

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 Audit and Control

NOTICE OF EXPIRATION

The following notice has expired and can not be reconsidered unless the Department of Audit and Control publishes a new notice of proposed rule making in the *NYS Register*.

Certification of Eligible Correction Officer Titles

I.D. No.	Proposed	Expiration Date
AAC-05-03-00015-P	February 5, 2003	August 4, 2003

Banking Department

EMERGENCY RULE MAKING

High Cost Home Loans

I.D. No. BNK-33-03-00002-E

Filing No. 806

Filing date: Aug. 1, 2003

Effective date: Aug. 3, 2003

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

Action taken: Amendment of Part 41 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 6-i and 6-l

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

Specific reasons underlying the finding of necessity: Chapter 626 of the Laws of 2002 is effective April 1, 2003. Provisions of chapter 626, by the enactment of section 6-l of the Banking Law, will affect the making of certain home mortgage loans, known as high cost home loans, on after the effective date. Part 41 of Title 3 NYCRR has governed the making of such loans prior to the effective date and is not in conformity with certain provisions of the chapter 626. Also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by chapter 626. Mortgage lenders and brokers and consumers should be aware of the revised regulatory requirements prior to the effective date of chapter 626 in order that mortgage loans made on and after April 1, 2003 conform legally to the statutory and regulatory requirements.

Subject: The making of certain residential mortgage loans, referred to as high cost home loans.

Purpose: To conform the provisions of part 41 of Title 3 NYCRR to various provisions of section 6-l of the Banking Law, and also to clarify certain provisions of such section 6-l.

Substance of emergency rule: Summary of proposed amendments to Part 41:

Section 41.1(a) is amended to revise the definition of a lender subject to part 41.

Section 41.1(b) is amended to revise the definition of an affiliate.

Section 41.1(c) is amended to make technical revisions.

Section 41.1(d) is amended to revise the definition of a bona fide loan discount point.

Section 41.1(e) is amended to revise the definition of a high cost home loan in regard to the points and fees threshold for determining such loans and limiting the exclusion of certain discount points in the computation of points and fees.

Section 41.1(f) is amended to revise the definition of loan amount.

Section 41.1(h) is amended to revise the definition of points and fees.

Section 41.1(j) is amended to make certain technical revisions.

Section 41.2(a) is amended to clarify the exceptions to the prohibition upon accelerating the indebtedness of high cost home loans.

Section 41.2(b) is amended to increase the term of a balloon mortgage to fifteen years.

Section 41.2(g), relating to modification and deferral fees, is repealed and then added as a new paragraph 2 to section 41.3(d), relating to refinancing of high cost home loans.

Section 41.3(a) is amended by adding a new disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability and to add certain conditions in order to determine that repayment ability has been "corroborated by independent verification."

Section 41.3(c) is amended to revise the percentage of points and fees that may be financed in making a high cost home loan, and to revise the charges that may be excluded from such financed points and fees.

Section 41.3(d) is re-titled and amended to revise the limitations upon points and fees that may be charged by particular lenders when refinancing high cost home loans and to add a previously repealed paragraph (see revisions to section 41.2(g)) relating to modification of an existing high cost home loan.

Section 41.3(f) is amended to delete a reference to median family income.

Section 41.3(g) is added to prohibit the refinancing of special mortgages, except under certain conditions.

Section 41.5(a) is amended to clarify deceptive acts relating to splitting or dividing loan transactions.

Section 41.5(b)(2) is amended to clarify retention of fees by lenders and brokers in relation to unfair, deceptive or unconscionable practices.

Section 41.5(b)(4) is amended to revise the definition of loan flipping, as an unfair or deceptive practice, and to add conditions to determine whether a loan has a net tangible benefit to the borrower.

Section 41.5(b)(6) is amended to clarify the standards to determine that recommending or encouraging default of a home loan or other debt is an unfair or deceptive practice.

Section 41.7 is amended to revise the legend that appears on a high cost home loan mortgage.

Section 41.8 is amended to delete VA and FHA mortgage loans from the definition of exempt products.

Section 41.9 is amended to repeal the current provisions relating to correction of errors and to add new provisions.

Section 41.11, relating to prohibiting the financing of single premium insurance, is re-titled and amended to include other insurance premiums or payments for any cancellation or suspension contract or agreement.

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 October 29, 2003.

