

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

National Institution of Standards and Technology Handbook 44

I.D. No. AAM-06-05-00001-P

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

Proposed action: This is a consensus rule making to amend section 220.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: National Institute of Standards and Technology (“NIST”) Handbook 44.

Purpose: To incorporate by reference the 2004 edition.

Text of proposed rule: Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [87th] 88th National Conference on Weights

and Measures [2002] 2003 as published in the National Institute of Standards and Technology Handbook 44, [2003] 2004 edition. This document is available from the National Conference on Weights and Measures, 15245 Shady Grove Road, Rockville, MD 20850, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the [Assistant] Director of Weights and Measures, Department of Agriculture and Markets, [One Winners Circle] 10B Airline Drive, Albany, NY 12235, or in the office of the Department of State, 41 State Street, Albany, NY 12231. [However, the Commissioner of Agriculture and Markets may at any time promulgate regulations which differ from any of the provisions of Handbook 44.]

Text of proposed rule and any required statements and analyses may be obtained from: Ross Andersen, Director, Bureau of Weights and Measures, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3146

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

The proposed rule will amend 1 NYCRR section 220.2 to incorporate by reference the 2004 edition of National Institute of Standards and Technology Handbook 44 in place of the 2003 edition which is presently incorporated by reference.

The proposed rule is non-controversial. The 2004 edition of Handbook 44 has been adopted or is in use by every state other than New York; the state’s manufacturers of weighing and measuring devices already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the state’s users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nation-wide applicability. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities. The proposed rule will incorporate by reference in 1 NYCRR section 220.2 the 2004 edition of National Institute of Standards and Technology Handbook 44 (henceforth, “Handbook 44 (2004 edition)”) which contains specifications, tolerances and regulations for commercial measuring devices. The 2003 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2004 edition) differs from the 2003 edition in that it provides for more appropriate marking requirements for certain types of scales, permits the use of new technologies and features on prescription scales, provides for new methods for uniformly expressing tolerances for a variety of liquid measuring devices, and sets forth standards for specific devices. Handbook 44 (2004 edition) has been adopted by or is in use in every state other than New York and, as such, the State’s manufacturers and users of weighing and measuring devices already conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Used Oil Management

I.D. No. ENV-06-05-00002-P

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

Proposed action: Amendment of Subparts 360-14, 374-2 and 360-1, section 372.1(e)(8) and Appendix 26 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 23-2305, 23-2307, 27-0703 and 27-0900 *et. seq*

Subject: Used oil management.

Purpose: To update used oil regulations to implement amendments (L. 1995, ch. 152) to title 23 of art. 23 of the Environmental Conservation Law and implement provisions derived from the Federal used oil regulations, 40 CFR 279, that either had not been adopted previously, or that had been added to Federal regulations since the department's previous used oil rule making.

Public hearing(s) will be held at: 2:00 p.m., March 30, 2005 at Department of Environmental Conservation, 625 Broadway, Rm. 129A, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dec.state.ny.us): This rulemaking incorporates into the state's used oil management program (6 NYCRR Subparts 360-1, 360-14, and 374-2) portions of the United States Environmental Protection Agency's (USEPA) regulations, found at Title 40 of the Code of Federal Regulations (CFR), Part 279, dating back to 1992, that had not been previously incorporated, as well as more recent amendments to 40 CFR 279. By doing so, New York intends to obtain RCRA authorization from the USEPA for its used oil management program.

The rulemaking also codifies the provisions of Chapter 152 of the Laws of 1995, which amended Article 23, Title 23, of the Environmental Conservation Law (ECL), pertaining to the acceptance of household do-it-yourself (DIY) used oil at service and retail establishments.

The rulemaking will also restructure the regulations governing used oil management so that all of the 40 CFR-derived used oil requirements that are currently in Subpart 360-14 will be moved to 374-2. The latter Subpart will be reorganized to more closely mirror the format of 40 CFR 279. ECL, Article 23, Title 23-based requirements will also be moved from 360-14 to 374-2. The reorganized 360-14 will deal mostly with Part 360 permitting requirements. Subpart 360-1 will be updated to incorporate by reference the current version of 40 CFR 279. 6 NYCRR Appendix 26 and the reference to this Appendix in paragraph 372.1(e)(8) are deleted as they are out of date.

The federal provisions, including amendments to 40 CFR 279 that have been promulgated since the previous State used oil rulemaking, as well as federal provisions that were not included in the previous State used oil rulemaking, are listed below. The listing includes a brief description of the proposals and the Federal Register (FR) notice and date when these provisions were promulgated by the USEPA.

1. Standards for the management of used oil, for used oil generators (57 FR 41615, September 10, 1992) and for used oil transporters and transfer facilities (57 FR 41617, September 10, 1992), will state that, if owners and operators of these entities engage in other types of regulated used oil activities, such as burning, marketing, or processing, they will be subject to those regulatory standards as well.

2. Used oil transfer facilities which store used oil for more than 35 days will require compliance with processor standards (57 FR 41613, September 10, 1992).

3. The "used oil transporter" definition will be expanded to include owners and operators of used oil transfer facilities (57 FR 41613, September 10, 1992).

4. Transporters will be exempt from used oil processor standards when they ship used electrical transformer oil to their facilities, filter the oil, and return it to the transformer for re-use (59 FR 10560, March 4, 1994).

5. Requirements specific to used oil generators, aggregation points, and collection centers, are reformatted to be consistent with corresponding EPA standards, which were first promulgated at 57 FR 41615 - 41616 (September 10 1992), amended at 58 FR 26425 (May 3, 1993), at 59 FR 10560 (March 4, 1994), and at 63 FR 25009 (May 6, 1998).

Proposed regulatory provisions, derived from Chapter 152 of the Laws of 1995, which amended Title 23 of Article 23 of ECL, include the following:

1. Allowing a service or a retail establishment to refuse acceptance of used oil from a DIY oil changer if contamination is evident.

2. Allowing establishments to limit their acceptance of DIY used oil to normal business hours.

3. Allowing establishments to require that DIYs bring their used oil only in rigid screw-top containers.

4. Prohibiting service establishments from charging used oil disposal fees to their customers when customers bring their vehicles in for servicing.

A brief description of regulatory changes by Subpart is listed below:

1. Subpart 360-1 - Solid Waste Management Facilities: General Provisions - Updating the incorporation by reference of 40 CFR 260 - 299.

2. Subpart 360-14 - Used Oil Management Facilities:

a. Moving the following definitions to Subpart 374-2: "adjacent", "on-premises oil changing operation", "petroleum refining facility", "retail", "retail establishment", "service establishment", "total halogens", "underground used oil tank". Copying the following modified definition from 374-2: "used oil transporter". Adding the following new definitions: "EPA", "used oil processor/re-refiner". Modifying the following definitions: "used oil", "used oil transfer facility", "processing" (formerly "used oil processing facility"), "used oil collection center" (formerly "collection center"). Deleting the following definitions: "tolling agreement", "container" (defined in 374-2), "aggregation point" (defined in 374-2 as "used oil aggregation point"), "used oil storage facility".

b. The list of exemptions is clarified so as to eliminate a common misunderstanding among regulators and the regulated community, that the exemptions contain "conditional requirements". The perception exists that the failure of a facility to follow the listed requirements of an exemption is an acceptable practice, provided that the facility obtains a Part 360 permit. Many of these so called "conditional requirements" are, in fact, federally-based, 40 CFR 279 requirements, and any provision in 6 NYCRR that could be construed to allow non-compliance with these requirements must be revised, in order to eliminate any misconception and maintain equivalent stringency with corresponding federal requirements.

To avoid excessive duplication with provisions in the proposed applicability section of 374-2.2(a), a provision is proposed for the exemption subdivision of 360-14.1(b) that will exempt from Part 360 permitting any operations or materials that are not subject to used oil regulation under 374-2.2(a). This proposal will have the effect of consolidating into one exemption the exemptions from Part 360 that are in the current regulations at 360-14.1(d)(1), (9), (10), (11), (12), and (13).

c. Management standards for used oil generators (including used oil retention facilities), aggregation points, collection centers, transfer facilities, and processors/re-refiners are relocated to Subpart 374-2.

d. The transportation requirements for used oil, currently located at Section 360-14.5, are moved to Subpart 374-2. The requirements are relocated depending upon the category of used oil facility or handler that the various provisions of this Section refer to. The provision that allows the shipment of off-specification used oil to facilities, other than permitted facilities and burners, provided that Departmental approval has been obtained, has been deleted, as this provision is less stringent than Federal requirements.

3. Subpart 374-2 - Standards for the Management of Used Oil:

a. The following definitions have been added: "do-it-yourself used oil collection center", "existing tank", "household do-it-yourself used oil", "new tank", "tank", "used oil tank system". The following definitions have been modified: "used oil aggregation point" (formerly "aggregation point"), "used oil collection center" (formerly "collection center"), "used oil transfer facility", "used oil transporter", "used oil processor/re-refiner", (formerly used oil processing facility). The following definitions have been moved from 360-14 and modified: "Aboveground used oil tank",

“Adjacent towns or cities” (formerly “adjacent”), “contract”, “household do-it-yourselfer used oil generator” (formerly “do-it-yourself oil changer”), “used oil processor/re-refiner” (formerly “used oil processing facility”).

b. Laboratory analysis requirements are clarified for rebuttable presumption and for fuel specification determinations.

c. Requirements for used oil generators are moved from various sections of Subpart 360-14 and consolidated into a new section, dedicated to generator management standards. The generator standards will incorporate provisions for used engine lubricating oil retention facilities, which are proposed to be relocated from Section 360-14.4. The standards are also proposed to codify statutory requirements, derived from Chapter 152 of the Laws of 1995.

d. A new section is added, dedicated to management standards for collection centers and aggregation points.

e. The Section devoted to Standards for Used Oil Transporters expands to include management standards for used oil transfer facilities, pursuant to the proposed expansion of the regulatory definition for “used oil transporter”. Used oil transfer facility standards are currently combined with management standards and permitting requirements for processors and re-refiners, and are located in Subpart 360-14.

f. The section of Subpart 360-14 that is devoted to the permit application requirements to construct and operate used oil transfer, storage, or processing facilities is proposed to be replaced. Separate sections, detailing the permitting requirements for processors/re-refiners and for transfer facilities/non-DIY collection centers will remain in Subpart 360-14. New separate sections are proposed for Subpart 374-2, detailing the substantive management standards for processors/re-refiners and for transfer facilities. Management standards for non-DIY collection centers will be included in the proposed new section in Subpart 374-2 for aggregation points and collection centers.

Text of proposed rule and any required statements and analyses may be obtained from: David O’Brien, Department of Environmental Conservation, Division of Solid and Hazardous Materials, 625 Broadway, Albany, NY 12233-7251, (518) 402-8633, e-mail: hwregs@gw.dec.state.ny.us

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

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

Additional matter required by statute: Negative declaration pursuant to SEQR.

Summary of Regulatory Impact Statement

1. Statutory Authority

Article 3, Title 3; Article 23, Title 23; and Article 27, Titles 7 and 9 of the Environmental Conservation Law (ECL).

2. Legislative Objective

By enacting Articles 3, 23 and 27 of the ECL, the State Legislature empowered the Department of Environmental Conservation (the Department) to promote resource recovery and to preserve and enhance the quality of air, water and land resources within the State by implementing regulations governing used oil collectors, re-refiners and retention facilities, in conformance with Article 27 of the ECL. ECL Section 27-0900 requires that the hazardous waste management regulations must be at least as broad and as stringent as those established by the United States Environmental Protection Agency (USEPA), under authority of the Resource Conservation and Recovery Act of 1976 (RCRA), and its succeeding amendments, including the Used Oil Recycling Act of 1980. Thus, State regulations governing used oil management must be at least as broad and as stringent as the corresponding Federal regulations, 40 CFR 279. It was also the intent of the Legislature that the Department obtain USEPA’s authorization of New York State’s used oil management program.

3. Needs and Benefits

To improve the readability of the regulations and decrease confusion, used oil management regulations at 6 NYCRR Subparts 360-14 and 374-2 will be reorganized and restructured. The new Subpart 374-2 will cover all technical and management standards derived from 40 CFR 279, petroleum bulk storage (PBS) regulations, and Title 23, Article 23 of the ECL. New Subpart 360-14 will cover only Part 360 permitting requirements. 6 NYCRR Appendix 26 and the reference to this Appendix in paragraph 372.1(e)(8) are deleted as they are out of date.

To implement Chapter 152 of the Laws of 1995, which amended ECL Article 23, Title 23.

To ensure that the Department receives authorization from the USEPA for its used oil program, thereby assuming primary responsibility for the federal program and any related compliance and enforcement activities, and to be consistent with Executive Order Number 20.

The major needs and benefits result from the following:

a. From the September 10, 1992 Federal Register (57 FR 41615), used oil generators would comply with standards for transporters, burners, marketers or disposers, if performing these activities. Stringency would be unchanged.

b. From the September 10, 1992 Federal Register (57 FR 41617), used oil transporters would comply with standards for used oil generators, processors, burners, marketers, and disposers, if performing these activities. Stringency would be unchanged.

c. From the March 4, 1994 Federal Register:

Used oil transfer facilities which store used oil for more than 35 days would comply with processor standards (59 FR 10559). Stringency would be unchanged.

Generators who also process used oil would comply with processor standards (59 FR 10560). Stringency would be unchanged.

Allow transporters who remove used oil from electrical transformers and turbines to filter the material and return it for its original use, without being subject to used oil processor standards (59 FR 10560). Stringency would lessen.

d. Implementation into regulation of chapter 152 of the Laws of 1995, amending ECL Title 23, Article 23. Since these provisions are mandated by statute, they must be reflected in the used oil regulations. These changes effectively place limitations on do-it-yourself used oil changers, and clarify the existing prohibition against establishments charging a fee for used oil disposal, but do not reflect a change in stringency for service establishments or retail establishments.

f. Consistent with Federal format, the Department proposes to add new sections dedicated separately to used oil requirements for generators, aggregation points and collection centers. Separating the standards for each type of operation recognizes the differences in complexities and levels of requirements for each.

The new sections proposed for used oil generators, aggregation points and collection centers would contain standards identical to the federal counterparts, except where Part 360 permitting or ECL Article 23 requirements are involved. ECL-based requirements for “service establishments” and “retail establishments” are proposed to be incorporated into the new section for generators.

g. The department proposes to modify the exemption from Part 360 permitting for the transfer of used oil from vehicle-to-vehicle, by requiring compliance with all federally-based transporter/transfer facility standards, whenever on-site storage exceeds 24 hours. Stringency would be increased.

h. There is an exemption from Part 360 permitting for Part 364 permitted transporters who store used oil at their facilities for up to ten days, provided that no consolidation of loads occurs. For equivalence to federal regulations, the department proposes to modify the exemption to state that storage beyond 24 hours will subject the facility to used oil transfer facility standards. Stringency would be increased.

i. Pursuant to Section 502 of the Public Health Law and ECL 3-0119, tests or analyses mandated pursuant to Article 27 of the ECL are required to be conducted by a laboratory that is certified under the Environmental Laboratory Approval Program (ELAP), as administered by the New York State Department of Health. The Department proposes to clarify this requirement by stating it directly in the used oil regulations, regarding rebuttable presumption and specification analyses. These are clarifications and not a change in stringency.

