTICE OF ADOPTION

Rate/Fee Setting

I.D. No. MRD-03-04-00002-A

Filing No. 326

Filing date: March 23, 2004

Effective date: April 7, 2004

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

Action taken: Amendment of sections 635-10.5, 671.7, 680.12, 681.14 and 690.7 of Title 14 NYCRR.

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

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

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs for the periods of January 1, 2004 to December 31, 2004 and July 1, 2004 to June 30, 2005.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. MRD-03-04-00002-EP, Issue of January 21, 2004.

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

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

Assessment of Public Comment

Related to the emergency/proposed regulations effective January 1, 2004 and the emergency/revised regulations effective February 1, 2004, OMRDD received one written comment from an Article 16 clinic provider expressing concern that Article 16 clinics will not receive the supplemental trend factor of 3.12 percent that other OMRDD-reimbursed programs will receive. The current proposed Executive Budget for New York State does not include Article 16 clinics in the language for this supplemental trend factor.

The Legislature has, however approved increases to Article 16 clinic fees in recent years. On January 1, 2003, a three percent cost of living increase to the personal service portion of allowed clinic reimbursement was granted for the recruitment and retention of staff. Similar cost of living increases were authorized in July of 2000 and April of 1999. Other fee-based programs such as day treatment and community residences, which likewise have not received regular or supplemental trend factors, have also been granted these cost of living increases.

Department of Motor Vehicles

NOTICE OF ADOPTION

Emissions Inspection Sticker Fees

I.D. No. MTV-04-04-00009-A

Filing No. 329

Filing date: March 23, 2004

Effective date: April 7, 2003

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

Action taken: Amendment of Part 79 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301, 304 and 305

Subject: Emissions inspection sticker fees.

Purpose: To increase the fees for emission inspection stickers.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. MTV-04-04-00009-EP, Issue of January 28, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

Division of Probation and Correctional Alternatives

EMERGENCY RULE MAKING

Interstate/Intrastate Transfer and Related Supervision Rule

I.D. No. PRO-14-04-00006-E

Filing No. 325

Filing date: March 22, 2004

Effective date: March 22, 2004

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

Action taken: Amendment of sections 349.3, 349.4 and 351.6 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 243(1), 259-m, 259-mm; Unconsolidated Law, sections 1801 *et seq.*; Criminal Procedure Law, section 410.8; and Family Court Act, section 176

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

Specific reasons underlying the finding of necessity: To increase offender accountability and ensure continuity of supervision to safeguard against inappropriate transfer and guarantee appropriate recordkeeping of finger-printable probationers.

Subject: Interstate/intrastate transfer and related supervision rule.

Purpose: To regulate interstate and intrastate transfers.

Text of emergency rule: Section 349.3 General Requirements for the transfer of supervision of all probationers.

Amend paragraph (a) to read as follows:

(a) All interstate transfers of probation supervision shall be in accordance with the provisions of the interstate compact for the supervision of parolees and probationers, the juvenile compact, *any other governing compact, and applicable* rules, regulation and procedures as adopted by the State compact administrator for such compacts with reference to the transfers of probation supervision. *Any sending probation department shall take all necessary steps to ensure the following are completed prior to transfer:*

(1) *fingerprinting of any convicted adult, youthful offender, juvenile offender/youthful offender, and juvenile delinquent adjudicated of a fingerprintable offense;*

(2) *DNA testing, where applicable; and*

(3) *Sex Offender Registration, where applicable.*

A sending department shall indicate what actions it has taken with regard to these aforementioned requirements.

Section 349.4 Requirement for the intrastate transfers of supervision.

Amend paragraph (a) to read as follows:

(a) Any intrastate transfer must be pursuant to a designation and order of the court. *A probationer must agree in writing to comply with any and all conditions set forth by the receiving court and be subject to any other fees and/or surcharges authorized by law. No intrastate transfer shall be initiated by a sending probation department when there exists a pending violation of probation in its jurisdiction unless the receiving probation department expresses in writing willingness to accept transfer. No transfer of interim probation cases shall be initiated unless statutorily authorized. Transfers are prohibited whenever there exists pending criminal charge(s) in the sending jurisdiction.*

Amend paragraph (b) to read as follows:

(b) Prior to a transfer, the sending probation department shall provide the court with information relevant to a probationer's [program] *prospec-*

tive plan of transfer, including residence, [whenever there is a question concerning the availability of a probation program] in the jurisdiction to which supervision is to be transferred.