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

Regulatory Impact Statement

1. Statutory authority:

Banking Law section 14(1) authorizes the Banking Board to adopt regulations not inconsistent with the law. Section 6-i of the Banking Law specifically states that no banking organization, partnership, corporation exempt organization, or other entity (hereafter "lenders") can make a mortgage loan in New York State unless those entities conform to Banking Law requirements pertaining to mortgage bankers (Article 12-D of the Banking Law) and rules and regulations promulgated by the Banking Board. Section 6-l of the Banking Law imposes new requirements upon the making of certain mortgage loans. Part 41 of the rules and regulations of the Banking Board was adopted pursuant to section 6-i of the Banking Law, and prior to approval of chapter 626 of the laws of 2002, which enacted section 6-l. Provisions of section 6-l, which are inconsistent with certain provisions of Part 41, supercede such regulatory provisions, and the Banking Board, in promulgating the amendments to Part 41, makes Part 41 consistent with section 6-l.

2. Legislative objectives:

Part 41 is intended to provide consumer protections by establishing important consumer disclosure requirements and prohibiting contractual terms and practices that are unfair in the making of residential mortgage loans that are offered on a high-cost basis. Section 6-l is intended to have the same objectives. Since Part 41 provides the broad regulatory scheme under which high cost mortgage loans are made, it is necessary that its provisions be in conformity with section 6-l and also, in limited instances, clarify certain provisions of such section in order that lenders and brokers

appropriately make high cost loans in conformity with the intended legislative objectives.

3. Needs and benefits:

Part 41 was intended to regulate the making of residential mortgage loans within a certain segment of the mortgage loan market, referred to as the sub-prime, or non-conventional, mortgage loan market. The regulatory scheme defined by Part 41, by requiring certain disclosures and practices to be followed in the making of such loans, sought to prevent occurrences of predatory lending. Predatory lending occurs when the borrower or debtor does not have sufficient income or other financial resources to pay the monthly principal and interest payments or when equity in a residential property is stripped by repeated re-financings, primarily by the charging of excessive points and fees, when the borrower realizes no economic benefit.

Since the Legislature established a number of different standards regarding disclosures and practices in the making of such residential mortgage loans by enactment of section 6-l of the Banking Law, it is necessary that the comparative standards in Part 41 be made consistent with section 6-l.

Further, it is also necessary that certain provisions of section 6-l be clarified by the amendments to Part 41 in order that lenders and brokers may be in compliance with the requirements section 6-l when making such loans, given that such provisions are not otherwise defined by section 6-l nor has the Legislature provided any other guidance which would clarify the intended meaning of those provisions. The clarifying provisions of the amendments to Part 41 address determining "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower, both of which are critical standards in assessing whether instances of predatory lending have occurred.

4. Costs:

The amendments to Part 41 should impose no additional cost upon mortgage lenders or brokers not otherwise imposed by the enactment of the comparative provisions of section 6-l of the Banking law to which the amendments conform Part 41. The amendments impose no additional cost upon the Banking Department or any other state agency, or any unit of local government.

5. Local government mandates:

The amendments to Part 41 do not impose any requirements or burdens upon any units of local government.

6. Paperwork:

The amendments to Part 41 do not impose any new paperwork requirements.

7. Duplication:

None.

8. Alternatives:

The Banking Department considered whether to forego amending Part 41 or to repeal Part 41 in light of the enactment of section 6-l of the Banking Law, given that section 6-l may be viewed legally as occupying the field of regulation of high cost home loans in the state of New York. It was determined that Part 41 provides a more extensive regulatory scheme than section 6-l for the making of such mortgage loans, and therefore it is appropriate to make the non-conforming provisions of Part 41 consistent with the comparative statutory provisions of section 6-l. In addition, the provisions of section 6-l that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making of such loans by articulating appropriate conditions, which such lenders and brokers must meet in order to be in compliance with certain non-defined statutory standards established by section 6-l.

9. Federal standards:

In the initial promulgation of Part 41, the Banking Department stated the regulations established thresholds that were lower than the thresholds set by the Home Ownership Equity Protection Act (HOEPA). Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-l of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-l refers and therefore corresponds to the comparative definition in HOEPA. The amendments would adopt the thresholds and definitions established by section 6-l.