4. Costs

a. Promulgation of proposed USEPA-based provisions should result in no additional cost to the regulated community, or to other branches of local or State Government. Proposed provisions that allow generators and transporters to conduct certain processing functions without being subject to processor standards, should lead to a decrease in cost.

b. Costs of non-USEPA provisions:

- Proposed regulatory provisions based upon Chapter 152 of the Laws of 1995 should not result in any additional cost to the regulated community. They constitute either a clarification of Legislative intent or will help service stations to avoid the added costs of hazardous waste disposal.

- Proposed modifications to both the vehicle-to-vehicle transfer exemption and to the on-vehicle storage exemption require conformance to used oil transfer facility standards whenever on-site storage exceeds 24 hours. Neither should result in increased costs to most of the regulated community. Stringency would increase because of secondary containment requirements at transfer facilities. However, most such facilities, being subject to the Federal Spill Prevention, Control, and Countermeasures (SPCC) regulations at 40 CFR 112, already have secondary containment. For facilities which are not subject to SPCC requirements, *i.e.*, facilities not located near navigable waters (including streams), storm drains, or ground water leading to navigable waters, USEPA estimated that the costs of compliance ranged up to \$1,976 per facility (57 FR 41609). These costs, however, will be offset somewhat by lower spill clean-up expenses. A major category of used oil transporter that could be affected by these proposed modifications is railroads. In its analysis, however, the USEPA did not consider the costs of secondary containment at railroad sites, where diking systems to surround tanker cars are impractical. To this date, no acceptable system of secondary containment has been agreed to by the USEPA, making it impossible to estimate compliance costs for railroads.

The proposed modifications are necessary to ensure equivalence with federal regulatory standards.

- The proposal that any laboratory analyses, for rebuttable presumption purposes, or for on-specification determinations, must be conducted at ELAP certified laboratories is a clarification of already existing requirements, and should result in no additional costs for compliance.

c. Costs to the Department, State, and Local Government:

The actual costs to the Department for implementing these proposed regulations should not be substantial. The usual costs involved are those associated with normal rulemaking activities, *i.e.*, printing the proposed regulations, mailings, conducting public hearings, and staff time.

Failure to promulgate the proposed regulations would result in New York being unable to receive authorization from the USEPA to administer its used oil program in place of EPA. It will also cause continued confusion to the regulated community, especially where the federal and State requirements are not identical.

There are no new costs for other State agencies or local governments other than the possible costs already discussed.

5. Local Government Mandates

No additional recordkeeping, reporting, or other requirements will be imposed on local governments by this rulemaking, other than requirements imposed upon the regulated community in general, as discussed above.

6. Paperwork

The proposed changes to the regulations, as detailed in item 3 above, will result in no change in the paperwork requirements, as compared to the current regulations.

7. Duplication

a. As previously noted in item 3(i), the proposal to explicitly state that analyses for specification determinations, and for rebuttable presumption purposes, must be performed by ELAP certified laboratories, should prevent conflicts with the Public Health Law and Section 3-0119 of the ECL.

b. Article 12 of the Navigation Law (NL) and its implementing regulations contain petroleum spill notification and clean-up requirements which overlap and are broader in scope than the corresponding used oil regulation requirements. A prior used oil rulemaking added spill notification requirements to conform with the analogous Article 12-based provisions. However, the broader-in-scope Article 12-based clean-up provisions were not included. To minimize the impact of overlapping provisions, it is proposed that the regulations state that all used oil handlers and facility types are subject to the applicable provisions of Article 12 of the Navigation Law and its implementing regulations, whenever used oil is spilled. The clean-up provisions in the current used oil regulations, for spills that did not originate from leaking underground storage tanks, are federally based and must be retained for EPA authorization purposes.

8. Alternatives

To obtain authorization from the USEPA, and to implement recent Statutory changes, no other viable alternatives are available.

If the State were to follow the "no action" alternative, it will not receive USEPA authorization. If this were to occur, the State's delegated program for enforcing Subtitle C RCRA requirements could be in jeopardy of losing USEPA authorization, and could cause an end of Federal funding to the Department for that program. The Department will also not receive any potential federal grant monies for the State's used oil program.

9. Federal Standards

For the purpose of obtaining USEPA authorization for the Department, the proposed changes that are federally based will make state regulations on used oil consistent with federal standards. ECL Article 23-based changes to the regulations have no comparable federal standards.

Two provisions in the federal used oil regulations refer to a regulation that no longer exists, 40 CFR 1510. Therefore, these provisions will require technical correction, as well as adoption. The first provision, 279.52(b)(2)(ii), specifies additional actions that the owner or operator of a used oil processing facility must take if a Spill Prevention, Control, and Countermeasures (SPCC) Plan has been prepared in accordance with either 40 CFR 112, 40 CFR 1510, or some other emergency or contingency plan. Since the absence of 40 CFR 1510 has no effect upon the stringency of this provision, reference to it has been omitted from the proposed State counterpart, 6 NYCRR 374-2.6(c)(2)(ii)('b').

The second provision, 279.52(b)(6)(iv)(B), specifies the notification responsibilities of an emergency coordinator at a used oil processing facility during an emergency. Since stringency would be affected if the reference to 1510 was omitted in the equivalent State provision, the successor to 40 CFR 1510 had to be identified. Thus, the proposed 6 NYCRR 374-2.6(c)(2)(vi)('d')('2') refers to the successor provision, 40 CFR 300, instead of to 1510.

10. Compliance Schedule

Compliance with proposed regulatory changes that are based upon currently existing federal regulations will be required by the effective date of the proposed regulations. Compliance with proposed regulatory changes that are based upon amendments to Article 23 of the ECL must also occur by the effective date of the regulatory changes, since the statutory amendments already require compliance.

Regulatory Flexibility Analysis

1. Effects on Small Businesses and Local Governments:

The type of small businesses most likely to be affected by the proposed rulemaking are the automobile service establishments that change engine lubricating oil for their customers. Only those car repair shops that sell 500 gallons or more of motor oil in a year are subject to requirements derived directly from Article 23 of the Environmental Conservation Law (ECL).

Amendments to Title 23 of Article 23 of the ECL pertain primarily to the service and retail establishments that are required to accept used oil from the public. Shops engaged in repairing engines are more likely to be affected than shops specializing in non-engine services, such as auto body shops. It is estimated that 25,000 service and retail establishments will be affected by the rule change. However, it should be emphasized that the proposed rule changes will not increase or decrease the number of small businesses already affected by the current regulations.

The standards for acceptance or rejection of Do-It-Yourself (DIY) used oil that are specified in these amendments can also affect the local governments that operate DIY used oil collection centers. It is estimated that there are about 65 local governmental units operating DIY used oil collection centers in the State. It is not anticipated that this number will change when the proposed regulations are finalized.

The number of small businesses and local governments affected by the rulemaking will not be more than those already affected by the existing regulations.

2. Compliance Requirements:

There are no new reporting or record keeping requirements for small businesses and local governments as a result of the proposed rulemaking. New federally based requirements should have a negligible effect upon small businesses and local governments that operate as used oil generators.

The proposed rulemaking either adopts the existing United States Environmental Protection Agency (USEPA) regulations (found at 40 CFR 279), adopts amended USEPA regulations which are less stringent than present state regulations with which the regulated community already has to comply, or implements recent statutory changes to Article 23 of the Environmental Conservation Law.

Most proposals that are based upon changes to Title 23 of Article 23 of ECL (Laws of 1995, Chapter 152) serve to clarify the original intent of the Legislature against establishments charging a fee for used oil disposal. They do not reflect a change in stringency for service establishments or retail establishments, but they do provide extra measures of protection against accepting contaminated used oils.

It is proposed that the current provision allowing generators to mix their used oil with diesel fuel, and to have the resulting mix exempt from used oil regulation, be modified to conform to Federal standards, *i.e.*, the act of mixing must only occur at the generator's site. Current State requirements on this issue are inconsistent. The 374-2 provision is identical to the

corresponding provision in 40 CFR 279, and specifies that the mixing must be conducted on-site. The corresponding provision in 360-14, however, allows the mixing to occur anywhere, and is, therefore, less stringent than Federal requirements. Since State regulations on used oil management cannot be less stringent than the corresponding Federal regulations, the Department proposes that the 360-14 provision be removed.

It is also proposed that the current provision requiring generators to store used oil in tanks or containers be modified to coincide with the Federal requirement which also allows used oil storage in units subject to the hazardous waste regulations. When the current used oil regulations were issued, it was thought by the Department that providing for used oil storage in tanks and containers, while disallowing storage in pits, ponds or lagoons, was more stringent than corresponding Federal requirements. However, as EPA pointed out in its authorization review, by not explicitly stating in its regulations that used oil may only be stored in tanks and containers, the Department left open the possibility that used oil could be stored in a unit that didn't comply with hazardous waste storage requirements, as long as that unit was not a pit, pond, or lagoon. By this interpretation, the Department's storage requirements are less stringent than Federal requirements. Employing the Federal language will render the State's requirement equivalent to the Federal regulations. However, adherence to the Federal storage standard is not anticipated to have an immediate effect upon small businesses and local government because the Department is unaware of any used oil storage in this State, other than in tanks and containers.

3. Professional Services:

The quantity and types of service needed will remain close to the present level. The proposed rulemaking does not involve any major program changes, with regard to the scope of the program, which are not already mandated by State statute or regulation. The Department continues to operate a toll-free telephone number (800-462-6553) that used oil handlers can call for assistance and conducts a variety of education and outreach activities directed at small businesses.

4. Compliance Costs:

Small businesses and local governments should not incur any additional costs, either initial capital costs or annual compliance costs, to comply with the proposed rulemaking. Some rule changes will make existing rules consistent with federal rules and generally less stringent than existing state regulations. Other changes are in response to statutory changes, mostly to safeguard small businesses, such as automotive repair shops, from accepting used oil from the public that has been contaminated with other materials. Thus, overall compliance costs related to these regulatory changes are anticipated to decrease.

5. Minimizing Adverse Impact:

It is the Department's belief that the proposed used oil rulemaking will not cause a significant additional economic burden to the small business community or to local governments. Some of the proposed changes are intended to make the State regulations conform to amended, less stringent federal regulatory requirements. Other proposals are based upon recent amendments to Article 23, Title 23 of the ECL, and will have the effect of protecting small businesses and local government-run collection centers from accepting used oil contaminated with other materials. Other proposed changes are clarifications or reformatting of already existing regulatory requirements and are, thus, neither more or less stringent than current requirements. No adverse economic impacts to small businesses and local governments from the proposed regulatory changes have been identified by the Department.

6. Small Business and Local Government Participation:

The Department has an ongoing education program for vehicle maintenance shops. As part of this program, workshops are conducted with trade associations throughout the State on a periodic basis. In addition, the Department has a guidance manual available that explains the regulatory requirements for vehicle maintenance shops and an accompanying self-audit checklist. In 1997, information on this rulemaking included a public workshop announcement and was printed in the State Register, the Environmental Notice Bulletin, and mailed to others, including environmental groups, citizen advisory committees and environmental management councils, regulated community and other interested parties. Over 800 responded that they were interested and have been included in subsequent mailings. A public workshop was held on July 8, 1997 in Colonie, New York and was attended by more than 100 interested parties. Small businesses and local governments were included in this Statewide Outreach effort.

7. Economic and Technological Feasibility:

Inasmuch as the proposed rule changes either clarify existing requirements, adopt less stringent federal requirements in place of current State requirements, or implement into regulation recent State statutory amendments which cause no added economic burdens or require any additional sophisticated environmental control technology, implementation of these rule changes will be economically and technologically feasible for small businesses and for local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

This rule will apply Statewide. All 43 rural counties and 71 additional rural towns will be included.

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

No additional reporting, recordkeeping or professional services will be imposed upon rural areas by this rulemaking.

The proposed rulemaking either adopts the existing United States Environmental Protection Agency (USEPA) regulations (found at 40 CFR 279), adopts amended USEPA regulations which are less stringent than present state regulations with which the regulated community already has to comply, or implements recent statutory changes to Article 23 of the Environmental Conservation Law.

To conform to Federal regulatory language, the exemption from generator requirements, for farmers who generate an average of 25 gallons or less of used oil per month, will be clarified to state that this average must be based upon a calendar year. Clarification is necessary to avoid any misinterpretation that would make this provision appear to be less stringent than the corresponding Federal provision.

Most proposals that are based upon changes to Title 23 of Article 23 of ECL (Laws of 1995, Chapter 152) serve to clarify the original intent of the Legislature against establishments charging a fee for used oil disposal. They do not reflect a change in stringency for service establishments or retail establishments, but they do provide extra measures of protection against accepting contaminated used oils.

3. Costs:

Rural areas should not incur any additional costs, either initial capital costs or annual compliance costs, to comply with the proposed rulemaking. Some rule changes will make existing rules consistent with federal rules and generally less stringent than existing state regulations. Other changes are in response to statutory changes, mostly to safeguard service and retail establishments from accepting used oil from the public that has been contaminated with other materials. Thus, overall compliance costs related to these regulatory changes are anticipated to decrease.

4. Minimizing adverse impact:

The proposed regulatory changes will not have any adverse impact in rural areas. Provisions in the current regulations that exempt farmers from used oil generator requirements, provided that they generate 25 gallons or less of used oil per month, on average, will be retained, although clarified. Some of the proposed changes are intended to make the State regulations conform to amended, less stringent federal regulatory requirements. Other proposals are based upon recent amendments to Article 23, Title 23 of the ECL, and will have the effect of protecting service and retail establishments and publicly-owned collection centers from accepting used oil contaminated with other materials. Other proposed changes are clarifications or reformatting of already existing regulatory requirements and are, thus, neither more or less stringent than current requirements. No adverse economic impacts to rural areas from the proposed regulatory changes have been identified by the Department.

5. Rural area participation:

In 1997, information of the original rulemaking included a public workshop announcement, and was printed in the State Register and the Environmental Notice Bulletin, and mailed to others, including environmental groups, citizen advisory committees, and environmental management councils, regulated community and other interested parties, including those located in rural areas. Over 800 responded that they were interested and have been included in subsequent mailings. A public workshop was held on July 8, 1997 in Colonie, New York and was attended by more than 100 interested parties. Rural areas were included in this Statewide Outreach effort.