Amend paragraph (c) to read as follows:

(c)(1) Immediately upon knowledge that a person being considered for probation or on

probation resides or desires to reside in another jurisdiction, the sending probation department may request the receiving probation department to verify the subject's residence or prospective residence *except those cases enumerated in paragraph (2) of subdivision (c).* All efforts shall be made to afford the receiving department adequate time so as not to delay disposition of the case.

Factors that may be considered when determining suitability to transfer to another probation department are the individual's address for mailing and/or tax purposes, where he/she lives the majority of time, votes, and where his/her vehicle is registered.

(2) *Prior to a transfer involving any person convicted or adjudicated of an offense defined in Article 130, 235, 263 of the Penal Law or section 255.25 of such law, or of an offense between spouses, parent and child, or between members of the same family or household, or any other crime where an order of protection exists, and where a probationer is not a resident of the receiving jurisdiction at the time of sentencing or disposition, the sending probation department shall afford the receiving probation department the opportunity to investigate the prospective transfer and verify actual residence prior to his/her movement and transfer of supervision to a receiving jurisdiction. For purposes of this section, offense shall include the criminal offense or matter for which convicted or adjudicated, as well as any other criminal offense or matter that is part of the same criminal transaction or underlying behavior or that is contained in any other accusatory instrument or petition disposed of by a plea of guilty or finding of fact or admission of guilt in satisfaction.*

(3) The sending probation department shall provide the receiving department at a minimum the following information:

(i) subject's current address and prospective address if different;

(ii) the subject's current home and business telephone number;

(iii) *the order and conditions of probation;*

(iv) *a copy of any existing order of protection;*

(v) a brief description of the underlying offense or act;

(vi) where applicable, subject's current employer and prospective employer if different; and

(vii) where applicable, the name, address, and telephone number of the subject's residential treatment provider or educational institution.

Amend paragraph (e) to read as follows:

(e) *The sending probation department shall take all necessary steps to ensure fingerprinting, DNA testing, and Sex Offender Registration, where applicable, are completed prior to transfer and shall indicate what actions it has taken with regard to these requirements.* The sending probation department [upon], *within ten calendar days of receipt of a court order of transfer, shall transmit to the receiving probation department designee the following information:*

(1) a completed DPCA-16, DPCA-16a or DPCA-16b, whichever is applicable;

(2) the pre-sentence or pre-disposition investigation report where available or in lieu of the report, a completed pre-sentence or pre-disposition report facesheet, the accusatory instrument or the petition, whichever is applicable, and police report(s) where available;

(3) periodic supervision reports;

(4) any mental health/substance abuse evaluation and/or treatment summary;

(5) any records regarding outstanding financial obligations;

(6) a photograph if available;

(7) a copy of any existing or recent orders of protection *and/or victim information, including name and address;*

(8) *whether the probationer is subject to sex offender registration and where applicable all documents relating to sex offender registration, including photograph;*

(9) any other information authorized by law;

(10) information required by either the court ordering the transfer or the court to which supervision is transferred; [and]

(11) name, address, phone number of probationer's prospective or existing employer, residential treatment provider, and/or educational institution;

(12) *proposed residence, phone number, and information pertaining to others living in the household; and*

(13) *whether the individual is subject to fingerprinting and/or DNA testing.* [A completed form DPCA-200 for registering probationers shall be promptly forwarded to the Division of Probation and Correctional Alternatives and the Division of Criminal Justice Services] *Where any convicted adult, youthful offender, juvenile offender/youthful offender, or juvenile delinquent adjudicated of a fingerprintable offense, is under probation supervision, a copy of the DPCA-200 or through an equivalent process which indicates the sending probation department's ORI number and the probationer's registration number associated with the underlying offense for which such individual is under supervision shall be transmitted to the DPCA via DCJS with a copy to the receiving probation department.*