10. Compliance schedule:

None. Any modification of existing disclosures or practices by lenders or brokers in regard to any cost home loans made on or after April 1, 2003 are the result of standards established by section 6-l of the Banking Law. Chapter 626, which enacted section 6-l, was approved on October 3, 2002,

and brokers and lenders have had sufficient time to familiarize themselves with these standards and subsequently modify their disclosures and practices, if necessary, in order to comply with the standards of 6-1 and the proposed amendments to Part 41.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by the requirements established by section 6-1 of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will impose no adverse reporting, record keeping or compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic impact upon private entities in rural areas beyond any such effects that may be caused by the requirements established by section 6-1 of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic impact upon public entities in rural areas. The proposed amendments will impose no adverse reporting, record keeping or compliance requirements private on public entities in rural areas.

Job Impact Statement

A Job Impact Statement is not attached because the proposed amendments to Part 41 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities beyond any such effects that may be caused by the requirements established by section 6-1 of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41.

Department of Correctional Services

NOTICE OF ADOPTION

Merit Time

I.D. No. COR-12-03-00001-A

Filing No. 802

Filing date: July 30, 2003

Effective date: Aug. 20, 2003

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

Action taken: Amendment of section 280.2(d) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112, 803 and 805

Subject: Merit time.

Purpose: To only credit for merit time those program achievements which have been earned by an inmate while serving the current sentence.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-12-03-00001-P, Issue of March 26, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Impartial Hearings for Students with Disabilities

I.D. No. EDU-33-03-00011-P

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

Proposed action: Amendment of section 200.5(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1)

Subject: Impartial hearings for students with disabilities.

Purpose: To prescribe procedures to ensure the timeliness of impartial hearings as required by the Federal Individuals with Disabilities Education Act and its implementing regulations.

Public hearing(s) will be held at: 8:30 - 11:00 a.m. and 12:30-3:00 p.m., Oct. 8-9, 2003 at One Commerce Plaza, Rm. 1616, Albany, NY; 8:30 - 11:00 a.m., Oct. 8, 2003 at Kellum Education Center, 887 Kellum St., Rm. 155, Lindenhurst, NY; 12:30 - 3:00 p.m., Oct. 8, 2003 at 75 S. Broadway, 1st Fl., White Plains, NY; 8:30 - 11:00 a.m., Oct. 9, 2003 at Five Hanson Place, 2nd Fl., Brooklyn, NY; 12:30-3:00 p.m., Oct. 9, 2003 at Hughes State Office Bldg., 333 E. Washington St., Syracuse, NY; 8:30 - 11:00 a.m., Oct. 10, 2003 at One Commerce Plaza, Rm. 1616, Albany, NY; and 8:30 - 11:00 a.m., Oct. 10, 2003 at 2-A Richmond Ave., Batavia, NY.

To register, call C. Northrup at (518) 473-2878. Preregistration required by Oct. 1, 2003.

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

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

Substance of proposed rule: The State Education Department proposes to amend paragraphs (3) and (4) of subdivision (i) of section 200.5 of the Regulations of the Commissioner of Education, effective January 1, 2004. The following is a summary of the substantive provisions of the proposed rule.

A new subparagraph (iii) is added to paragraph (3) to provide that the impartial hearing officer shall schedule the hearing to begin within the first 14 days of being appointed by the school district.

Subparagraph (x) of paragraph (3) is amended to provide that upon appointment, the impartial hearing officer shall contact the parties to schedule the hearing.

A new subparagraph (xi) is added to provide that an impartial hearing officer may schedule a prehearing conference with the parties. Such conference may be conducted by telephone. A written summary of the prehearing conference shall be entered into the record by the impartial hearing officer. The proposed amendment also delineates the purposes of the prehearing conference.

Subparagraph (xi) of paragraph (3) is relettered as (xii) and a new clause (b) is added to the subparagraph, to provide that the impartial hearing officer, wherever practicable, shall require the stipulation of facts and introduction of joint exhibits into the record.

A new clause (c) is added to subparagraph (xii) to provide that the impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer shall exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious. The impartial hearing officer may receive testimony by telephone, provided that such testimony shall be made under oath and shall be subject to cross examination.

A new clause (d) is added to subparagraph (xii) to provide that the impartial hearing officer may limit examination of a witness by either party whose testimony the impartial hearing officer determines to be irrelevant, immaterial, unreliable or unduly repetitious.

A new clause (e) is added to subparagraph (xii) to provide that the impartial hearing officer may limit the number of additional witnesses to avoid unduly repetitious testimony.

A new clause (f) is added to subparagraph (xii) to provide that the impartial hearing officer may take direct testimony by affidavit in lieu of

in-hearing testimony, provided that the witness giving such testimony shall be made available for cross examination.

A new clause (g) is added to subparagraph (xii) to provide that the impartial hearing officer may receive memoranda of law from the parties not to exceed fifteen pages in length.