Job Impact Statement

In accordance with Section 201-a.2(a) of the State Administrative Procedures Act (SAPA), a Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State.

In its authorization review of the State's used oil management regulations, the United States Environmental Protection Agency (USEPA) iden-

tified areas where the State's regulatory requirements are or may be less stringent than the corresponding Federal regulations (40 CFR 279). In order for the Department to obtain authorization from the USEPA, the State's used oil regulations must be at least as stringent as the corresponding Federal regulations, including amendments to the Federal regulations added after the previous State used oil rulemaking was completed. Therefore the Department must amend its regulations to properly incorporate all current federal used oil requirements. The Department must also amend its regulations to incorporate recent statutory changes to Title 23 of Article 23 of the New York State Environmental Conservation Law (ECL).

However, none of these proposed changes will result in requirements that are broader in scope than the ones currently in effect. Most Federally-based proposed changes are, in fact, clarifications of currently existing requirements that have been interpreted by the EPA as being less stringent than the corresponding Federal standards.

Among these proposals are:

1. Provisions requiring used oil generators to comply with standards for transporters, burners, marketers or disposers, if performing any of these respective activities. Additionally, it is also proposed that used oil transporters comply with standards for used oil generators, processors, burners, marketers, or disposers, if performing any of these respective activities. Specifically stating these requirements in the regulations should eliminate any doubt concerning their stringency, as compared to the corresponding EPA requirements.

2. Current used oil regulations contain an exemption from Part 360 permitting for operations undertaking vehicle-to-vehicle transfers (usually truck-to-truck or truck-to-rail) of used oil, provided that the transfers are continually observed, an acceptable contingency plan is in place, the transporter(s) meet all applicable requirements of 6 NYCRR Part 364, and certain quality control measures are followed. Although there is no federal permitting requirement, these current conditions do not meet the technical and management standards of the federal used oil regulations, which require compliance with all federally-based transporter/transfer facility standards, such as secondary containment for used oil storage in containers, whenever storage at such a facility exceeds 24 hours. For equivalency with federal regulations, the Department proposes to modify this exemption to require compliance with all federally-based transporter/transfer facility standards, whenever duration of used oil storage at such a facility exceeds 24 hours.

3. Current used oil regulations contain a provision for Part 360 permitting exemptions for transporters who are permitted under Part 364 when they store used oil at their facilities for a period of 10 calendar days or less, provided that no transfer, pumping or consolidation of loads occurs. However, the federal used oil regulations subject such facilities to transfer facility standards if used oil storage exceeds 24 hours. For equivalency with federal regulations, the Department proposes to modify this exemption by requiring compliance with all federally-based transporter/transfer facility standards whenever duration of used oil storage at such a facility exceeds 24 hours.

During a prior used oil rulemaking, the State had already implemented most 40 CFR-derived provisions. Among those Federal provisions that had not been implemented previously, some, such as the incorporation of 40 CFR 279.20(b)(2)(i) and 279.41(c), which allow generators and transporters to conduct certain processing functions without being subject to processor standards, are less stringent than current New York requirements. Their implementation should lead to a decrease in the cost of regulatory compliance. These changes will increase consistency between New York State regulations and federal regulations, as Executive Order Number 20 encourages, and as federal program delegation requirements mandate. The Department believes that, with the implementation of Federal requirements, some more stringent, others less stringent, there will be no substantial loss of jobs in the State as compared to current regulatory requirements.

Other proposals are intended to reorganize and restructure existing Subparts 360-14 and 374-2, so that all technical and management standards derived from ECL Article 23, 40 CFR 279 or from the Petroleum Bulk Storage (PBS) regulations (6 NYCRR 612 - 614) will be placed in the latter Subpart, while 360-14 will retain only the Part 360-based permitting requirements. This will improve the understanding and readability of the regulations among departmental staff, the public, and the regulated community. However, reorganization by itself will have no effect upon the stringency of the regulations, and, therefore, is not expected to have any negative impact upon jobs in the state.

Proposals based upon recent amendments to Title 23 of Article 23 of the ECL effectively place limitations upon do-it-yourself used oil chang-

ers, and clarify the existing prohibition against establishments from charging a fee for used oil disposal. This is consistent with the original intent of the State Legislature when Article 23 was first enacted in 1978. They do not reflect a change in stringency for service or retail establishments, but they do provide these establishments with an extra measure of protection from the acceptance of contaminated used oils from the public.

Therefore, the Department concludes that adoption of these regulatory proposals should not have a substantial adverse impact on jobs within New York State.

Department of Health

EMERGENCY RULE MAKING

Serialized Official New York State Prescription Form

I.D. No. HLT-06-05-00005-E

Filing No. 78

Filing date: Jan. 21, 2005

Effective date: Jan. 21, 2005

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

Action taken: Addition of Part 910 and amendment of sections 85.21, 85.22, 85.23 and 85.25 of Title 10 NYCRR; amendment of sections 505.3, 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for a proper transition period for the use of statewide forge proof prescriptions, which under the regulations will be for a period of 18 months. Without the regulations the program is required to be enacted in 60 days which would be detrimental to both practitioners and the public.

Immediate adoption of these regulations is necessary to allow the gradual implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

Subject: Serialized official New York State prescription form.

Purpose: To enact the form.

Substance of emergency rule:

Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that for the 18 month period stipulated in the law, either an official prescription or a practitioner's personal prescription is valid for prescribing. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing

official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes have been proposed:

Section 505.3 (18 NYCRR)

- Language included to reflect use of facsimile prescriptions
- Language included to allow electronically transmitted prescriptions
- Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form
- Delete language prohibiting telephone orders for OTCs
- Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills)
- Delete Estimated Acquisition Cost—defined in Social Services Law 367-a(9)(b)(ii)
- Delete language referencing “triplicate” prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law
- Delete language referencing other Sections that have been deleted (i.e. 10 NYCRR 85.25)
- Delete language referencing dispensing fees—in Social Services Law 367-a(9)(d)
- Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law and the Article 33 of the Public Health Law and new 10 NYCRR Part 910.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website
- Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3(g)(3)

Part 85 (10 NYCRR)

- Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed
- Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (i.e., 18 NYCRR 528.2 and 10 NYCRR 85.25)
- Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a)
- Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 20, 2005.

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

Regulatory Impact Statement

Statutory Authority:

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

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. New

Section 21 of the Public Health law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Needs and Benefits:

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York. The simplification and provider beneficial provisions include:

- (1) Allowing electronic prescribing in the State Medical Assistance (Medicaid) program;
- (2) Eliminating the fee to practitioners and institutions for official prescriptions;
- (3) Eliminating the requirement that practitioners send written follow-up prescriptions to pharmacies for oral prescriptions in the Medicaid program;
- (4) Allowing oral prescribing of OTC medications in the Medicaid program and eliminating the requirement for hard copy orders for Medicaid OTC drugs;
- (5) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (6) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (7) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

The regulations also define the requirements for using the official prescription and provide for an 18-month period where both existing prescription forms and the official prescription can be used. This will allow for a transition period for practitioners, institutions and pharmacists.

These regulations are found in amendments to 18 NYCRR Sections 505.3; 528.1; 528.2; and in the newly promulgated regulations in 10 NYCRR Part 910.

Technical amendments are also being made to 10 NYCRR Sections 85.21, 85.22, 85.23 and 85.25 to conform with the intent of Section 21 of the Public Health Law.

Costs:

Costs to Regulated Parties:

This program is being funded by an assessment on the State Insurance Department. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize millions of dollars in savings due to the reduction of fraudulent prescription claims.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

The slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements, will be offset by funds through a grant administered by the Department.

Costs to State and Local Government:

There will be no costs to state or local government.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

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

Paperwork:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and recordkeeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing and dispensing as well as the elimination of the requirement for a written follow up prescription on oral prescriptions in the Medicaid Program will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

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

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances and Medicaid prescriptions as op-

posed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

Federal Standards:

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

Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, as of April 2003, there were approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions as of April 2003 there were approximately 18,000 licensed and registered pharmacists in New York.

Compliance Requirements:

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments;

- (1) Allowing electronic prescribing in the State Medical Assistance (Medicaid) program;
- (2) Eliminating the fee to practitioners and institutions for official prescriptions;
- (3) Eliminating the requirement that practitioners send written follow-up prescriptions to pharmacies for oral prescriptions in the Medicaid program;
- (4) Allowing oral prescribing of OTC medications in the Medicaid program and eliminating the requirement for hard copy orders for Medicaid OTC drugs;
- (5) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (6) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (7) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all controlled substances.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements; however, this cost will be offset through the distribution of grant funds awarded to the Department for the enhancement of its prescription monitoring program by the federal Bureau of Justice Assistance.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

Minimizing Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding, the elimination of written follow up prescriptions for oral prescriptions for the Medicaid program and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the

Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

Compliance Requirements:

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and pharmacies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

Professional Services:

None necessary.

Compliance Costs:

None.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

Minimizing Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from pharmacist, health plan and practitioner associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas was expressed.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefitting the public health by ensuring that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

**EMERGENCY
RULE MAKING**

Expansion of the New York State Newborn Screening Pool

I.D. No. HLT-06-05-00007-E

Filing No. 101

Filing date: Jan. 25, 2005

Effective date: Jan. 25, 2005

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

Action taken: Amendment of sections 69-1.2 and 69-1.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

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

Specific reasons underlying the finding of necessity: New York Public Health Law Section 2500-a authorizes the Commissioner of Health to designate additional diseases or conditions for inclusion in the newborn screening program test panel by regulation. This regulatory amendment adds 20 conditions — inherited metabolic disorders — to the current 11 that comprise New York State's newborn screening test panel, pursuant to existing Subpart 69-1.2. The Department of Health finds that immediate adoption of this rule is necessary to preserve the public health, safety and

general welfare, and that compliance with State Administrative Procedure Act (SAPA) Section 202(1) for this rule making would be contrary to the public interest, and welfare.

Proposed addition of 20 new conditions would more than double the number of conditions included in the screening panel, currently 11, *i.e.*, ten genetic/congenital disorders and one infectious disease. The potential positive effect on public health of this action is best illustrated by the fact that many conditions in the expanded screening panel proposed by this amendment have several variants or subtypes with different clinical presentations, which, if each were counted as a separate disorder, would translate into the Newborn Screening Program's detecting infants with any one of 58 serious but treatable neonatal conditions. Immediate implementation of the proposed expanded panel, which may be accomplished with minimal to no additional costs, is both feasible and obligatory, since the necessary personnel and technology are already in place under the previous screening panel expansion, and a system for follow-up and assurance of access to necessary treatment for identified infants is fully established. This proposed expansion will allow the Department to take advantage of the multiplex capabilities of the tandem mass spectrometry (MS/MS) instrumentation already in operation in the Program and now used to screen for MCADD. The proposed new conditions will be identified by the Program's collecting and analyzing more data from MS/MS examination of each newborn's dried blood spot specimen than currently done. While it was not practicable to implement additional MS/MS testing prior to this time, now that the Program is technically proficient in MS/MS testing and experienced in spectrometric data collection and interpretation, failure to begin to do so immediately would mean infants would go untested, undetected, and may thus suffer irreversible medical harm and even death. Although individually each of the 20 conditions is rare, it is expected that in the aggregate their prevalence will approach that of PKU - approximately 1 in 18,000 births. Therefore, mandatory inclusion of the 20 additional conditions under the implementing regulations is rigorously time-constrained.

To avoid unnecessary and potentially detrimental delay in full implementation of the expanded screening profile, the amended regulatory language of 10 NYCRR Section 69-1.2 is hereby adopted by emergency promulgation.

Subject: Expansion of the New York State newborn screening panel.

Purpose: To add 20 disorders to the newborn screening panel.

Text of emergency rule: Section 69-1.2 of Subpart 69-1 is amended as follows:

Section 69-1.2 Diseases and conditions tested. (a) Unless a specific exemption is granted by the State Commissioner of Health, the testing required by section 2500-a and section 2500-f of the Public Health Law shall be [done] performed by the testing laboratory according to recognized clinical laboratory procedures.

(b) Diseases and conditions to be tested shall include: phenylketonuria [,](PKU); branched-chain ketonuria, also known as maple syrup urine disease (MSUD); homocystinuria[,]; galactosemia[,]; hemoglobinopathies, including homozygous sickle cell disease[,]; hypothyroidism[,]; biotinidase deficiency[,]; human immunodeficiency virus (HIV) exposure and infection[,]; cystic fibrosis [,](CF); congenital adrenal hyperplasia [, and](CAH); medium-chain acyl-CoA dehydrogenase deficiency (MCADD); argininosuccinic acidemia (ASA); carnitine palmitoyl transferase II deficiency (CPT-II); carnitine-acylcarnitine translocase deficiency (CAT); carnitine uptake defect (CUD); citrullinemia (CIT); cobalamin A,B cofactor deficiency (Cbl A,B); glutaric acidemia type I (GA-I); 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG); isovaleric acidemia (IVA); long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency (LCHADD); 3-methylcrotonyl-CoA carboxylase deficiency (3-MCC); methylmalonyl CoA mutase deficiency (MUT); mitochondrial acetoacetyl-CoA thiolase deficiency (BKT); mitochondrial trifunctional protein deficiency (TFP); multiple acyl-CoA dehydrogenase deficiency (MADD, also known as GA-II); multiple carboxylase deficiency (MCD); propionic acidemia (PA); short-chain acyl-CoA dehydrogenase deficiency (SCADD); tyrosinemia (TYR); and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

Section 69-1.3 of Subpart 69-1 is amended as follows:

Section 69-1.3 Responsibilities of the chief executive officer. The chief executive officer shall ensure that a satisfactory specimen is submitted to the testing laboratory for each newborn born in the hospital, or admitted to the hospital within the first twenty-eight (28) days of life [with] from whom no specimen [having] has been previously collected, and that the following procedures are carried out:

(a) The infant's parent is informed of the purpose and need for newborn screening, and given newborn screening educational materials provided by the testing laboratory.

* * *

(h) [Biohazardous specimens shall be thoroughly] Thoroughly dried [and then individually sealed in a transparent, plastic bag. The outside of the plastic bag shall be labeled as a biohazardous specimen] biohazardous specimens shall be forwarded in accordance with instructions provided by the testing laboratory.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 24, 2005.

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

Summary of Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Section 2500-a requires institutions caring for infants 28 days or under of age to cause newborns to be tested for phenylketonuria, branched-chain ketonuria, homocystinuria, galactosemia, homozygous sickle cell disease, hypothyroidism, and other conditions to be designated by the Commissioner of Health. Specifically, PHL Section 2500-a(a) provides statutory authority for the Commissioner of Health to designate in regulation other diseases or conditions for newborn testing in accordance to the Department's mandate to prevent infant and child mortality, morbidity, and diseases and disorders of childhood.