Paragraph (f) is renumbered paragraph (h) and a new paragraph (f) shall read as follows:

(f) *If it is determined that the probationer: resides at the specified address in the order of transfer: has absconded; does not reside; or will not be residing at the specified address in the order of transfer; the receiving probation department shall immediately upon knowledge, but no later than sixty calendar days after the date the initial court transfer order is received, notify the sending probation department of its finding with respect to residency or non-residency. If the address in the order of transfer is inaccurate, the correct address shall be provided. Any verbal notification shall be immediately confirmed in writing. The sending probation department shall notify the sending court of the finding. The sending probation department shall retain the duty of supervision for the probationer and the sending court shall retain jurisdiction over the case prior to verification of residence or upon notification of probationer non-residence within the time period. If no notification of residency or non-residency occurs within sixty calendar days of the date the court transfer order is received, the transfer shall be effective and the receiving court shall assume those powers and duties as otherwise specified in the court order and the receiving probation department shall assume the duty of supervision. Upon knowledge of residency or non-residency, the receiving probation department shall complete the acknowledgment section contained in the appropriate DPCA transfer form and return two duly executed copies to the sending probation department. Upon acceptance, the receiving probation department shall transmit to DPCA via DCJS a DPCA-200 or through an equivalent process which updates information and shall provide a copy to the sending probation department. Where non-residency is determined, the receiving probation department shall return all appropriate transfer material to the sending probation department within ten calendar days of such a determination.*

A new paragraph (g) shall read as follows:

(g) *Where the receiving probation department recommends additional conditions, it shall seek to calendar the case with the receiving court for modification of conditions within twenty business days of acceptance of transfer. Nothing shall preclude the ability of the receiving probation department to request modification of conditions and/or a court to modify conditions during the term of supervision.*

Section 351.6 Reporting Requirements.

Amend Section 351.6 to read as follows:

Each probation director shall report to the State Director of Probation and Correctional Alternatives in the form and manner prescribed, including any and all such information requested pertaining to each person sentenced to probation by a criminal court *and each juvenile delinquent adjudicated of a fingerprintable offense* and under the supervision of the probation director's department in accordance with timeframes established by the division.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 19, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Linda J. Valenti, Counsel, Division of Probation and Correctional Alternatives, 80 Wolf Rd., Suite 501, Albany, NY 12205, (518) 485-2394

Regulatory Impact Statement

1. Statutory Authority:

Executive Law Section 243(1) empowers the State Director of Probation and Correctional Alternatives to promulgate rules and regulations governing the administration of probation services, including but not limited to the supervision of probationers. Executive Law Sections 259-m and 259-mm. Sections 1801 *et seq.* of the Unconsolidated Laws, Criminal Procedure Law Section 410.80, and Family Court Act Section 176 authorize interstate and intrastate transfer of probation supervision of criminal

court and family court probationers. Further, Criminal Procedure Law Section 410.80(1) states that criminal courts may authorize intrastate transfers of probation supervision and that such transfers must be in accordance with regulations adopted by the State Director.

2. Legislative Objectives:

This regulation is consistent with legislative intent that the State Director adopt regulations in areas relating to critical probation functions. It is in keeping with legislative intent to promote uniformity that the Division of Probation and Correctional Alternatives issue regulations establishing standardized procedures for handling transfers. Standardization and strengthened procedures in this area will promote consistency, good professional practice, ensure effective application and prevent disruption in supervision.

Further, there exist various state laws governing fingerprinting, sex offender registration, and DNA collections of certain individuals involved in the criminal justice or juvenile justice system, namely Criminal Procedure Law Section 160.10, Family Court Act Section 306.1, Article 6-C of the Correction Law, and Article 49-B of the Executive Law. Certain provisions of this regulation which establish that sending departments take all necessary steps to ensure such are completed where applicable will optimize compliance in these areas.

3. Needs and Benefits:

The proposed amendments to the interstate/intrastate and supervision rules are designed to increase offender accountability, ensure continuity of supervision, promote public safety, and improve data reporting. It is in the best interests of the state and local government that these amendments be issued as emergency regulations to address and optimize public and victim safety and to safeguard against inappropriate transfers.