A new subparagraph (xiii) is added to provide that each party shall have up to one day to present its case unless the impartial hearing officer determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision. Additional hearing days, if required, shall be scheduled on consecutive days wherever practicable.

Paragraph (4) of subdivision (i) of section 200.5 is amended to provide that in cases where extensions of time have been granted beyond the applicable required timelines, the decision of the impartial hearing officer must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision.

Subparagraph (i) of paragraph (4) is amended to provide that each extension of time granted by the impartial hearing officer shall be for no more than 30 days.

A new subparagraph (ii) is added to provide that the impartial hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:

(a) the impact on the child's educational interest or well being which might be occasioned by the delay;

(b) the need of a party for additional time to prepare or present the party's position at the hearing in accordance with the requirements of due process;

(c) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and

(d) whether there has already been a delay in the proceeding through the actions of one of the parties.

A new subparagraph (iii) is added to provide that absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, settlement discussions between the parties or other similar reasons except as provided in subparagraph (iv) of this paragraph. Agreement of the parties is not a sufficient basis for granting an extension.

A new subparagraph (iv) is added to provide that the impartial hearing officer shall have the authority to grant one extension for no more than 30 days for settlement discussions between the parties upon written verification by the parties that they are engaged in a good faith effort to complete negotiations. At the end of the extension period, the parties shall advise the impartial hearing officer in writing whether or not a settlement has been reached. If no settlement has been reached, the impartial hearing officer shall convene the hearing. The impartial hearing officer shall not have the authority to grant any further extensions for settlement discussions.

A new subparagraph (v) is added to provide that the impartial hearing officer shall respond in writing to each request for an extension and the response shall become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension, but shall subsequently provide that decision in writing and include it as part of the record. For each extension granted, the impartial hearing officer shall set a new date for rendering his or her decision, and notify the parties in writing of such date.

Subparagraph (ii) is relettered as subparagraph (vi) and is amended to provide that the impartial hearing officer shall determine when the record is closed and notify the parties of the date the record is closed. The decision shall reference the hearing record to support the findings of fact. The impartial hearing officer shall attach to the decision a list identifying each exhibit admitted into evidence. Such list shall identify each exhibit by date, number of pages, and exhibit number or letter. In addition, the decision shall include an identification of all other items the impartial hearing officer has entered into the record.

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

Data, views or arguments may be submitted to: Lawrence C. Gloeckler, Deputy Commissioner, Office of Vocational and Education Services for Individuals with Disabilities, Education Department, One Commerce Plaza, Rm. 1606, Albany, NY 12234, (518) 474-2714, e-mail: lgloeckl@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or any statute relating to education, and shall be responsible for executing all educational policies determined by the Regents. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties, as he shall be charged with by the Regents.

Education Law section 4402 establishes the duties of school districts for the education of students with disabilities. Section 4402(1) provides for the identification and placement of students with disabilities by school districts pursuant to regulations prescribed by the Commissioner and approved by the Board of Regents. Section 4402(1)(b)(2) and (3) provides that the district committee or subcommittee on special education shall identify, review and evaluate each child thought to have a disability who resides within the district and make recommendations to the child's parent or person in parental relation relating to appropriate educational programs and placement for such child.

Education Law section 4403 outlines the responsibilities of the Department relating to special education programs and services for students with disabilities. Section 4403(3) authorizes the Department to formulate such rules and regulations pertaining to the physical and educational needs of such children as the Commissioner shall deem to be in their best interests.

Education Law section 4404(1) sets forth the appeal procedures for students with disabilities from recommendations of committees on special education.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to ensure timeliness of impartial hearings to comply with the Individuals with Disabilities Education Act and its implementing regulations in Part 300 of the Code of Federal Regulations.

NEEDS AND BENEFITS:

The proposed amendment is necessary to prescribe procedures for the conduct of impartial hearings that will ensure the timeliness of impartial hearings as required by the Individuals with Disabilities Education Act and its implementing regulations.

COSTS:

(a) Costs to State government: None.

(b) Costs to local governments: None.

(c) Costs to private regulated parties: None.

(d) Costs to the State Education Department for implementation and continued administration of this rule: None.

The proposed amendment is necessary to ensure compliance with required timelines for conducting impartial hearings under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations and does not impose any costs on the State, local governments, private regulated parties or the State Education Department. It is anticipated that the proposed amendment will reduce overall costs to parties by ensuring that such hearings are timely conducted.