Legislative Objectives:

In enacting PHL Section 2500-a, the Legislature intended to promote public health through mandatory screening of New York State newborns to detect those with serious but treatable neonatal conditions and to ensure their referral for medical intervention. This proposal, which would add 20 conditions - all inherited metabolic disorders - to the list of ten genetic/congenital disorders and one infectious disease currently in regulation, is in keeping with the Legislature's public health aims of early identification and timely medical intervention for all the State's youngest citizens.

Needs and Benefits:

Data compiled from New York State's Newborn Screening Program and other states' programs have shown that timely intervention and treatment for metabolic disorders can drastically improve affected infants' survival chances and quality of life. Advancing technology, emerging medical treatments and rising public expectations for this critical public health program demand that the panel of screening conditions be expanded at this time through this amendment of Subpart 69-1.2, which would add 20 inherited metabolic disorders to the scope of newborn screening services already provided by the Department. They are: argininosuccinic acidemia (ASA); carnitine palmitoyl transferase II deficiency (CPT-II); carnitine-acylcarnitine translocase deficiency (CAT); carnitine uptake defect (CUD); citrullinemia (CIT); cobalamin A,B cofactor deficiency (Cbl A,B); glutaric acidemia type I (GA-I); 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG); isovaleric acidemia (IVA); long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency (LCHADD); 3-methylcrotonyl-CoA carboxylase deficiency (3-MCC); methylmalonyl CoA mutase deficiency (MUT); mitochondrial trifunctional protein deficiency (TFP); mitochondrial acetoacetyl-CoA thiolase deficiency (BKT); multiple acyl-CoA dehydrogenase deficiency (MADD, also known as GA-II); multiple carboxylase deficiency (MCD); propionic acidemia (PA); short-chain acyl-CoA dehydrogenase deficiency (SCADD); tyrosinemia (TYR); and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD). Although individually each of the conditions is rare, it is expected that in the aggregate their prevalence will approach that of PKU - approximately 1 in 18,000 births.

The 20 conditions - all inborn errors of metabolism - can be grouped according to the resulting abnormality: organic acidemias; fatty acid oxidation disorders; and amino acid disorders. Infants may die during an early clinical episode, and children who survive severe clinical episodes may experience varying degrees of central nervous system dysfunction, including developmental delay and other abnormalities. However, many inborn errors of metabolism can be effectively treated when detected early, primarily through dietary intervention and avoidance of metabolic stressors such as fasting, especially during childhood illness. Without newborn screening a child may not be recognized with a metabolic disorder until it develops cognitive or behavioral symptoms and/or is admitted to the hospital with

seizures, ataxia, movement disorder, stroke, coma or other afflictions. Early diagnosis of the error can make the difference between lifelong impairment and healthy development.

Overall, the potential positive effect on public health of the proposed screening panel is significant. It is best illustrated by considering that many of the conditions in the expanded screening panel proposed by this amendment carry several variants or subtypes, each with a different clinical presentation, which, if viewed as a separate disorder, would translate into the Newborn Screening Program's detection of a total of more than 58 serious but treatable neonatal conditions.

This amendment would also codify the Program's practice of reporting clinically significant abnormalities of hemoglobin detected concurrently with homozygous sickle cell disease. In addition, this amendment would append an acronym to each condition in existing regulation for which an acronym is commonly used (*e.g.*, PKU for phenylketonuria). Such a linkage will facilitate recognition by primary care physicians and laypersons, most of whom are unfamiliar with the full, complex scientific names for these relatively rare metabolic conditions, and will make the regulation's express terms consistent with acronyms used in the Program's administrative forms and educational materials. This amendment also proposes to modify paragraph (h) of Section 69-1.3 to include in regulation current procedures for use and labeling of mailers for forwarding newborn specimens to the Department, procedures that are consistent with United States Postal Service (USPS) regulations, as amended effective January 1, 2004. The Program's new specimen collection form folds over to cover the specimens with a protective flap that is preprinted with the universal biohazard symbol. Therefore, the existing requirement for enclosing the specimen in a transparent plastic bag and labeling the package by hand is no longer necessary.

Costs:

Costs to Private Regulated Parties:

Regulated parties (*i.e.*, birthing facilities) will incur no new costs related to collection and submission of blood specimens to the Program, since the dried blood spot specimens now collected and mailed to the program for other currently available testing would also be tested for the additional disorders proposed by this amendment.

The Program estimates that, following implementation of this proposal, 1,500 newborns will screen positive for one or more of the new conditions annually, and will require either repeat screening or referral to facilities and practitioners, depending on whether the value of the initial screening result for the condition's marker is close to the empirically determined cutoff point for positive, or significantly above that point. Cost figures that follow are based on this high-end estimate for presumptive positives and an estimated maximum number of infants' needing immediate referral; the numbers were developed from studies conducted by the Department on 4,200 residual newborn specimens stripped of all identifiers after completion of mandatory screening. The studies used a preliminary value for the cutoff point (marker level) for considering a specimen positive, a value that intentionally maximizes the number of presumptive positives. It is reasonable to expect that the cutoff point would be adjusted to capture a reduced number of false positives as the Program gains experience testing and verifies clinical outcomes.

Approximately 350 of the 1,500 screen-positive infants are expected to show marker levels significantly above the cutoff for positive and will be referred immediately for clinical assessment; repeat specimens will be requested from the remaining 1,150 screen-positive infants. Of the repeat specimens submitted, about 20 percent will be screen-positive on the repeat specimen and require referral for clinical assessment. The Department expects that, on average, each of the seven metabolic centers would experience referral of an additional two infants per week for clinical assessment and possible additional testing to confirm or refute screening results.

Birthing facilities would likely incur minimal additional costs related to fulfilling their responsibilities for ensuring a repeat specimen and for ensuring referral of infants. Such costs would be limited to human resources costs of approximately 1.0 person-hour for communicating the need, and/or arranging for collection of a second specimen and its forwarding to the Department. On average, each birthing facility can expect to handle 3.5 additional infants in need of referral to a metabolic center per year as a result of screening tests that would be conducted pursuant to this proposal. This increase is expected to have little effect on the facility's workload since the current annual number of infants in need of referral at all facilities ranges from 350 to 500; therefore, no additional staff would be required at these institutions. Any facility can calculate its specific cost impact based on its annual number of births and expenses applying the

following factors: an estimated rate of six screen-positive infants per 1,000 births; and a referral rate of two infants per 1,000 births.

Facilities and practitioners receiving referrals would incur human resources costs of approximately \$300 for: medical evaluation, including confirmatory testing in some cases; ongoing care; and treatment supplies and dietary supplements. However, given the low specificity of screening tests, the Department anticipates that as many as 98 percent of referred infants will ultimately be found not to be afflicted with the target condition, using clinical assessment and laboratory tests.

Regulated parties will incur additional human resources costs, attributable to two to five person-hours and estimated at \$450 per affected infant, for providing post-evaluation and ongoing medical management services to the approximately two percent of screen-positive infants whose disorders are confirmed.

Infants who screen positive for one or more of the 20 new metabolic conditions will require laboratory tests and comprehensive-level office visits at metabolic centers to determine final diagnosis. The cost of these services is estimated to be in the range of \$261,000 to \$754,000 annually, using the prevailing rate of \$300 for a comprehensive-level office visit, and, for the various laboratory tests that may be required, laboratory charges ranging from \$150 to \$1,000. The number and kind of laboratory tests, and therefore costs for testing, will vary greatly, depending on the type of metabolic disorder, the specific condition being investigated and the availability of definitive laboratory methods, such as mutation analysis by DNA-based genetic tests.

The Department expects that costs of medical services and supplies will be reimbursed by all payor mechanisms now covering the care of children identified with conditions currently in the newborn screening panel. Payors include indemnity health plans, managed care organizations, New York State's medical assistance program (Medicaid), Child Health Plus, and Children with Special Health Care Needs Programs.

Many of the costs associated with medical management of a child affected with a metabolic disorder are not attributable solely to the proposed regulation, as most would have been incurred at some point following diagnosis if targeted testing was sought at the primary care level for children in whom the disorder was not fatal shortly after birth. Although early diagnosis through the proposed rule may result in increased overall lifetime healthcare costs for patients who would have died in the absence of screening, *e.g.*, those with propionic acidemia, substantial cost savings are likely to be accrued from avoided complications. Early diagnosis and early treatment may prevent or lessen irreversible organ damage, and thereby reduce costs related to caring for affected individuals incurred by New York's health care and education systems. Furthermore, early detection affords affected individuals with the opportunity for improved quality of life, a benefit that cannot be quantified.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

Although funding for the State's Newborn Screening Program requires State expenditures, proactively treating congenital abnormalities may save money by avoiding more financially burdensome medical costs and institutional services.

State-operated facilities providing birthing services, infant follow-up and medical care would incur costs and savings as described for regulated parties. The Medicaid Program would also experience costs equal to the 25 percent State share for treatment and medical care of affected Medicaid-eligible children. However, Medicaid would also benefit from cost savings, since early diagnosis avoids medical complications, thereby reducing the average length of hospital stays and need for expensive high-technology health care services.

Costs to the Department:

Costs incurred by the Department's Wadsworth Center for performing newborn screening tests, providing short- and long-term follow-up, and supporting continuing research in neonatal and genetic diseases are covered by State budget appropriations recently augmented by dedicated line-item funding for program expansion.

A system for follow-up and assurance of access to necessary treatment for identified infants is fully established. The Department will bolster staffing in the follow-up unit to handle the increased number of screen-positive results and interface with medical practitioners and facilities, by reprioritizing resources and redeploying and filling four positions with an annual value of \$169,000.

Costs to Local Government:

Local government-operated facilities providing birthing services, infant follow-up and medical care would incur the costs and savings described for private regulated parties. County governments would also incur

costs equal to the 25 percent county share for treatment and medical care of affected Medicaid-eligible children, and realize cost savings as described above for State-operated facilities.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government; or school, fire or other special district, unless a county, city, town or village government; or school, fire or other special district operates a facility, such as a hospital, caring for infants 28 days or under of age and, therefore, is subject to these regulations to the same extent as a private regulated party.

Paperwork:

No increase in paperwork would be attributable to activities related to specimen collection, and reporting and filing of test results, as the number and type of forms now used for these purposes will not change. Facilities that submit newborns' specimens will sustain minimal to no increase in paperwork, specifically, only that necessary to conduct and document follow-up and/or referral.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternative Approaches:

Potential delays in detection of serious but treatable neonatal conditions until onset of clinical symptoms would result in increased infant morbidity and mortality, as well as higher health care costs, and are therefore unacceptable. Given the decided public health benefits of preventing adverse clinical outcomes in affected infants, the Department has determined that there are no alternatives to requiring newborn screening for these conditions.

Federal Standards:

There are no existing federal standards for medical screening of newborns.

Compliance Schedule:

The Department will continue to work with the Newborn Screening Task Force and affected parties toward optimal coordinated notification and implementation of the newborn test panel expansion. Program representatives and other senior Department staff met with the directors of affected metabolic centers on September 17, 2004; the agenda included ensuring that the centers have been properly identified and are appropriately certified. The Department anticipates that the Commissioner of Health will send a letter to all New York State-licensed physicians informing them of the newborn panel expansion. The letter will be distributed to hospital CEOs and their designees responsible for newborn screening, as well as other affected parties.

There appears to be no potential for organized opposition. Consequently, regulated parties should be able to comply with these regulations as of their effective date.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This proposed amendment to add 20 conditions – all inherited metabolic disorders – to the list of ten genetic/congenital disorders and one infectious disease for which every newborn in New York State must be tested will affect hospitals; alternative birthing centers; and physician and midwifery practices operating as small businesses or operated by local government, provided such facilities care for infants 28 days or under of age, or are required to register the birth of a child. The Department estimates that ten hospitals and one birthing center in the State meet the definition of a small business. Local government, including the New York City Health and Hospitals Corporation, operates 21 hospitals. No metabolic center is operated by a local government or as a small business. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom, specifically those in private practice, operate as small businesses. It is not possible, however, to estimate the number of these medical professionals operating an affected small business, primarily because the number of physicians directly involved in delivering infants cannot be ascertained.

Compliance Requirements:

The Department expects that affected facilities, and medical practices operated as small businesses or by local governments, will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to mandatory newborn screening are already embedded in established policies and practices of affected institutions and individuals. Activities related to collection and submission of blood specimens to the State's Newborn Screening Program will not change, since newborn dried blood spot specimens now collected and mailed to the Program for other currently performed testing would also be used for the additional tests proposed by this amendment. However, birth-

ing facilities and at-home birth attendants (*i.e.*, licensed midwives) would be required to follow-up infants screening positive for any one or more of the conditions proposed for addition to the State's panel, and assume responsibility for referral for medical evaluation and additional testing as appropriate for each infant's medical status. The anticipated increased burden is expected to have minimal effect on the ability of small businesses or local government-operated facilities to comply, as no such facility would experience an increase of more than two per week in the number of infants requiring referral. Therefore, the Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Although increased numbers of repeat specimens and referrals are foreseen, affected facilities' existing professional staff should be able to assume the minimal increase in workload. Infants with positive screening tests for one or more of the disorders included in this amendment will be referred to the facility physician already designated to receive positive screening results for MCADD and PKU.

Compliance Costs:

Birthing facilities operated as small businesses and by local governments, and practitioners who are small business owners (*i.e.*, private practicing licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional tests proposed by this amendment. However, such facilities, and, to a lesser extent, at-home birth attendants, would likely incur minimal costs related to follow-up of infants screening positive for one or more of the 20 disorders proposed for addition to the newborn screening panel, primarily because testing proposed under this regulation is expected to result in, on average, fewer than one screen-positive infant per week at each of the 11 birthing facilities that are small businesses. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would take 1.0 person-hour, and is expected to be able to be accomplished with existing staff.

Providers, such as clinical specialists (*i.e.*, medical geneticists), and primary and ancillary care providers (*i.e.*, pediatricians, nutritionists and physical therapists), some of whom operate small businesses, would incur costs for first response and ongoing care of affected infants, as well as treatment supplies and dietary supplements. Specifically, such providers would incur human resources costs of approximately \$300 for an initial comprehensive medical evaluation of one infant with an abnormal screening test results. However, given the low specificity of screening tests to ensure no false-negative test results, the Department anticipates that as many as 98 percent of infants will be found to not have the target condition, using clinical assessment and relatively simple confirmatory tests.

Hospitals and independent providers will incur additional costs for providing post-evaluation and ongoing medical management services to the approximately two percent of screen-positive infants whose disorders are confirmed. Human resources costs for post-confirmation services of two to five person-hours, involving medical geneticists, genetic counselors and nutritionists, have been estimated at \$450 per affected infant, including \$300 for a comprehensive-level visit and \$150 for a genetic or nutritional counseling session.