The Division of Probation and Correctional Alternatives is aware of several problems that have arisen in the area of interstate and intrastate transfer that can be remedied by establishing restrictions and conditions that must be met before transfers are initiated and completed. A recent incident involved an upstate sex offender with other pending sex crimes being judicially transferred and allowed to relocate to another jurisdiction. The transfer occurred before the receiving probation agency could verify residency or conduct a criminal history check. Public safety was compromised as the offender was subsequently arrested for another sex offense in the receiving jurisdiction while the transfer was pending. The proposed rule amendment will ensure that this situation does not happen again by establishing stronger measures that clearly delineate responsibilities of sending and receiving jurisdictions that will both guarantee offender accountability and compliance and protect public and victim safety.

Examples of new key regulatory provisions are highlighted below:

- Since transfer of probation is a privilege not a right, an interstate probationer will be required to agree in writing to comply with any and all conditions set forth by the receiving court and to be subject to any other fees and/or surcharges. This is consistent with current law in the area of interstate transfer which recognizes that a probationer must agree to abide by any conditions set by a supervising agency, compact administrator or designee.
- It is reasonable and sound that no intrastate transfer shall be initiated by a sending probation department when there exists a pending violation of probation in its jurisdiction unless the receiving department consents and that sending department take all necessary steps to ensure fingerprinting, DNA testing and Sex Offender Registration are completed prior to transfer and that orders of protection are provided with application papers in a timely manner.
- Several provisions will establish better intrastate transfer procedures by prohibiting transfers whenever there exists pending criminal charge(s) in the sending jurisdiction, and disallowing transfers involving sex offenders and domestic violence where a probationer is not a resident of the receiving jurisdiction at the time of sentencing or disposition until the receiving jurisdiction has had sufficient opportunity to investigate the prospective transfer and verify actual residence prior to the probationer's movement to the receiving jurisdiction.
- Fingerprinting provisions will help ensure that all enumerated cases, subject to fingerprinting laws are indeed fingerprinted prior to leaving the original jurisdiction. Fingerprinting guarantees notification to the probation department of record of any new arrest. Further, it is important to law enforcement that criminal history records are accurate.

- DNA collection is recognized as a vital law enforcement investigatory and prosecutorial tool as technology provides for positive identification of offenders. It has proven instrumental in solving previously unsolved crimes and in assisting defense in their efforts to prove their client's innocence.
- Sex Offender registration helps ensure that offenders are registered in a timely fashion and that risk assessments are conducted, and that appropriate law enforcement agencies are notified. Through registration and risk assessment, the public and/or entities with vulnerable populations may have access to certain information that is timely and accurate.
- New language which will require affording the receiving department the opportunity to

investigate enumerated sex offenses and those involving domestic violence of nonresidents will promote victim safety, enhance supervision and as a result foster community safety.

- The change in our supervision rule as to reporting requirements merely clarifies a previous written communication on this subject to guarantee that the Division of Probation and Correctional Alternatives has a more comprehensive database of individuals under probation supervision.

These proposed amendments strengthen and clarify procedural requirements in the area of interstate and intrastate transfer and offender compliance with the new fingerprinting, DNA collection and sex offender registration provisions. These amendments will serve the additional important functions of enhancing public and victim safety, promoting offender accountability, ensuring continuity of services, and establishing better safeguards in the transfer process.

4. Costs:

These changes are procedural in nature and will require some training. However, we do not foresee these proposed reforms leading to significant additional costs to probation departments. Clearly, any minimal costs are significantly outweighed by increased public safety interests and offender accountability provided by these new provisions.

5. Local Government Mandates:

The proposal establishes new procedures for interstate and intrastate transfers and clarifies supervision reporting. It imposes clear duties upon sending and receiving probation departments to facilitate transfers consistent with offender accountability and public safety. The Division circulated earlier drafts to probation agencies and received overwhelming support and no strong opposition.