PAPERWORK:

A written summary of the prehearing conference shall be entered into the record by the impartial hearing officer. In cases where extensions of time have been granted beyond the applicable required timelines, the impartial hearing officer's decision must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision. The impartial hearing officer shall respond in writing to each request for an extension. The response shall become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension, but shall subsequently provide that decision in writing and include it as part of the record.

The impartial hearing officer shall determine when the record is closed and notify the parties of the date the record is closed. The decision of the impartial hearing officer shall reference the hearing record to support the

findings of fact. The impartial hearing officer shall attach to the decision a list identifying each exhibit admitted into evidence. Such list shall identify each exhibit by date, number of pages, and exhibit number or letter. In addition, the decision shall include an identification of all other items the impartial hearing officer has entered into the record.

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to prescribe procedures for the conduct of special education hearings by impartial hearing officers in order to ensure compliance with required timelines for conducting such hearings under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, and does not impose any additional program, service, duty or responsibility upon local governments.

DUPLICATION:

The proposed amendment does not duplicate any existing State or federal statute or regulation.

ALTERNATIVES:

There are no significant alternatives to the proposed amendment. The proposed amendment is necessary to prescribe procedures for the conduct of impartial hearings in order to ensure compliance with required timelines for conducting such hearings under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.

FEDERAL STANDARDS:

The proposed amendment implements the federal requirement in IDEA to ensure timely decisions in impartial hearings.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to ensure the timeliness of impartial hearings as required by the Individuals with Disabilities Education Act and its implementing regulations. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further actions were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to hearings conducted by impartial hearing officers appointed by school districts to rule on disputes between parents and school districts over special education programs and services.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any compliance requirements on school districts, but merely prescribes procedures for the conduct of hearings by impartial hearing officers to ensure that such hearings are conducted in a timely manner pursuant to the Individuals with Disabilities Education Act (IDEA) and its implementing regulations (34 CFR Part 300).

PROFESSIONAL SERVICES:

The proposed amendment prescribes procedures for the conduct of hearings by impartial hearing officers to ensure that such hearings are conducted in a timely manner pursuant to federal requirements, and does not impose any additional professional services requirements on school districts.

COMPLIANCE COSTS:

The proposed amendment prescribes procedures for the conduct of hearings by impartial hearing officers to ensure that such hearings are conducted in a timely manner pursuant to the Individuals with Disabilities Education Act (IDEA) and its implementing regulations (34 CFR Part 300) and does not impose any costs on school districts. It is anticipated that the proposed amendment will reduce overall costs to parties by ensuring that it is anticipated that the proposed amendment will reduce overall costs to parties by ensuring such hearings are timely conducted.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any new technological requirements on school districts. Economic feasibility is addressed above under Compliance Costs.

MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to hearings conducted by impartial hearing officers appointed by school districts to rule on disputes between parents and school districts over special education programs and services. The amendment does not impose any compliance requirements on school districts, but merely prescribes procedures for the conduct of hearings by

impartial hearing officers to ensure that such hearings are conducted in a timely manner pursuant to federal requirements. The amendment has been drafted to minimize the adverse impact on parties to such hearings and to shorten the length of time it takes to conduct an impartial hearing and reduce the number of records and exhibits associated with the hearing.

LOCAL GOVERNMENT PARTICIPATION:

Comments from the proposed amendment have been solicited from school districts, through the office of the district superintendents of each supervisory district in the State. In addition, public hearings will be held at various locations throughout the State and representatives of school superintendents, the New York City Board of Education, the New York State School Boards Association, district superintendents of BOCES, the Commissioner's Advisory Panel on Special Education and approved private schools will be invited to provide comments on proposed regulations.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to hearings conducted by impartial hearing officers appointed by school districts to rule on disputes between parents and school districts over special education programs and services, including those school districts located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment applies to hearings conducted by impartial hearing officers to rule on disputes between parents and school districts over special education programs and services. The amendment does not impose any reporting, record keeping or other compliance requirements on school districts, but merely prescribes procedures for the conduct of hearings by impartial hearing officers to ensure that such hearings are conducted in a timely manner pursuant to federal requirements.

Upon appointment, the impartial hearing officer shall contact the parties to schedule the hearing to begin within the first 14 days of being appointed by the school district.

The impartial hearing officer may schedule a prehearing conference with the parties. Such conference may be conducted by telephone. A written summary of the prehearing conference shall be entered into the record by the impartial hearing officer.