The Department expects that costs of medical services and supplies will be reimbursed by all payor mechanisms now covering the care of children identified with conditions in the present newborn screening panel, as well as the care of children diagnosed with a metabolic disorder by targeted testing at the primary care level. Payors include indemnity health plans, managed care organizations, and New York State's medical assistance program (Medicaid Program), Child Health Plus and Children with Special Health Care Needs programs. The Department also expects that medical care providers will claim reimbursement from one or more of these payors at a rate equal to the usual and customary charge, thereby recouping costs.

Overall health care costs for definitive diagnosis and comprehensive medical management of affected individuals will vary significantly, primarily depending on the condition and the services and supplies required for sustaining some level of continued health. Many of the costs associated with medical management of a child affected with a metabolic disorder are not attributable solely to the proposed regulation, as most such expenses would have been incurred at some point following diagnosis, by targeted testing at the primary care level. Although the proposed rules' speeding early diagnosis may result in increased overall lifetime care and treatment

costs for patients who would have died in the absence of screening, *e.g.*, those with propionic acidemia, substantial cost savings are likely to be accrued from prevented medical complications to set off against treatment costs. Early diagnosis and early treatment may prevent or lessen irreversible organ damage, and thereby reduce costs related to caring for affected individuals incurred by New York's health care and education system infrastructure. Furthermore, early detection affords affected individuals the opportunity for improved quality of life, a benefit that cannot be quantified.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment.

Minimizing Adverse Impact:

The Department did not consider alternate, less stringent compliance requirements, or regulatory exceptions for facilities operated as small businesses or by local government, because of the importance of the proposed testing to statewide public health and welfare. These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements for mandatory newborn screening, as full compliance would require minimal enhancements to present collection, reporting, follow-up and recordkeeping practices.

Small Business and Local Government Participation:

This amendment is being proposed as an emergency rule, and ensuring notification of its provisions and requirements in accordance with the SAPA process to affected parties that are either small businesses or local governments would cause unnecessary and potentially detrimental delay in full implementation of the expanded screening profile proposed by this regulation. Notification of the change occurred prior to and concurrent with statewide implementation of the expanded newborn screening panel.

Rural Area Flexibility Analysis

Types of Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population under 200,000; and, for counties with a population larger than 200,000, rural areas are defined as towns with population densities of 150 persons or fewer per square mile. Forty-four counties in New York State with a population under 200,000 are classified as rural, and nine other counties include certain townships with population densities characteristic of rural areas.

This proposed amendment to add 20 conditions – all inherited metabolic disorders – to the list of ten genetic/congenital disorders and one infectious disease for which every newborn in the State must be tested will affect hospitals, alternative birthing centers, and physician and midwifery practices located in rural areas, provided such facilities care for infants 28 days or under of age, or are required to register the birth of a child. The Department estimates that 54 hospitals and birthing centers operate in rural areas, and another 30 birthing facilities operate in counties with low-population density townships. Although they are well distributed throughout the State, no specialized care center operates in a rural area. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom are engaged in private practice in areas designated as rural; however, the number of professionals practicing in rural areas cannot be estimated because licensing agencies do not maintain records of licensees' employment addresses.

Reporting, Recordkeeping and other Compliance Requirements:

The Department expects that facilities and medical practices affected by this amendment and operating in rural areas will experience minimal additional regulatory burdens in complying with the amendment's requirements, as activities related to mandatory newborn screening are already part of established policies and practices of affected institutions and individuals. Collection and submission of blood specimens to the State's Newborn Screening Program will not be altered by this amendment, since the dried blood spot specimens now collected and mailed to the program for other currently available testing would also be used for the additional tests proposed by this amendment. However, birthing facilities and at-home birth attendants (*i.e.*, licensed midwives) would be required to follow-up infants screening positive for one of the 20 disorders proposed for addition to the panel, and assume responsibility for referral for medical evaluation and additional testing as appropriate for each infant's medical status. This requirement is expected to affect minimally the ability of rural facilities to comply, as no such facility would experience an increase of more than two per week in infants requiring referral. Therefore, the Department anticipates that regulated parties in rural areas will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Although small increases in the number of repeat specimens and referrals are foreseen, affected facilities' existing professional staff are expected to be able to assume the resulting minimal increase in workload. Infants with a positive screening test for one or more of the disorders included in this amendment will be referred to the facility physician already designated to receive positive screening results for MCADD and PKU.

Compliance Costs:

Birthing facilities operating in rural areas and practitioners in private practice in rural areas (*i.e.*, licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State's Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the program for other currently available testing would also be used for the additional tests proposed by this amendment. However, such facilities and, to a lesser extent, at-home birth attendants would likely incur minimal costs related to follow-up of infants screening positive for one of the metabolic disorders, since the proposed added testing is expected to result in no more than one more referral per week. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would take 1.0 person-hour, and is expected to be able to be accomplished with existing staff.

Rural providers, including clinical specialists (*i.e.*, medical geneticists) and primary and ancillary care providers (*i.e.*, pediatricians, nutritionists and physical therapists), would incur costs for first response and ongoing care of identified infants, as well as treatment supplies and dietary supplements. Specifically, such medical professionals would incur human resources costs of approximately \$300 for an initial comprehensive medical evaluation of each infant with an abnormal screening result. However, given the low specificity of screening tests to ensure no false negative results, the Department anticipates that as many as 98 percent of infants will be ultimately found to not be afflicted with the target condition, using clinical assessment practices and relatively simple confirmatory tests.

To the extent specialized services are delivered in a rural area, hospitals and independent providers in rural areas will incur additional costs for post-evaluation and ongoing medical management services to the approximately two percent of screen-positive infants whose disorders are confirmed. Human resources costs of two to five person-hours for post-confirmation services, involving medical geneticists, genetic counselors and nutritionists, have been estimated at \$450 per affected infant, including \$300 for a comprehensive-level office visit, and \$150 for a genetic or nutritional counseling session.

The Department expects that costs of medical services and supplies will be reimbursed by all payor mechanisms now covering the care of children identified with conditions already in the newborn screening panel, as well as children diagnosed with one of the metabolic disorders proposed for addition to the State panel by means of targeted testing at the primary care level. Payors include indemnity health plans, managed care organizations, and New York State's medical assistance program (Medicaid), Child Health Plus and Children with Special Health Care Needs programs. The Department also expects that medical care providers will claim reimbursement from one or more of these payors at a rate equal to the usual and customary charge, thereby recouping costs.

Overall health care costs for definitive diagnosis and comprehensive medical management of affected individuals will vary significantly, primarily by the condition, and the services and supplies required for sustaining some level of continued health. Many of the costs associated with medical management of a child affected with a metabolic disorder are not attributable solely to the proposed regulation, as most would have been incurred at some point following diagnosis by targeted testing at the primary care level. Although early diagnosis provided through the proposed rule may result in increased overall lifetime costs for patients who would have died in the absence of screening, *e.g.*, those with propionic acidemia, substantial cost savings are likely to be accrued from avoided complications to offset treatment costs. Early diagnosis and early treatment may prevent or lessen irreversible organ damage, and thereby reduce costs related to caring for affected individuals incurred by New York's health care and education system infrastructure. Moreover, early detection affords affected individuals with the opportunity for improved quality of life, a benefit that cannot be quantified.

Minimizing Adverse Impact:

The Department did not consider less stringent compliance requirements or regulatory exceptions for facilities located in rural areas because of the importance of the added infant testing to statewide public health and

welfare. These amendments will not have an adverse impact on the ability of regulated parties in rural areas to comply with Department requirements for mandatory newborn screening, as full compliance would entail minimal enhancements to present collection, reporting, follow-up and record-keeping practices.

Rural Area Participation:

This amendment is being proposed as an emergency rule, and ensuring notification of its provisions and requirements in accordance with the SAPA process to affected parties that are located in rural areas would cause unnecessary and potentially detrimental delay in full implementation of the expanded screening profile proposed by this regulation. Notification of the change occurred prior to and concurrent with statewide implementation of the expanded newborn screening panel.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. The amendment proposes the addition of 20 conditions — inherited metabolic disorders — to the scope of newborn screening services already provided by the Department. It is expected that, of the small number of regulated parties that will experience moderate rather than minimal impact on their workload, few, if any, will need to hire new personnel. Therefore, this proposed amendment carries no adverse implications for job opportunities.

Insurance Department

EMERGENCY RULE MAKING

Physicians and Surgeons Professional Insurance Merit Rating Plans

I.D. No. INS-06-05-00004-E

Filing No. 77

Filing date: Jan. 20, 2005

Effective date: Jan. 20, 2005

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

Action taken: Addition of Part 152 (Regulation 124) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 2342(d) and (e); L. 2002, ch. 1, part A, section 42 as amended by L. 2002, ch. 82, part J, section 16

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

Specific reasons underlying the finding of necessity: Section 42 of Part A of Chapter 1 of the Laws of 2002, requires that any physician, surgeon or dentist who wants to participate in the excess medical malpractice insurance program established by the Legislature in 1986 must participate in a proactive risk management course. Section 42 authorized the Superintendent to promulgate regulations that provide for the establishment and administration of such plans. Section 42, as originally enacted on January 25, 2002, established an effective date of July 1, 2003 for participation in these courses. However, on May 29, 2002, Section 16 of Part J of Chapter 82 of the Laws of 2002 was enacted and the effective date was amended to July 1, 2002.

It is essential that this amendment be promulgated on an emergency basis so that insurers are made aware of the requirements for proactive risk management courses and have the courses in place as soon as possible. Insureds must be able to avail themselves of these courses as soon as possible so that they may participate in the excess medical malpractice insurance program. This is especially important for those insureds who are presently insured in the excess medical malpractice insurance program. It is vital that their insurance be maintained on a continuous basis not only for their financial protection but also to preserve the rights of claimants who suffer injury as a result of medical malpractice.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the public welfare.

Subject: Physicians and surgeons professional insurance merit rating plans.

Purpose: To establish guidelines and requirements for medical malpractice merit rating plans and risk management plans.

Substance of emergency rule: Summary of the Substance of the Third Amendment to 11 NYCRR 152 (Regulation No. 124)

Section 152.1 is amended by adding paragraph (e) which details the statutory authority for proactive risk management programs.

Section 152.2 is amended by adding definitions for the terms physician, excess medical malpractice program and insurer.

Section 152.6 contains the standards for risk management programs in which insureds participate in order to receive premium credits. This section is amended to provide that these courses may be offered in an internet-based format.

Section 152.7 is amended by specifying how risk management programs, provided in an internet-based format, may be implemented.

Section 152.8 is renumbered to be Section 152.12 and a new Section 152.8 is added to provide the standards for proactive risk management programs which are provided for insureds who wish to qualify for the excess medical malpractice insurance programs established by the Legislature.

A new Section 152.9 is added to provide eligibility requirements for participation in the excess medical malpractice insurance program.

A new Section 152.10 is added to provide coordination of the excess medical malpractice risk management courses with risk management courses that are offered for the purpose of providing premium credits.

A new Section 152.11 is added to provide guidelines for insurers in implementing risk management programs administered for insureds who wish to qualify for participation in the excess medical malpractice insurance program established by the Legislature.

Section 152.12 is amended to provide requirements for insurers conducting audits of insureds or for insureds to conduct self-review surveys. A new provision is added requiring insurers to report, by territory and medical specialty, the number of insureds participating in risk management programs who qualify for the excess medical malpractice insurance program.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 19, 2005.

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

Regulatory Impact Statement

1. Statutory authority: Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law, and to effectuate any power granted under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2343(d) provides that the Superintendent shall, by regulation, establish a merit rating plan for physicians professional liability insurance. Section 2343(e) provides that the Superintendent may approve malpractice insurance premium reductions for insured physicians who successfully complete an approved risk management course, subject to standards prescribed by the Superintendent by regulation. Section 42 of Part A of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002, requires that all physicians, surgeons and dentists participating in the excess medical malpractice insurance program established by the Legislature in 1986 participate in a proactive risk management program. Section 42 authorizes the Superintendent to promulgate regulations which provide for the establishment and administration of these risk management courses.

2. Legislative objectives: The objective of Section 2343(d) was the establishment, by the Superintendent, by regulation, of a merit rating plan for physicians professional liability insurance that was reasonable and not unfairly discriminatory, inequitable, violative of public policy or contrary to the best interests of the people of New York. The regulation was to include reasonable standards to be applied to merit rating plans submitted by insurers for approval by the Superintendent. Those standards are to be used to arrive at premium rates, surcharges and discounts based on an evaluation of the insured, geographical areas, specialties of practice, past and prospective loss and expense experience for medical malpractice insurance and any other factors deemed relevant in a system of merit rating.

The objective of Section 2343(e) was to permit insurers to provide premium credits for successful completion of risk management programs approved by the Superintendent.

The objective of Section 42 of Part A of the Laws of 2002 was to require that all physicians, surgeons and dentists participating in the excess medical malpractice insurance program established by the Legislature participate in a proactive risk management program.

An effective risk management program would provide insureds with an overview of the causes of malpractice claims, emphasize communication skills and improved patient rapport skills, and focus on improving procedures. This should reduce the frequency and severity of medical malpractice claims. The intent of this amendment is to effectuate that objective.

3. Needs and benefits: The first amendment to Part 152 established standards under which risk management programs may be approved by the Superintendent. Successful completion of approved risk management programs permitted credits to be applied to physicians professional liability programs.

At the time that amendment was promulgated, all risk management courses were conducted in a classroom setting in a lecture format. Since that time, advances in technology have made Internet-based home study courses available in an array of disciplines. Insurers have requested that they be permitted to take advantage of this technology and offer Internet-based risk management courses to their medical malpractice insureds. Offering Internet-based risk management courses will allow insureds increased flexibility in participating in these courses. This may result in more insureds completing the courses, which should ultimately translate into better patient care and reductions in the incidence and cost of medical malpractice claims.

The recently enacted Section 42 of Part A of Chapter 1 of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002 requires that, as of July 1, 2002, physicians, surgeons and dentists participate in a proactive risk management program in order to be eligible to participate in the excess medical malpractice insurance program established by the Legislature.

4. Costs: This rule imposes no compliance costs upon state or local governments.

There are no additional costs imposed upon regulated parties by the provisions of this amendment since, for the purposes of obtaining a premium credit, insurers are not required to offer risk management courses to their insureds, and those that offer risk management courses will not be required to include an Internet-based version. However, if they do offer these courses, these provisions offer regulated parties another option in offering risk management courses to their insureds. It is likely that it is more cost effective to offer Internet-based risk management courses to insureds in addition to, or in place of risk management courses in the lecture format. Courses conducted in a lecture format entail costs of hiring instructors, printing course materials and renting physical settings that can accommodate, and are convenient to, as many insureds that are eligible to attend.

In addition, insured physicians taking the Internet-based courses would not incur any transportation expenses that are associated with attending lecture format risk management courses. Furthermore, physicians would not have to schedule time away from their practice since these courses could be taken on line at virtually any time.