6. Paperwork:

The proposed rule will not lead to additional paperwork. In an effort to assist in identifying critical information, the Division redesigned interstate and intrastate forms to capture new requisite information.

7. Duplication:

This proposed rule does not duplicate any State or Federal law or regulation. It clarifies and reinforces certain laws with respect to Sex Offender Registration, DNA, and fingerprinting to promote compliance.

8. Alternatives:

In view of the need to ensure uniformity in transfer procedures, establish stronger minimum standards to promote offender accountability and protect public and victim safety, regulation in this area is critical and no other alternatives were determined appropriate.

9. Federal Standards:

There are federal standards governing interstate transfers of probationers and Sex Offender registration, and this regulation requires local probation departments to adhere to these requirements.

10. Compliance Schedule:

Through prompt dissemination and because amendments are not unduly burdensome, local departments should be able to immediately implement these amendments.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses is not required by Section 202-a of the State Administrative Procedure Act, no small business record keeping requirements, needed professional services, or compliance requirements will be imposed on small businesses.

Any impact a local government is addressed in both the Regulatory Impact Statement and the Rural Area Flexibility Analysis.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-four local probation departments are located in rural areas and will be affected by the proposed rule.

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

The proposed rule strengthens procedural requirements and improves probation practice, yet should not impose significant additional local probation costs. There are no professional services likely to be needed in any rural area to comply with proposed rule changes. Recordkeeping and compliance provisions will improve transfer operations and offender accountability, thus enhancing public safety.

3. Costs:

There are no significant additional costs or new annual costs required to comply with the proposed rule changes. Clearly, any minimal costs, are significantly outweighed by increased public safety interests and offender accountability provided by these new provisions.

4. Minimizing adverse impact:

The proposed rule amendments will have no adverse impact on rural areas.

5. Rural area participation:

DPCA has discussed the proposed rule changes with Executive Committee Representatives of the Council of Probation Administrators and we have circulated and submitted comments on a prior draft of this regulatory reform for all probation directors and the State Probation Commission. This latest draft incorporates a few additional changes to address and clarify certain procedural provisions.

Job Impact Statement

A job impact statement is not being submitted with the proposed rule because it will have no adverse effect on private or public jobs or employment opportunities. The revisions are procedural in nature and clarify interstate and intrastate work responsibilities and functions that are consistent with good professional practice. These changes are not onerous in nature and can be implemented through correspondence and training of probation staff.

NOTICE OF WITHDRAWAL

Interstate/Intrastate Transfer and Related Supervision Rule

I.D. No. PRO-11-04-00027-W

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

Action taken: Notice of emergency/proposed rule making, I.D. No. PRO-11-04-00027-EP, has been withdrawn from consideration. The notice of emergency/proposed rule making was published in the *State Register* on March 17, 2004.

Subject: Interstate/intrastate transfer and related supervision rule.

Public Service Commission

NOTICE OF ADOPTION

Exchange of Retail Access Data between Jurisdictional Utilities and Eligible ESCO/Marketers

I.D. No. PSC-15-03-00011-A

Filing date: March 22, 2004

Effective date: March 22, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 98-M-0667, approving revisions to the EDI monthly usage standards.

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

Subject: Modifications to the EDI transaction set standards.

Purpose: To remove the requirement that National Fuel Distribution Corporation provide therm factor data via EDI.

Substance of final rule: The Commission approved modifications to the EDI Monthly Usage Standard to remove the requirement that National Fuel Distribution Corporation provide therm factor data via EDI, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS

employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-0667SA38)

NOTICE OF ADOPTION

EDI Transaction Set Standards

I.D. No. PSC-19-03-00028-A

Filing date: March 22, 2004

Effective date: March 22, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 98-M-0667, approving new measurement codes to the enrollment, consumption history/gas profile and monthly usage standards.

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

Subject: Modifications to the EDI transaction set standards.

Purpose: To add new codes to help differentiate between usage on high and low tension lines and between peak and non-peak usage during summer versus winter periods.