The impartial hearing officer, wherever practicable, shall require the stipulation of facts and introduction of joint exhibits into the record. The impartial hearing officer may receive any oral, documentary or tangible evidence, except that the impartial hearing officer may exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious, may limit examination of a witness by either party whose testimony the impartial hearing officer determines to be irrelevant, immaterial, or unduly repetitious, and may limit the number of additional witnesses to avoid unduly repetitious testimony. The impartial hearing officer may receive testimony by telephone, provided that such testimony shall be made under oath and shall be subject to cross examination. The impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross examination. The impartial hearing officer may receive memoranda of law from the parties not to exceed fifteen pages in length.

Each party shall have up to one day to present its case unless the impartial hearing officer determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision. Additional hearing days, if required, shall be scheduled on consecutive days wherever practicable. In cases where extensions of time have been granted beyond the applicable required timelines, the hearing officer's decision must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision. Each extension shall be for no more than 30 days.

The impartial hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:

- (a) the impact on the child's educational interest or well being which might be occasioned by the delay;
- (b) the need of a party for additional time to prepare or present the party's position at the hearing in accordance with the requirements of due process;
- (c) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
- (d) whether there has already been a delay in the proceeding through the actions of one of the parties.

Absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of school

vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, settlement discussions between the parties or other similar reasons except as provided in subparagraph (iv) of section 200.5(i)(4). Agreement of the parties is not a sufficient basis for granting the extension.

The impartial hearing officer shall have the authority to grant one extension for no more than 30 days for settlement discussions between the parties upon written verification by the parties that they are engaged in a good faith effort to complete negotiations. At the end of the extension period, the parties shall advise the impartial hearing officer in writing whether or not a settlement has been reached. If no settlement has been reached, the impartial hearing officer shall convene the hearing. The impartial hearing officer shall not have the authority to grant any further extensions for settlement discussions. The impartial hearing officer shall respond in writing to each request for an extension. The response shall become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension, but shall subsequently provide that decision in writing and include it as part of the record. For each extension granted, the impartial hearing officer shall set a new date for rendering his or her decision, and notify the parties in writing of such date.

The impartial hearing officer shall determine when the record is closed and notify the parties of the date the record is closed. The decision of the impartial hearing officer shall reference the hearing record to support the findings of fact. The impartial hearing officer shall attach to the decision a list identifying each exhibit admitted into evidence. Such list shall identify each exhibit by date, number of pages, and exhibit number or letter. In addition, the decision shall include an identification of all other items the impartial hearing officer has entered into the record.

COSTS:

The proposed amendment prescribes procedures for the conduct of hearings by impartial hearing officers to ensure that such hearings are conducted in a timely manner pursuant to the Individuals with Disabilities Education Act (IDEA) and its implementing regulations and does not impose any costs on school districts. It is anticipated that the proposed amendment will reduce overall costs to parties by ensuring that such hearings are timely conducted.

MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to hearings conducted by impartial hearing officers appointed by school districts to rule on disputes between parents and school districts over special education programs and services. The amendment does not impose any compliance requirements on school districts, but merely prescribes procedures for the conduct of hearings by impartial hearing officers to ensure that such hearings are conducted in a timely manner pursuant to federal requirements. The amendment has been drafted to minimize the adverse impact on parties to such hearings and to shorten the length of time it takes to conduct an impartial hearing and reduce the number of records and exhibits associated with the hearing.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment have been solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. In addition, public hearings will be held at various locations throughout the State and representatives of school superintendents, the New York City Board of Education, the New York State School Boards Association, district superintendents of BOCES, the Commissioner's Advisory Panel on Special Education and approved private schools will be invited to provide comments on proposed regulations.

Job Impact Statement

The proposed amendment is necessary to prescribe procedures to ensure compliance with required timelines for conducting impartial hearings under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. The proposed amendment will not have an adverse impact on jobs and employment opportunities in New York State. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensure in Message Therapy

I.D. No. EDU-33-03-00012-P

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

Proposed action: Amendment of section 52.15, repeal of section 78.4 and addition of new section 78.4 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 6506(1) and (6), 6507(2)(a) and (4)(a), 7802 (not subdivided) and 7804(2)

Subject: Licensure in message therapy.

Purpose: To clarify clock hour requirements for programs leading to licensure in message therapy and requirements for the endorsement of a license in message therapy issued by another state, country, or territory.

Text of proposed rule: 1. Section 52.15 of the Regulation of the Commissioner is amended, effective October 30, 2003, as follows:

52.15 Massage therapy.

(a) . . .