While insurers will incur additional costs when offering proactive risk management programs for the purpose of insurer eligibility in the excess medical malpractice insurance program, the statute provides that these costs will be reimbursed from funds available pursuant to Section 51 of Part A of Chapter 1 of the Laws of 2002. Reimbursement will be made according to procedures to be established by the Superintendent.

Although insurers have offered risk management programs, for the purpose of obtaining premium credits, for almost ten years, there are additional requirements specified in Section 42 of Chapter 1 of the Laws of 2002 for proactive risk management courses.

The follow-up course component of the proactive risk management course must be offered annually rather than every other year.

In order to satisfy the statutory requirement that these courses be proactive, insurers will also be required to conduct risk management audits annually, either by the insurer or by a self-review survey completed by the insured. There will be costs associated with developing the audit procedure, training people to conduct the audits, visiting insureds' practice settings to do the audit and implementing any necessary follow-up procedures after the results of the audit are analyzed.

These new requirements must be incorporated into the course and the course must be submitted to the superintendent for approval.

In addition, Section 42 requires that, in order for a dentist to participate in the excess medical malpractice program, he or she must participate in a proactive risk management program. Dental malpractice insurance carriers will incur costs necessary to set up proactive risk management courses, since up to this point the requirements of this Part with respect to risk management courses set up for purposes of premium credits did not apply to them.

Although the statute does not permit insurers to assess any fees against insureds for participating in these courses, insureds may have to schedule time away from their practice to participate in these risk management courses. However, it should be noted that participation in a proactive risk management course permits an insured to be issued one million dollars of excess medical malpractice insurance at no charge to himself/herself. It should also be noted that the aim of participation in risk management courses is to improve patient care which ultimately translates into better patient care which will reduce the frequency and severity of medical malpractice losses.

In addition, it is anticipated that completion of the excess medical malpractice risk management program will allow an insured physician to receive credit for Category 1 continuing medical education.

5. Local government mandates: This rule does not impose any mandates on local government.

6. Paperwork: There are paperwork requirements imposed by the provisions of the amendment on insurers with respect to offering an internet based risk management course. An insurer that decides to offer an Internet-based risk management course will have to follow existing procedures for obtaining the Superintendent's approval of that course and submit required data on the number of insureds receiving the risk management credit.

Although they are not regulated parties, an insured physician might be subject to minimal paperwork requirements. If an insured physician takes an Internet-based risk management course, he or she must affirm that they were the person who actually took the course and that they are aware that any premium credit granted by the insurer is based on this affirmation. Any additional costs associated with the completion of this affirmation will be offset by the fact that the insured does not have to travel to and from a location where any risk management course is offered in the lecture format. It should also be noted that it is a voluntary decision by the insured to participate in any risk management course.

With respect to the proactive risk management course, insurers will have to provide the follow-up course on an annual basis rather than every other year which will entail making more frequent arrangements concerning location, notification and presentation of the course if it is offered in a lecture format. They will also have to develop new procedures for the purposes of conducting audits and/or self-audits by insureds.

Insurers will also be required to submit to the Department, on an annual basis, the number of insureds participating in proactive risk management courses. However, this paperwork burden should be minimal since insurers are already required to submit similar statistics regarding other risk management courses.

7. Duplication: This amendment will not duplicate any existing federal or state law.

8. Alternatives: The alternative of not permitting Internet-based risk management courses to be offered by insurers is not a viable alternative. The Department is of the opinion that technological advances in this area should be made available to insurers and insureds. By permitting the availability of these types of courses, it is expected that more insured physicians will be able to take these courses and the benefits of risk management will improve the quality of care provided to their patients.

Consideration was given to permitting insurers to provide non-Internet-based home study courses to their insureds. However, the Department is of the opinion that such home study courses do not afford insurers the ability to properly monitor the effectiveness of the course and to verify that the insured physician is actually taking the course as do other formats. Currently, when offering a risk management course in the lecture format, attendance must be taken of participants both before and after the lecture and admittance to the course is closed at a certain time after the start of the course. With Internet-based risk management courses, the insured physician will be required to affirm that they have read the content of the course, taken any quizzes and completed the required project. In addition, insureds will be given an individual password to use and the length of time spent on the Internet taking the course can be tracked by the insurer.

Since the proactive risk management course is required by statute, the Department could not consider the alternative of not implementing it. Although an internet based format is not directly addressed in the mandatory statute, the rule provides for this option in order to provide flexibility to both insurers and physicians, surgeons and dentists who must take such courses to qualify for the excess medical malpractice insurance coverage and to maintain consistency between the risk management credit course which is voluntary, and the course that must be taken by all insureds wishing to qualify for the excess medical malpractice insurance program.

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

10. Compliance schedule: The provisions of this amendment will apply immediately. As required by statute, insurers must have a proactive risk management course available for their insureds in order for insureds to participate in the excess medical malpractice insurance program. It is expected that insurers will be able to comply with the new provisions in a relatively short period of time since most medical malpractice insurers already have had other risk management programs approved by the superintendent. In order to facilitate compliance with this statute, extensive discussions have been held by the Department with the major medical malpractice insurers in this state and the Medical Society of the State of New York so that the content of the course relative to excess management will be consistent from course to course and also qualify for continuing medical education credit.

Since the offering of risk management courses for the purpose of premium credits is optional for insurers, there is no compliance schedule with respect to the offering of these courses in an internet-based format. An insurer may offer an internet-based risk management course to its insureds as soon as the Department determines that the course is in compliance with the provisions of this Part.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State and self-insurers, none of which fall within the definition of "small business".

The Insurance Department has reviewed filed Reports on Examination an Annual Statements of authorized property/casualty insurers and determined that none of them would fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees. Self-insurers typically have to be large enough to have the financial ability to self insure losses and the Department has never been provided information to indicate that any of the self-insurers are small businesses.

This rule will also have no adverse economic impact on local governments and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

Although they are not regulated parties, this part affects physicians, surgeons and dentists, some of whom may be considered small businesses as they are required to attend proactive risk management courses if they wish to be eligible to participate in the excess medical malpractice insurance program. This may entail scheduling time away from their medical practice in order to participate in these courses. However, it should be noted that participation in this course permits an insured to be issued one million dollars of excess medical malpractice insurance at no charge to himself/herself. It should also be noted that the aim of participation in risk management courses is to improve patient care which ultimately translates into better patient care which will reduce the frequency and severity of medical malpractice losses.

In addition, by providing insurers with the option of offering risk management programs in an internet-based format, physicians should be able to save time and money by taking these courses in their home or office at a time convenient to them as opposed to attending these courses when conducted in a lecture format.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and self-insurers covered by this regulation do business in every county in this state, including rural areas as defined under Section 102(1) of the State Administrative Procedure Act. Other affected parties, such as physicians, surgeons and dentists, conduct their practices throughout the state.

2. Reporting, recordkeeping and other compliance requirements: There are paperwork requirements imposed by the provisions of this amendment on insurers with respect to offering an internet-based risk management course. An insurer that decides to offer an internet-based risk management course will have to follow existing procedures for obtaining the Superintendent's approval of that course and submit required data on the number of insureds receiving the risk management credit.

Although they are not regulated parties, an insured physician might be subject to minimal paperwork requirements. If an insured physician takes an internet-based risk management course, he or she must affirm that they

were the person who actually took the course and that they are aware that any premium credit granted by the insurer is based on this affirmation. Any additional costs associated with the completion of this affirmation will be offset by the fact that the insured does not have to travel to and from a setting where any risk management course is offered in the lecture format. It should also be noted that it is a voluntary decision by the insured to participate in any risk management course.

With respect to the proactive risk management course, insurers will have to provide the follow-up course on an annual basis rather than every other year which will entail making more frequent arrangements concerning location, notification and presentation of the course if it is offered in a lecture format. They will also have to develop new procedures for the purpose of conducting audits and/or self-audits by insureds.

Insurers will also be required to submit to the Department, on an annual basis, the number of insureds participating in proactive risk management courses. However, this paperwork should have a minimal impact since insurers are already required to submit similar statistics regarding other risk management courses.

3. Costs: This rule imposes no compliance costs upon state or local governments.

It is not expected that insurers would incur undue expenses in offering internet-based risk management courses to their insureds for the purpose of obtaining premium credits. In fact, it is likely that it is more cost effective to offer internet-based risk management courses to insureds in addition to, or in place of, risk management courses in the lecture format.

Insureds would not be unduly affected by participating in internet-based risk management courses and would probably incur time and financial savings since they would be able to take these courses in their home or office at a time convenient to them.

Insurers will incur additional costs when offering proactive risk management programs to insureds for the purpose of eligibility in the excess medical malpractice insurance program. However, the statute provides that their costs will be reimbursed from statutory funds according to procedures to be established by the Superintendent. Insurers must offer these courses on an annual basis and will be conducting risk management audits or have insureds conduct self-audits. These new requirements are statutorily mandated, but should not impose any undue hardships for insurers.

However, it should be noted that participation in this course permits an insured to be issued one million dollars of excess medical malpractice insurance at no charge to himself/herself. It should also be noted that the aim of participation in risk management courses is to improve patient care which ultimately translates into better patient care which will reduce the frequency and severity of medical malpractice losses.

It should also be noted that portions of the excess medical malpractice risk management programs will be reviewed by the Medical Society of the State of New York for qualification as Category 1 of continuing medical education credit. Therefore, an insured who successfully completes this course will qualify both for continuing medical education and for participation in the excess medical malpractice insurance program.

4. Minimizing adverse impact: The regulation applies to regulated parties that do business throughout New York State and does not impose any adverse impact on rural areas. Permitting insurers to offer risk management courses in an internet-based format should benefit insureds in rural areas through savings of time and money. Instead of traveling to central locations throughout the state to attend these courses in a lecture format, they can take the courses on computers in their home or office at a time convenient to them.

5. Rural area participation: The Department met extensively with the major medical malpractice insurers in New York State to solicit their opinions on the subject of proactive risk management programs. The Department also solicited input from the Medical Society of the State of New York in order that these courses would qualify for continuing medical education credit. Their comments were taken into account in developing the provisions of this Part.

Job Impact Statement

This rule should not have any adverse impact on jobs and employment opportunities in this State since it merely sets forth guidelines that medical malpractice insurers must follow when developing statutorily prescribed proactive risk management programs that must be submitted to the Superintendent for approval. It also permits insurers to offer risk management courses in an internet-based format.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appointment of Pheasant Hill Water Corporation as Temporary Operator of the Minisink Water System

I.D. No. PSC-06-05-00003-EP

Filing date: Jan. 19, 2005

Effective date: Jan. 19, 2005

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

Action taken: The commission, on Jan. 12, 2005, adopted on an emergency basis, an order in Case 99-W-1572 appointing the Pheasant Hill Water Corporation (PHWC) as temporary operator of the Minisink water system.

Statutory authority: Public Service Law, sections 89-b(1), 89-c(4) and 89-j

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

Specific reasons underlying the finding of necessity: Immediate approval of Pheasant Hill Water Corporation (PHWC) as temporary operator of the Minisink water system is necessary to ensure continuation of safe and adequate water service to the residents of Pheasant Hill. The water system is in dire need of rehabilitation and delaying PHWC appointment as temporary operator will delay the funding essential for water system improvements thus resulting in unreliable water service to customers.

Subject: Appointment of Pheasant Hill Water Corporation as temporary operator of the Minisink water system.

Purpose: To provide safe and adequate water service to Pheasant Hill residents.

Substance of emergency/proposed rule: The Commission issued an Order on an emergency basis appointing the Pheasant Hill Water Corporation as temporary operator of the Minisink water system serving the Pheasant Hill subdivision in the Town of Minisink, Orange County, New York, subject to the terms and conditions set forth in the order.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire April 18, 2005.

Text of rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (99-W-1572SA1)

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-29-95-00032-P	July 19, 1995
PSC-35-96-00013-P	August 28, 1996
PSC-36-96-00032-P	September 4, 1996
PSC-37-96-00006-P	September 11, 1996
PSC-37-96-00007-P	September 11, 1996
PSC-37-96-00008-P	September 11, 1996
PSC-37-96-00009-P	September 11, 1996
PSC-37-96-00010-P	September 11, 1996
PSC-37-96-00011-P	September 11, 1996

PSC-37-96-00012-P	September 11, 1996
PSC-37-96-00013-P	September 11, 1996
PSC-37-96-00014-P	September 11, 1996
PSC-37-96-00015-P	September 11, 1996
PSC-37-96-00016-P	September 11, 1996
PSC-37-96-00017-P	September 11, 1996
PSC-37-96-00018-P	September 11, 1996
PSC-37-96-00019-P	September 11, 1996
PSC-37-96-00020-P	September 11, 1996
PSC-37-96-00021-P	September 11, 1996
PSC-37-96-00022-P	September 11, 1996
PSC-37-96-00023-P	September 11, 1996
PSC-37-96-00024-P	September 11, 1996
PSC-37-96-00025-P	September 11, 1996
PSC-37-96-00026-P	September 11, 1996
PSC-37-96-00028-P	September 11, 1996
PSC-37-96-00029-P	September 11, 1996
PSC-37-96-00030-P	September 11, 1996
PSC-37-96-00031-P	September 11, 1996
PSC-37-96-00032-P	September 11, 1996
PSC-37-96-00033-P	September 11, 1996
PSC-37-96-00034-P	September 11, 1996
PSC-37-96-00035-P	September 11, 1996
PSC-37-96-00036-P	September 11, 1996
PSC-37-96-00037-P	September 11, 1996
PSC-37-96-00038-P	September 11, 1996
PSC-37-96-00039-P	September 11, 1996
PSC-37-96-00040-P	September 11, 1996
PSC-37-96-00049-P	September 11, 1996
PSC-37-96-00050-P	September 11, 1996
PSC-37-96-00051-P	September 11, 1996
PSC-37-96-00052-P	September 11, 1996
PSC-37-96-00053-P	September 11, 1996
PSC-37-96-00054-P	September 11, 1996
PSC-37-96-00055-P	September 11, 1996
PSC-37-96-00056-P	September 11, 1996
PSC-38-96-00025-P	September 18, 1996
PSC-38-96-00026-P	September 18, 1996
PSC-38-96-00027-P	September 18, 1996
PSC-38-96-00028-P	September 18, 1996
PSC-38-96-00029-P	September 18, 1996
PSC-38-96-00030-P	September 18, 1996
PSC-38-96-00031-P	September 18, 1996
PSC-38-96-00032-P	September 18, 1996
PSC-38-96-00033-P	September 18, 1996
PSC-38-96-00034-P	September 18, 1996
PSC-38-96-00035-P	September 18, 1996
PSC-38-96-00036-P	September 18, 1996
PSC-38-96-00037-P	September 18, 1996
PSC-38-96-00038-P	September 18, 1996
PSC-38-96-00039-P	September 18, 1996
PSC-38-96-00040-P	September 18, 1996
PSC-38-96-00041-P	September 18, 1996
PSC-38-96-00042-P	September 18, 1996
PSC-38-96-00043-P	September 18, 1996
PSC-51-96-00009-P	December 18, 1996
PSC-04-97-00017-P	January 29, 1997
PSC-04-97-00018-P	January 29, 1997
PSC-04-97-00023-P	January 29, 1997
PSC-06-97-00001-P	February 12, 1997
PSC-06-97-00002-P	February 12, 1997
PSC-06-97-00004-P	February 12, 1997
PSC-06-97-00005-P	February 12, 1997
PSC-06-97-00006-P	February 12, 1997
PSC-06-97-00007-P	February 12, 1997
PSC-06-97-00008-P	February 12, 1997
PSC-06-97-00009-P	February 12, 1997
PSC-06-97-00010-P	February 12, 1997
PSC-06-97-00011-P	February 12, 1997
PSC-06-97-00012-P	February 12, 1997
PSC-06-97-00013-P	February 12, 1997
PSC-06-97-00014-P	February 12, 1997
PSC-06-97-00015-P	February 12, 1997
PSC-06-97-00016-P	February 12, 1997
PSC-06-97-00017-P	February 12, 1997