Substance of final rule: The Commission approved the incorporation of additional codes into the Enrollment, Consumption History/Gas Profile and Monthly Usage Standards to enable transmission of more detailed usage measurements to ESCOs, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-0667SA39)

NOTICE OF ADOPTION

Submetering of Electricity by Queens Fresh Meadows, LLC

I.D. No. PSC-28-03-00016-A

Filing date: March 22, 2004

Effective date: March 22, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-E-0889, authorizing Queens Fresh Meadows, LLC to submeter electricity at 188-02 64th Avenue, Flushing, NY.

Statutory authority: Public Service Law, sections 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To allow Queens Fresh Meadows, LLC to submeter electricity.

Substance of final rule: The Commission approved a request by Queens Fresh Meadows, LLC for the submetering of electricity at 188-02 64th Avenue, Flushing, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-0889SA1)

NOTICE OF ADOPTION

Exchange of Retail Access Data by Rochester Gas & Electric Corporation

I.D. No. PSC-48-03-00016-A

Filing date: March 22, 2004

Effective date: March 22, 2004

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

Action taken: The commission, on March 16, 2004, adopted on order in Case 98-M-0667, approving revisions to the EDI TS867 monthly usage standards.

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

Subject: Modifications to the EDI transaction set standards.

Purpose: To ensure ESCO/Marketers participating in RG&E service territory will continue to receive detailed metered usage data under the single retailer model.

Substance of final rule: The Commission approved modifications to the Monthly Usage Standards and directed Rochester Gas and Electric Corporation to continue to make available to the Village of Hilton, using non-EDI means, the meter read data previously provided under the Single Retailer Model, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-0667SA41)

NOTICE OF ADOPTION

Enrollment Request and Change Request Standards

I.D. No. PSC-48-03-00017-A

Filing date: March 22, 2004

Effective date: March 22, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 98-M-0667, approving revisions to the EDI enrollment request and change request standards.

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

Subject: Modifications to EDI transaction set standards.

Purpose: To enable ESCO/Marketers to report a customers' tax rate to a utility when a Customers' bill option is Utility Rate Ready consolidated billing.

Substance of final rule: The Commission approved modifications to the EDI Enrollment and Change Standards to add a new data segment to enable ESCOs to transmit tax rate data in an enrollment transaction or to provide notice of a tax rate change via a change transaction, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(98-M-0667SA42)

NOTICE OF ADOPTION

Interruptible Gas Rates by St. Lawrence Gas Company**I.D. No.** PSC-51-03-00005-A**Filing date:** March 18, 2004**Effective date:** March 18, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order, in Case 00-G-0996, granting in part a request by St. Lawrence Gas Company (St. Lawrence) for clarification and exemption of the commission's Nov. 4, 2003 order.

Statutory authority: Public Service Law, sections 66(12), 67 and 72

Subject: Criteria for interruptible gas service.

Purpose: To exempt St. Lawrence from the requirement to remind customers to monitor an oil storage inventory that is not required.

Substance of final rule: The commission approved in part St. Lawrence Gas Company's (St. Lawrence) petition for clarification of the Commission's November 4, 2003, granting St. Lawrence and exemption from the requirement that LDCs must alert interruptible customers of the potential need to replenish oil storage inventories whenever accumulated gas service interruptions during the winter exceed a total of 5 days prior to February 15th, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-G-0996SA7)

NOTICE OF ADOPTION

Retail Access Program by Niagara Mohawk Power Corporation**I.D. No.** PSC-02-04-00009-A**Filing date:** March 22, 2004**Effective date:** March 22, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order, in Case 03-E-1768, making permanent the provisions of the Dec. 30, 2003 order regarding tariff revisions to Niagara Mohawk Power Corporation's (Niagara Mohawk) retail access program.

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

Subject: Amendments to Niagara Mohawk's electric schedule—P.S.C. No. 207.

Purpose: To reduce Niagara Falls Air Force Base's operating costs.