(b) Curriculum.

[(1) . . .]

[(2) On or after January 1, 2000, the] *The* institution shall maintain a satisfactory program of not less [then 1000 hours (50 minutes each)] *than 1,000 clock hours* of classroom instruction or the semester hour equivalent, as prescribed as follows:

[(i)] (1) 200 *clock* hours in anatomy, physiology, and neurology, provided that a minimum of 50 *clock* hours of instruction is in neurology;

[(ii)] (2) 150 *clock* hours in myology and/or kinesiology;

[(iii)] (3) 100 *clock* hours in general pathology, including instruction related to skin, neuromuscular, and soft tissue conditions;

[(iv)] (4) 75 *clock* hours in the subject of hygiene, first aid, and other areas related to the practice of massage therapy, including but not limited to instruction in: infection control procedures; cardiopulmonary resuscitation (CPR) resulting in certification; the recognition of abused and/or neglected patients; and the uses, effects, and chemical ingredients of powders, oils, and other products used in the practice of massage therapy;

[(v)] (5) 150 *clock* hours in general theory and techniques in the fundamentals of western massage therapy and oriental massage therapy, provided that a minimum of 50 *clock* hours of instruction is given in each type of massage therapy; and

[(vi)] (6) 325 *clock* hours of additional instruction and student practice in massage therapy techniques, within the practice of massage therapy as defined in section 7801 of the Education Law, provided that each student shall be required to directly apply massage therapy techniques to another individual for a minimum of 150 *clock* hours and that student practice shall be under the on-site supervision of a person licensed to practice massage therapy pursuant to the requirements of section 7804 of the Education Law or authorized to practice massage therapy by subdivision one of section 7805 of the Education Law.

2. Section 78.4 of the Regulations of the Commissioner of Education is repealed and a new section 78.4 is added, effective October 30, 2003, as follows:

78.4 *Licensure by endorsement. An applicant for endorsement of a license in massage therapy issued by another state, country, or territory shall meet all of the requirements of either Path A, as prescribed in subdivision (a) of this section, or Path B, as prescribed in subdivision (b) of this section.*

(a) *Path A. The applicant for endorsement of a license in massage therapy issued by another state, country, or territory shall:*

(1) *meet the requirements of section 59.6 of this Title;*

(2) *meet the professional education requirements prescribed in section 78.1 of this Part;*

(3) *have a current certificate in cardiopulmonary resuscitation (CPR);*

(4) *provide evidence satisfactory to the State Board for Massage Therapy and acceptable to the department of at least two years of acceptable professional experience in massage therapy in the state, country, or territory where licensed and following licensure in such jurisdiction, based upon a determination that such professional experience includes but is not limited to western and/or oriental massage therapy techniques;*

(5) *pass a written examination for licensure in the state, country, or territory in which the applicant is licensed to practice massage therapy, which is:*

(i) *satisfactory to the State Board for Massage Therapy and acceptable to the department, based upon the determination that it is comparable in scope and content to that approved pursuant to section 78.2 of this Part; or*

(ii) *satisfactory to the State Board for Massage Therapy and acceptable to the department, based upon the determination that limitations in the examination's scope and content, as compared to the examina-*

tion approved pursuant to section 78.2 of this Part, are addressed by the applicant through meeting the professional experience requirement, as prescribed in paragraph (4) of this subdivision; and

(6) be in good standing as a licensee in each jurisdiction in which the applicant is licensed to practice massage therapy.

(b) Path B. The applicant for endorsement of a license in massage therapy issued by another state, country, or territory shall:

(1) meet the requirements of section 59.6 of this Title;

(2) present evidence of high school graduation or its equivalent;

(3) have completed a massage therapy program of at least 500 clock hours at a school or institute of massage therapy;

(4) have completed at least 800 clock hours of classroom instruction, including but not limited to classroom instruction taken within the massage therapy program prescribed in paragraph (3) of this subdivision, composed of:

(i) at least 300 clock hours of classroom instruction that includes study in each of the following subjects: anatomy, physiology, neurology, myology or kinesiology, pathology, hygiene, and first aid; and

(ii) at least 200 clock hours of classroom instruction that includes study in massage theory and technique, including at least 50 clock hours in oriental theory and technique and at least 50 clock hours in western theory and technique; and