PSC-06-97-00018-P	February 12, 1997
PSC-06-97-00020-P	February 12, 1997
PSC-06-97-00021-P	February 12, 1997
PSC-06-97-00022-P	February 12, 1997
PSC-06-97-00023-P	February 12, 1997
PSC-06-97-00024-P	February 12, 1997
PSC-06-97-00025-P	February 12, 1997
PSC-06-97-00027-P	February 12, 1997
PSC-06-97-00028-P	February 12, 1997
PSC-06-97-00029-P	February 12, 1997
PSC-06-97-00030-P	February 12, 1997
PSC-06-97-00031-P	February 12, 1997
PSC-06-97-00032-P	February 12, 1997
PSC-06-97-00033-P	February 12, 1997
PSC-06-97-00034-P	February 12, 1997
PSC-06-97-00035-P	February 12, 1997
PSC-06-97-00036-P	February 12, 1997
PSC-06-97-00037-P	February 12, 1997
PSC-06-97-00038-P	February 12, 1997
PSC-06-97-00039-P	February 12, 1997
PSC-06-97-00040-P	February 12, 1997
PSC-06-97-00041-P	February 12, 1997
PSC-06-97-00042-P	February 12, 1997
PSC-06-97-00043-P	February 12, 1997
PSC-06-97-00044-P	February 12, 1997
PSC-06-97-00046-P	February 12, 1997
PSC-06-97-00048-P	February 12, 1997
PSC-06-97-00049-P	February 12, 1997
PSC-06-97-00050-P	February 12, 1997

NOTICE OF ADOPTION

Minor Rate Increase by Valley Energy, Inc.

I.D. No. PSC-29-04-00007-A
Filing date: Jan. 21, 2005
Effective date: Jan. 21, 2005

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

Action taken: The commission, on Jan. 12, 2005, adopted an order in Case 04-G-0821 directing Valley Energy, Inc. to cancel its tariff filing and file amendment to increase revenues by \$53,733 or 7.46 percent.

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

Subject: Tariff filing for a minor rate increase.

Purpose: To increase revenues by \$53,733.

Substance of final rule: The Commission denied a request by Valley Energy, Inc. (Valley Energy) to increase its annual revenues \$109,698 or 13.5% and directed Valley Energy to file amendments to increase revenues on a temporary basis by \$53,733 or 7.46%, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-0821SA1)

NOTICE OF ADOPTION

Net Loss Revenues by National Fuel Gas Distribution Corporation

I.D. No. PSC-41-04-00002-A
Filing date: Jan. 19, 2005
Effective date: Jan. 19, 2005

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

Action taken: The commission, on Jan. 12, 2005, adopted an order in Case 04-G-1138 granting National Fuel Gas Distribution Corporation (NFG) permission to recover \$1,235,160 in net lost revenues.

Statutory authority: Public Service Law, section 66

Subject: Request for the recovery of net lost revenues.

Purpose: To recover net lost revenues resulting from the operation of billing back out credit to energy service companies.

Substance of final rule: The Commission approved National Fuel Gas Distribution Corporation's petition to recover \$1,235,160 in net lost revenues associated with the operation of its billing back out provision.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-1138SA1)

NOTICE OF ADOPTION

Amendment to Waiver by Central Hudson Gas & Electric Corporation

I.D. No. PSC-42-04-00019-A
Filing date: Jan. 19, 2005
Effective date: Jan. 19, 2005

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

Action taken: The commission, on Jan. 12, 2005, adopted in order in Case 04-G-1079 allowing Central Hudson Gas & Electric Corporation (Central Hudson) to amend the terms of a previously granted waiver of certain requirements of the commission's rules and regulations, 16 NYCRR Part 255—transmission and distribution of gas.

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

Subject: Request to amend an existing waiver.

Purpose: To waive certain requirements.

Substance of final rule: The Commission approved a request by Central Hudson Gas & Electric Corporation for an amendment to its existing waiver of the requirements of 16 NYCRR § 255.123 to allow the use of mechanical fittings to join plastic pipe at pressures above 100 pounds per square inch gauge, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-1079SA1)

NOTICE OF ADOPTION

Order Setting Permanent Hot Cut Rates by Bridgecom International Inc., et al.

I.D. No. PSC-45-04-00011-A
Filing date: Jan. 21, 2005
Effective date: Jan. 21, 2005

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

Action taken: The commission, on Jan. 12, 2005, adopted an order in Case 02-C-1425 addressing petitions for rehearing and clarification of the commission's Aug. 25, 2004 order, setting permanent hot cut rates.

Statutory authority: Public Service Law, section 22

Subject: Rehearing and/or clarification of the commission's Aug. 25, 2004 order.

Purpose: To consider petitions for rehearing.

Substance of final rule: The Commission denied in part and granted in part petitions for rehearing and clarification of the Commission's August 25, 2004 Order Setting Permanent Hot Cut Rates filed by a group of Competitive Local Exchange Carriers (CLECs) and Verizon New York Inc., (Verizon) and dismissed Covad Communications Company's petition for rehearing as moot. Furthermore, the Commission directed Verizon to file tariff amendments within 14 days of the date of this order, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (02-C-1425SA2)

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

Major Gas Rate Increase by National Fuel Gas Distribution Corporation

I.D. No. PSC-06-05-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by National Fuel Gas Distribution Corporation to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 8—Gas. The effective date of the filing has been suspended through July 28, 2005.

Statutory authority: Public Service Law, 66(12)

Subject: Major gas rate increase.

Purpose: To increase base rates by \$60.9 million and eliminate surcharges to produce a net aggregate increase in revenues of about \$41.3 million or 5.5 percent.

Public hearing(s) will be held at: 10:00 a.m., March 7, 2005 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY; 1:00 p.m.-3:00 p.m., March 8, 2005 at Buffalo and Erie County Public Library, Buffalo, NY; and 6:30 p.m.-8:30 p.m., March 8, 2005 at Amherst Main Library at Audubon, 350 John James Audubon Pkwy., Amherst, NY.

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

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

Substance of proposed rule: National Fuel Gas Distribution Corporation has made a tariff filing to increase its base rates by \$60.9 million and eliminate surcharges to produce a net aggregate increase in revenues of \$41.3 million, or 5.5%. The effective date of the filing is currently suspended through July 28, 2005 in Case 04-G-1047. The Commission may approve, modify or reject the rate filing in whole or part.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

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

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-1047SA1)

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

Intercarrier Agreements between Verizon New York Inc. and Northland Networks Ltd.

I.D. No. PSC-06-05-00008-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 modification filed by Verizon New York Inc. and Northland Networks Ltd. to revise the interconnection agreement effective on Oct. 12, 2004.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Northland Networks Ltd. in January 2005. The companies subsequently have jointly filed amendments to clarify the provisions regarding unbundled network elements. The Commission is considering these changes.

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. Brillling, 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.

(99-C-0657SA2)

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

Intercarrier Agreements between Verizon New York Inc. and Conversent Communications of New York, LLC

I.D. No. PSC-06-05-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Conversent Communications of New York, LLC to revise the interconnection agreement effective on June 14, 2001.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Conversent Communications of New York, LLC in September 2001. The companies subsequently have jointly filed amendments to clarify the provisions regarding reciprocal compensation rates. The Commission is considering these changes.

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. Brillling, 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.

(01-C-0810SA2)

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

Simplified Telecommunications Annual Report**I.D. No.** PSC-06-05-00010-P

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

Proposed action: The New York Public Service Commission is considering a modified annual report, the Simplified Telecommunications Annual Report (STAR) to be filed by all telecommunications carriers in New York State, including traditional telephone companies, cable television companies, facilities-based telephone companies, resellers, long distance telephone companies and local telephone companies.

Statutory authority: Public Service Law, sections 94(2), 95(1) and 216(2)

Subject: Simplified Telecommunications Annual Report.

Purpose: To evaluate and determine whether to approve a modified annual report.

Substance of proposed rule: The New York Public Service Commission is considering a modified annual report, the Simplified Telecommunications Annual Report (STAR) to be filed by all telecommunications carriers in New York State, including traditional telephone companies, cable television companies, facilities-based telephone companies, resellers, long distance telephone companies and local telephone companies. A public copy of the Notice Requesting Comments and proposed annual report is available on the Commission's Web Site at <http://www.dps.state.ny.us> by accessing the Commission Documents section of the homepage and referencing Case number 04-C-0637.

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-C-1637SA1)

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

Interconnection Agreement between Verizon New York Inc. and OnFiber Carrier Services, Inc.**I.D. No.** PSC-06-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and OnFiber Carrier Services, Inc. for approval of an interconnection agreement executed on Dec. 8, 2004.

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

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

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

Substance of proposed rule: Verizon New York Inc. and OnFiber Carrier Services, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and OnFiber Carrier Services, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 7, 2006, or as extended.

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.

(05-C-0061SA1)

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

Interconnection Agreement between Verizon New York Inc. and Warwick Valley Telephone Company**I.D. No.** PSC-06-05-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Warwick Valley Telephone Company for approval of an interconnection agreement executed on Dec. 15, 2004.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Warwick Valley Telephone Company have reached a negotiated agreement whereby Verizon New York Inc. and Warwick Valley Telephone Company will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 14, 2006, or as extended.

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.

(05-C-0062SA1)

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

Retail Access Backout Credits by Consolidated Edison Company of New York, Inc.**I.D. No.** PSC-06-05-00013-P

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

Proposed action: The Public Service Commission (commission) is considering a filing of Consolidated Edison Company of New York, Inc. (Con Edison) regarding the implementation of electric retail access backout credits, rate design and sample unbundled tariff rates for a limited number of supply related functions applicable to certain customer service classes, as well as a proposal for a lost revenue recovery mechanism addressing recoupment by Con Edison of revenues lost upon customer migration to an energy service company for electric commodity supply. The commission

may also consider other matters related to the unbundling of Con Edison's electric rates.

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

Subject: Implementation of retail access backout credits, related rate design and a lost revenue recovery mechanism, and consideration of sample unbundled tariff rates for a limited number of supply related functions and other related matters.

Purpose: To consider electric retail access backout credits, related rated design, a lost revenue recovery mechanism, sample unbundled tariff rates for a limited number of supply related functions, and other related matters.

Substance of proposed rule: The Public Service Commission (Commission) is considering matters related to implementation of electric retail access backout credits, rate design and sample unbundled tariff rates for a limited number of supply related functions applicable to certain customer service classes, as well as a proposal for a lost revenue recovery mechanism addressing recoupment by Consolidated Edison Company of New York, Inc. of revenues lost upon customer migration to an Energy Service Company (ESCO) for commodity supply. Among the issues to be considered are the appropriateness of the backout credits, the cost-based nature of the credits, the impact of implementing the credits on the market, and whether the proposed rate design properly reflects the manner in which costs are incurred by the company for the listed customer care functions. Additionally, the Commission will consider a proposed lost revenue recovery mechanism associated with unbundling and increased migration to ESCOs, the consistency of the mechanism with other Commission orders, and 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: Jaclyn A. Brillling, 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-0572SA2)

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

Affiliated Exempt Telecommunications Company by Waverly Electric Light & Power Company

I.D. No. PSC-06-05-00015-P

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

Proposed action: The Public Service Commission is considering a petition from Waverly Electric Light & Power Company for, in the alternative if jurisdiction is not disclaimed, waiver of the review of or approval of contracts between affiliates regarding an affiliated exempt telecommunications company.

Statutory authority: Public Service Law, sections 65(1), (2), (3), 66(1) and 110

Subject: Contracts between affiliates regarding an affiliated exempt telecommunications company.

Purpose: To waive the review of or approval of contracts between affiliates.

Substance of proposed rule: The Commission is considering a petition from Waverly Electric Light & Power Company for, in the alternative if jurisdiction is not disclaimed, waiver of the review of or approval of contracts between affiliates regarding an affiliated exempt telecommunications company. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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. Brillling, 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.

(05-M-0080SA1)

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

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc. and the Town of Plattekill

I.D. No. PSC-06-05-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

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

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision of Wappingers Falls, Inc. and the Town of Plattekill to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross revenues.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of Section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Plattekill (Ulster County).

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. Brillling, 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-V-0923SA2)

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

Franchising Procedures by the Village of Grand View-on-Hudson

I.D. No. PSC-06-05-00017-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Grand View-on-Hudson (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

Subject: Franchising process by the Village of Grand View-on-Hudson.

Purpose: To waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Grand View-on-Hudson (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

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

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

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

(05-V-0055SA1)

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

Franchising Procedures by the Village of South Nyack

I.D. No. PSC-06-05-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of South Nyack (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

Subject: Franchising process by the Village of South Nyack.

Purpose: To waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of South Nyack (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

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

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

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

(05-V-0056SA1)

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

Franchising Procedures by the Village of Upper Nyack

I.D. No. PSC-06-05-00019-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Upper Nyack (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

Subject: Franchising process by the Village of Upper Nyack.

Purpose: To waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Upper Nyack (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

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

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

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

(05-V-0057SA1)

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

Franchising Procedures by the Village of Elmsford

I.D. No. PSC-06-05-00020-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Elmsford (Westchester County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

Subject: Franchising process by the Village of Elmsford.

Purpose: To waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Elmsford (Westchester County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

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

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

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

(05-V-0058SA1)

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

Franchising Procedures by the Town of Clarkstown

I.D. No. PSC-06-05-00021-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Clarkstown (Rockland County) for a waiver of 9 NYCRR sections 504.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

Subject: Franchising process by the Town of Clarkstown.