Substance of final rule: The Commission adopted as a permanent rule the provisions of the December 30, 2003 Order allowing Niagara Mohawk Power Corporation to revise its Retail Access Program to provide the unbundled retail delivery service required for the delivery of low-cost New York State Power Authority power allocation to the Niagara Falls Air Force Base, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1768SA1)

NOTICE OF ADOPTION

Functional Storage Service Option by Orange and Rockland Utilities, Inc.**I.D. No.** PSC-03-04-00013-A**Filing date:** March 19, 2004**Effective date:** March 19, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-G-1734, allowing Orange and Rockland Utilities, Inc. (O&R) to revise its schedule for gas service — P.S.C. No. 4.

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

Subject: Tariff filing.

Purpose: To replace the functional storage service option with a new winter bundled sales service option.

Substance of final rule: The Commission authorized Orange and Rockland Utilities, Inc. (O&R) to eliminate the Functional Storage Service Option and replace it with a new Winter Bundled Sales Service Option to allow S.C. No. 6 customers to meet their gas requirements during November through March and directed O&R to file further revisions to become effective on one day's notice on April 1, 2004, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-G-1734SA1)

NOTICE OF ADOPTION

Winter Bundled Sales Service Option by Orange and Rockland Utilities, Inc.**I.D. No.** PSC-03-04-00014-A**Filing date:** March 19, 2004**Effective date:** March 19, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-G-1735, allowing Orange and Rockland Utilities, Inc. (O&R) to revise its schedule for gas service—P.S.C. No. 4.

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

Subject: Tariff amendments.

Purpose: To establish a new winter bundled sales service option applicable to S.C. No. 6 customers.

Substance of final rule: The Commission authorized Orange and Rockland Utilities, Inc. (O&R) to establish in its S.C. No. 6—Firm Transportation Service and S.C. No. 11—Continuous Receipt of Customer-Owned Gas Service a new Winter Bundled Sales Service Option applicable to S.C. No. 6 customers and directed O&R to file further revisions to become effective on one day's notice on April 1, 2004, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-G-1735SA1)

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

Underground Line Extensions by Niagara Mohawk Power Corporation

I.D. No. PSC-14-04-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal by Niagara Mohawk Power Corporation to make various changes to its rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 207—Electricity, to become effective May 1, 2004.

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

Subject: Underground line extensions.

Purpose: To revise Niagara Mohawk Power Corporation's method of calculating underground line extensions.

Substance of proposed rule: Niagara Mohawk Power Corporation filed proposed tariff revisions to revise its method of calculating underground line extensions to be based on a simple average of annual rates for the most recent five years to become effective May 1, 2004.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(04-E-0368SA1)

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

Submetering of Natural Gas Service to Industrial and Commercial Customers by Hamburg Fairgrounds

I.D. No. PSC-14-04-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Hamburg Fairgrounds for permission to submeter gas service to commercial gas customers at the Buffalo Raceway, 40 Fountain Plaza, Buffalo, NY.

Statutory authority: Public Service Law, section 65(1), (2), (3), (4), (5), (8), (10), (12) and (14)

Subject: Submetering of natural gas service to industrial and commercial customers.

Purpose: To submeter gas service to commercial customers located at the Buffalo Speedway.

Substance of proposed rule: The Hamburg Fairgrounds has filed a petition for approval to submeter gas service to their commercial customers located at the Buffalo Raceway, 40 Fountain Plaza, Buffalo, New York. The Commission may approve, reject, or modify, in whole or in part, this request.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(04-G-0268SA1)

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

Long-Term Debt Agreement by Fillmore Gas Company, Inc.

I.D. No. PSC-14-04-00009-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 by the Fillmore Gas Company, Inc. for authority to enter into a long-term debt agreement not to exceed \$600,000.

Statutory authority: Public Service Law, section 69

Subject: Long-term debt agreement.

Purpose: To authorize long-term debt for the financing of various purposes, including the replacement of vehicles, construction equipment and billing software, construction expenditures, and the repayment of existing short-term debt.