Purpose: To waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Clarkstown (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

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

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

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

(05-V-0059SA1)

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

Franchising Procedures by the Village of Irvington

I.D. No. PSC-06-05-00022-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Irvington (Westchester County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

Subject: Franchising process by the Village of Irvington.

Purpose: To waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Irvington (Westchester County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

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

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

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

(05-V-0060SA1)

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

Transfer of Water Plant Assets by Sterling Homes, LLC, et al.

I.D. No. PSC-06-05-00023-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a joint petition filed by Sterling Homes, LLC, S.H. Water Company, Inc. and Mr. Manuel Hirschman to transfer the water plant assets of the S.H. Water Company from Mr. Manuel Hirschman to Sterling Homes, LLC.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer water plant assets.

Purpose: To transfer the water works and water distribution system from Mr. Manuel Hirschman to Sterling Homes, LLC.

Substance of proposed rule: On December 9, 2004, a joint petition was filed by Sterling Homes, LLC, S.H. Water Company, Inc. and Mr. Manuel Hirschman for approval of the transfer of the water plant assets of S.H. Water Company, Inc. and Mr. Manuel Hirschman to Sterling Homes, LLC. S.H. Water company, Inc. currently provides water service to approxi-

mately 8 customers (with a full development customer number of 105) in Sackett Lake Estates, in the Town of Thompson, Sullivan County. The Commission may approve or reject, in whole or in part, or modify the petition.

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. Brillong, 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-W-1558SA1)

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

Water Rates and Charges by South Road Water Company, Inc.

I.D. No. PSC-06-05-00024-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by South Cross Road Water Company, Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 2—Water, to become effective May 1, 2005.

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

Subject: Water rates and charges.

Purpose: To increase South Cross Road Water Company, Inc.'s annual revenues by about \$8,666 or 26.3 percent.

Substance of proposed rule: On January 11, 2005, South Cross Road Water Company, Inc., (South Cross or the company) filed to become effective May 1, 2005, Leaf No. 12, Revision 1 to its electronic tariff schedule, P.S.C. No. 2 – Water. South Cross requests to increase its annual revenues by \$8,666 or 26.3%. The company provides metered water to 147 customers in a real estate development known as Golden Meadows located along Route 9G in the Town of Hyde Park, Dutchess County. The average customer's annual metered bill for 60,000 gallons would increase from \$215 to \$272. The company also requests to change its billing from quarterly billing to three times a year (every four months). South Cross' water allowance included in the minimum charge would change from 9,000 gallons to 12,000 gallons. The current minimum charge for the first 9,000 gallons of usage is \$30.58. Under the company's proposal, this would change to \$51.50 for 12,000 gallons of usage. Usage over the allowance the rate would go from \$3.87 per thousand gallons to \$4.89 per thousand gallons. South Cross' tariff, along with its proposed changes (Leaf No. 12, Revision 1) is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) – located under the file room – Tariffs). The Commission may approve or reject, in whole or in part, or modify, South Cross' 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. Brillong, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(05-W-0035SA1)

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

Initial Tariff Schedule by Sterling Homes, LLC

I.D. No. PSC-06-05-00025-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, Sterling Homes, LLC's initial tariff schedule, P.S.C. No.1—Water, to become effective Aug. 1, 2005.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule – electronic filing.

Purpose: To set forth the initial rates, charges, rules and regulations under which water for Sterling Homes, LLC will operate.

Substance of proposed rule: On January 13, 2005, Sterling Homes, LLC (Sterling or the company), filed an electronic tariff schedule, P.S.C. No. 1 – Water, which sets forth the rates, charges, rules and regulations under which the company will operate to become effective August 1, 2005. Sterling currently has 8 customers, but a full development will have 105 customers. Sterling is located in Sackett Lake Estates, Town of Thompson, Sullivan County. The company proposes a quarterly service charge of \$60 and a metered rate of \$6.00 per thousand gallons for all usage. A customer's average annual bill would be \$840. The tariff defines when a bill will be considered delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge is \$50 during normal business hours Monday through Friday, and \$75 outside of normal business hours Monday through Friday and \$100 on weekends and public holidays. Sterling's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) – located under the file room – Tariffs). The Commission may approve, modify or reject, in whole or in part, or modify Sterling's 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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-W-0053SA1)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Income Standards for Eligibility for Emergency Assistance for Needy Families with Children

I.D. No. TDA-46-04-00006-A

Filing No. 76

Filing date: Jan. 19, 2005

Effective date: Feb. 9, 2005

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

Action taken: Amendment of section 372.2(a) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 350-j and 355(3)

Subject: Income standards for eligibility for emergency assistance for needy families with children (EAF).

Purpose: To establish an objective income standard.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-46-04-00006-P, Issue of November 17, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

**EMERGENCY
RULE MAKING**

Waiver Agreements

I.D. No. WCB-06-05-00006-E

Filing No. 79

Filing date: Jan. 24, 2005

Effective date: Jan. 24, 2005

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

Action taken: Amendment of section 300.36 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 141 and 32

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

Specific reasons underlying the finding of necessity: Workers' Compensation Law, section 32, as amended Chapter 635 of the Laws of 1996, permits the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, subject to approval by the Board. At first, few waiver agreements were submitted to the Board, and a meeting was held before a Board Commissioner in all cases to question the parties about the agreement. However, in the late 1990's, the number of waiver agreement submitted to the Board increased so dramatically that it was not feasible to hold a meeting in every case in which an agreement was filed. Moreover, most agreements submitted to the Board were routine. Beginning in 2000, Board Commissioners began reviewing routine agreements administratively, without holding a meeting to discuss the agreement with the parties. The majority of settlement agreements are reviewed and approved by the Board without the need for a meeting with the parties. On April 22, 2004, the Appellate Division, Third Department rendered a Memorandum and Order in Matter of *Hart v. Pageprint/Dekalb*, 6 A.D.3d 947, 775 N.Y.S.2d 195 (3rd Dept., Slip Op. No. 94339, 2004), finding that the administrative review of waiver agreements was invalid insofar as it conflicted with the terms of 12 NYCRR section 300.36. The purpose of this amendment is to amend 12 NYCRR section 300.36, consistent with Workers' Compensation Law, section 32, to permit the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting with the parties, which benefits everyone. Requiring meetings for all waiver agreements would greatly increase the time it takes for such an agreement to be approved as the Board has limited calendar time. Additionally, the Board has numerous agreements which have been processed administratively and are ready for approval, but cannot be approved due to the above referenced decision. If the Board is to continue to efficiently and timely review and issue decisions regarding waiver agreements, it must process the routine agreements administratively.

Subject: Waiver agreements.

Purpose: To provide for the administrative review of waiver agreements.

Text of emergency rule: Subdivision (b) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(b) Any agreement submitted to the board for approval shall be on a form prescribed by the chair or, alternatively, contain the information prescribed by the chair. [For the purposes of section 32 of the Workers' Compensation Law and this section, an agreement shall be deemed submit-

ted when it is received by the board at the time a hearing is conducted to question the parties about the agreement. No agreement shall be approved for a period of 10 calendar days after submission to the board.]

Subdivision (c) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(c) The [submission] receipt of an agreement [to] by the board for approval shall act as a stay on all related proceedings before the board.

Subdivision (e) is renumbered (f), a new subdivision (e) is added and renumbered (f) is amended to read as follows:

(e) *The agreement shall be reviewed by the chair, a designee of the chair, a member of the board, or a Workers' Compensation Law Judge, who will make a determination whether to approve or disapprove the agreement. The chair, designee of the chair, member of the board, or Workers' Compensation Law Judge reviewing the agreement may approve or disapprove the agreement administratively, based on a review of the record before the board, or may choose to schedule a meeting to question the parties about the agreement. If the agreement is reviewed administratively, the Board shall advise the parties in writing of the date the agreement shall be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section. If a meeting is scheduled to question the parties about the agreement, the agreement will be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section at such meeting. No agreement shall be approved for a period of 10 calendar days after submission to the board.*

([e]f) The board will advise the parties of the approval or disapproval of all agreements by duly filing and serving a notice of [decision] approval or disapproval.

Subdivisions (f), (g), (h) and (i) of Section 300.36 of 12 NYCRR are renumbered (g), (h), (i) and (j).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 23, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 park St., Rm. 401, Albany, NY 12207, (518) 473-8626, e-mail: Office-ofGeneralCounsel@wbc.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.36. Workers' Compensation Law Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Workers' Compensation Law Section 117(1) further authorizes the Board to adopt reasonable rules consistent with the provisions of the Workers' Compensation Law and the Labor Law.

Section 141 of the Workers' Compensation Law provides that the Chair shall be the administrative head of the Board and authorizes the Chair, in the name of the Board, to enforce all the provisions of the WCL and to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports. Section 142 of the Workers' Compensation Law confers upon the Board the power to hear and determine all claims for compensation or benefits and to approve agreements.

Section 32 of the Workers' Compensation Law provides that whenever a claim for workers' compensation has been filed, the claimant or the deceased claimant's dependents and the employer or its insurance carrier may enter into a written agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. Such agreement shall not be binding unless approved by the Board. Once approved by the Board, the agreement shall be final and conclusive upon the parties. An agreement may be modified at any time by written agreement of all the interested parties provided it is approved by the Board.

2. Legislative objectives:

Section 73 of Chapter 635 of the Laws of 1996 amended Section 32 of the Workers' Compensation Law to permit the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. This rule would amend the regulations adopted in 1997 implementing Section 73 of Chapter 635 of the Laws of 1996 to provide for the administrative review of waiver agreements.

3. Needs and benefits:

Prior to the enactment of Section 73 of Chapter 635 of the Laws of 1996, a workers' compensation claimant was not permitted to permanently

waive his or her right to benefits under the Workers' Compensation Law (hereinafter "WCL"). The 1996 amendment to WCL § 32 permits the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, subject to approval by the Board. At first, few waiver agreements were submitted to the Board, and a meeting was held before a Board Commissioner in all cases to question the parties about the agreement. However, in the late 1990's, the number of waiver agreement submitted to the Board increased so dramatically that it was not feasible to hold a meeting in every case in which an agreement was filed. Moreover, most agreements submitted to the Board were routine. Beginning in 2000, Board Commissioners began reviewing routine agreements administratively, without holding a meeting to discuss the agreement with the parties. The majority of settlement agreements are reviewed and approved by the Board without the need for a meeting with the parties. On April 22, 2004, the Appellate Division, Third Department rendered a Memorandum and Order in *Matter of Hart v. Pageprint/Dekalb*, 6 A.D.3d 947, 775 N.Y.S.2d 195 (3rd Dept. 2004), finding that the administrative review of waiver agreements was invalid insofar as it conflicted with the terms of 12 NYCRR 300.36. On April 29, 2004, the Board filed an emergency regulation with the Department of State, effective immediately, to amend 300.36 to permit the Board to review waiver agreements submitted pursuant to Workers' Compensation Law § 32 administratively.

The purpose of this amendment is to permanently amend 12 NYCRR 300.36, consistent with WCL § 32, to permit the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting with the parties.

Permitting the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting benefits all participants to the workers' compensation system. The Board receives approximately 1,000 new waiver agreements each month. Requiring meetings for all waiver agreements would greatly increase the length of time it would take to review each agreement, as the Board has limited calendar time and only a small number of Board Commissioners. Additionally, claimants would be required to take time during the work day to appear at a Board district office for the meeting. The waiver agreements that are reviewed administratively are routine and the claimants represented. The Board is working to ensure that the parties who have entered into a routine waiver agreement have that agreement reviewed and a decision issued without delay. By redirecting the simple or routine cases from the meeting calendar and processing them administratively, the complex cases that remain on the meeting calendar will progress more quickly.

In addition, this proposed amendment makes two minor changes to 12 NYCRR 300.36 which reflect the current practice of the Board, and have minimal impact on regulated parties. These changes (1) require the Board to stay all proceedings in a case upon the receipt by the Board of a waiver agreement and (2) reflect that the written approval or disapproval by the Board of a waiver agreement is a "notice of approval" or "notice of disapproval," rather than a "notice of decision."

In essence this rule conforms the regulations to practices and procedures that have been in effect since 2000.

4. Costs:

The proposed amendment will not result in any new or additional costs to private regulated parties, State, local governments or the Workers' Compensation Board. This proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not require personal appearances before the Board by the parties. By eliminating the need for personal appearances before the Board for all waiver agreements, parties will experience savings in travel costs, appearance costs and claimants will not have to take time away from work to attend.

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants in the workers' compensation system, this proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not require personal appearances before the Board by the parties.

6. Paperwork:

The proposed amendment does not add any reporting requirements.

7. Duplication:

This amendment will not duplicate any existing Federal or State requirements.

8. Alternatives:

One alternative discussed was to hold a meeting in every case to question the parties about the agreement submitted. However, in most instances, waiver agreements submitted to the Board are routine, questioning of the parties concerning the agreement is not necessary, and a meeting would result in a delay in the processing of such agreements. Pursuant to the proposed amendment, the Board could schedule a meeting to discuss the agreement with the parties when circumstances so warrant.

Representatives of the Board have been meeting with different constituent groups across the State at which this topic is discussed. At a meeting with representatives of both carriers and claimants, it was suggested, to improve the administrative process and alleviate concerns expressed, that the Board modify its internal processing when reviewing waiver agreements administratively. The Board is currently reviewing this suggestion to determine impact and feasibility of implementation.

9. Federal standards:

There are no federal standards applicable to this proposed amendment.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

Small businesses that are self-insured will also be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

Small businesses which are self-insured employers and self-insured local governments may voluntarily enter into waiver agreements settling upon and determining claims for compensation. This amendment will speed the processing and approval of such agreements.

2. Compliance requirements:

The amendment will not require any additional reporting or record-keeping by small businesses or local governments.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers' Compensation Law § 32.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed amendment. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed amendment to comply.

6. Minimizing adverse impact:

This proposed amendment is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business participation and local government participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure small business and local government entities. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement submitted, the majority of comments received support the amendment allowing the Board to review and approve routine agreements administratively.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule applies to all claimants, insurance carriers and self-insured employers in all rural areas of the state which are subject to the provisions of the Workers' Compensation Law.

2. Reporting, recordkeeping and other compliance requirements:

The amendment will not impose any additional reporting, recordkeeping or compliance requirements on regulated parties in rural areas.

3. Costs:

This proposal will not impose any compliance costs on rural areas. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers Compensation Law § 32.

4. Minimizing adverse impact:

This proposed amendment is designed to minimize adverse impact for regulated parties in rural areas. This proposed amendment provides only a benefit to regulated parties in rural areas.

5. Rural area participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure employers in rural areas. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement, the majority of comments received supported the amendment allowing the Board to review and approve routine agreements administratively.

Job Impact Statement

The proposed amendment will not have an adverse impact on jobs. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to WCL § 32 and will therefore ultimately benefit the participants to the workers' compensation system.