Substance of proposed rule: The Commission is considering a petition filed by the Fillmore Gas Company, Inc. for authority to enter into a long-term debt agreement, for an amount not to exceed \$600,000. The proceeds of the debt agreement will be used to repay existing short-term debt, to purchase replacement trucks, heavy construction equipment, gas distribution equipment and billing software, and to construct a new shop building and make facility improvements to the corporate headquarters.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(04-G-0152SA1)

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

Adoption of Billing and Crediting Procedures

I.D. No. PSC-14-04-00010-P

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

Proposed action: The Public Service Commission is considering whether to require electric and gas corporations responsible under Public Service Law, section 52 for making shared meter determinations to adopt certain procedures with respect to billing and crediting adjustments to tenants' and building owners' bills when a shared meter condition is found, as well as procedures for notifying affected tenants and building owners of their right to seek relief from the commission or its designee and the conditions for seeking such relief.

Statutory authority: Public Service Law, section 52

Subject: Adoption of billing and crediting procedures.

Purpose: To ensure that electric and gas corporations adopt appropriate procedures with respect to billing and crediting adjustments.

Substance of proposed rule: Gas, electric and steam utilities should be required, in handling shared meter complaints from residential tenants, to:

(1) establish procedures to include in their current written notification to building owners (or their representatives) and shared meter tenants of the placement on the owner's bill of the 12-month assessment and shared area charges (made at the approximate time of that actual placement) the following additional information:

(a) notification of the owner's right to request reduction of the 12-month assessment by writing to the Commission's designee, the Director

of the Office of Consumer Services, at the appropriate address (to be specified by the utility in the notice), to include the following elements:

(i) a statement that such request must be received in writing by the designee at the specified address, within 45 days of the date of the utility's notification to the owner, or it will be rejected;

(ii) a statement that either the owner or the tenant may ask the designee to alter the utility's decision about the amount of the shared area charges by making a written request to the designee within the same 45-day time limit (with late requests being rejected);

(2) establish procedures to include in their current written notification sent to owners and tenants, of the utility's determination that a shared meter condition exists, the following additional information:

(a) clear written notice that a building owner, pursuant to Public Service Law § 52(4)(d), has 45 days from the date of the utility's letter notifying the parties of the utility's shared meter determination to make a complaint to the Office of Consumer Services in the event the owner disputes the existence of a shared meter condition and that late requests may be rejected;

(3) establish procedures to insure that, at the time that the 12-month assessment and shared area charges are placed on the building owner's bill following a shared meter determination, such a utility will credit to the shared meter tenant's account or refund to that tenant no more than 25% of the refund corresponding to the 12-month assessment to the shared meter tenant's account until expiration of a 60-day period following the date of the utility's written notice to the parties that the 12-month assessment has been placed on the building owner's account (the remainder of the refund to be credited to the tenant promptly following expiration of the 60-day period).

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(04-M-0324SA1)

counting and rate treatment should be modified. It may also consider other related matters.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaelyn A. Brillig, Acting 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.

(03-M-1150SA2)

Office of Temporary and Disability Assistance

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Temporary and Disability Assistance publishes a new notice of proposed rule making in the *NYS Register*.

Fee for Lost or Stolen Identification Cards

I.D. No.	Proposed	Expiration Date
TDA-11-03-00007-P	March 19, 2003	March 18, 2004

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request for Rehearing by New York State Gas & Electric Corporation

I.D. No. PSC-14-04-00011-P

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

Proposed action: The Public Service Commission is considering a petition for rehearing filed by New York State Electric & Gas Corporation related to the accounting and rate treatment ordered by the commission in an order approving the sale of property owned by the company. The commission is considering whether to grant or deny the petition, and whether to modify the accounting and rate treatment it established for this transaction.

Statutory authority: Public Service Law, sections 5(b), 65, 66 and 70

Subject: Request for rehearing.

Purpose: To consider whether to modify the accounting and rate treatment for goodwill associated with a sale of property and the original purchase of a utility operating unit.

Substance of proposed rule: The Public Service Commission is considering whether to grant or deny a petition for rehearing filed by New York State Electric & Gas Corporation (NYSEG) related to an Order the Commission issued on February 4, 2004 in Case 03-M-1150. In that Order, the Commission approved the sale of property owned by NYSEG in the City of Binghamton and specified the accounting and rate treatment for goodwill associated with the sale. NYSEG has requested that the Commission modify that accounting and rate treatment. In the event the Commission grants NYSEG's petition, it will also consider whether and how the ac-