(iii) other classroom instruction, if needed to complete the 800 clock hour requirement, in subjects that are related to massage theory, technique, and practice that are satisfactory to the State Board for Massage Therapy and acceptable to the department, which may include but are not be limited to study in cardiopulmonary resuscitation (CPR), the uses, effects, and chemical ingredients of powders, oils, and other products used in the practice of massage therapy, infection control procedures, the recognition of abused and/or neglected patients, and communication skills;

(5) have a current certificate in cardiopulmonary resuscitation (CPR);

(6) provide evidence satisfactory to the State Board for Massage Therapy and acceptable to the department of at least five years of acceptable professional experience in massage therapy in the state, country, or territory where licensed, following licensure in such jurisdiction, and within 10 years immediately preceding application for licensure by endorsement, based upon a determination that such professional experience includes but is not limited to western and/or oriental massage therapy techniques;

(7) pass a written examination for licensure in the state, country, or territory in which the applicant is licensed to practice massage therapy, which is:

(i) satisfactory to the State Board for Massage Therapy and acceptable to the department, based upon the determination that it is comparable in scope and content to that approved pursuant to section 78.2 of this Part; or

(ii) satisfactory to the State Board for Massage Therapy and acceptable to the department, based upon the determination that limitations in the examination's scope and content, as compared to the examination approved pursuant to section 78.2 of this Part, are addressed by the applicant through meeting the professional experience requirement, as prescribed in paragraph (4) of this subdivision; and

(8) be in good standing as a licensee in each jurisdiction in which the applicant is licensed to practice massage therapy.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law authorizes the Board of Regents to register domestic and foreign institutions in terms of New York Standards.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to and the practice of the professions and to promulgate rules to carry out such supervision.

Subdivision (6) of section 6506 of the Education Law authorizes the Board of Regents to endorse a license issued by a licensing board of another State or country upon application fulfilling prescribed requirements.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to register or approve educational programs designed for the purpose of providing professional preparation which meets standards established by the Department.

Section 7802 of the Education Law prescribes that only a person licensed or authorized pursuant to the Education Law shall practice massage therapy.

Subdivision (2) of section 7804 of the Education Law prescribes education requirements for licensure in massage therapy and authorizes the State Education Department to specify satisfactory subjects of study for programs in this field.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes which confer upon the Commissioner of Education the authority to establish in regulation requirements relating to licensure in massage therapy. Specifically, as authorized by statute, the proposed amendment establishes requirements for programs leading to licensure in this field, and requirements for the endorsement of a license in massage therapy issued by another state, country, or territory.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to clarify clock hour requirements for programs leading to licensure in massage therapy and requirements for the endorsement of a license in massage therapy issued by another state, country, or territory.

The amendment is needed to clarify the intent of the Commissioner's regulations. It requires programs leading to licensure in massage therapy to include at least 1,000 clock hours of classroom instruction or the semester equivalent. The current language of the regulation requires the program to include 1,000 hours (50 minutes each) of classroom instruction. This has led to confusion because the State Education Department has required programs leading to licensure to include at least 1,000 clock hours of classroom instruction. All such programs have met this requirement. The amendment is needed to conform the language of the regulation to existing practice.

The amendment is also needed to clarify the requirements for the endorsement of a license in massage therapy issued by another jurisdiction. The amendment conforms to current practice, and specifies in detail the requirements for the two paths to licensure by endorsement.

4. COSTS:

(a) Costs to State Government: The amendment will not impose any additional costs on State government. The amendment clarifies the regulations and does not change current procedures for registering programs leading to licensure in massage therapy or the endorsement of a license in massage therapy issued by another jurisdiction.

(b) Costs to local government: None.

(c) Costs to private regulated parties: The proposed amendment will not impose any cost on private regulated parties, including institutions that offer programs leading to licensure in massage therapy and applicants for the endorsement of a license in massage therapy issued by another jurisdiction. The amendment clarifies requirements and conforms them to current practice. Massage therapy programs are already required to include at least 1,000 clock hours of instruction and the requirements for the endorsement of a license in massage therapy issued by another jurisdiction are those currently being implemented. Accordingly, the amendment will not impose any additional costs on regulated parties.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns requirements for licensure in massage therapy and for programs that are licensure qualifying in this field. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment does not impose paperwork requirements beyond those currently required. College programs seeking to be registered as leading to licensure in this field will continue to have to apply to the State Education Department for such registration, and individuals who want an endorsement of a license issued by another jurisdiction will continue to have to apply to the State Education Department for such endorsement. The amendment does not change or increase paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered because of the nature of the amendment, which clarifies regulations and conforms them to current practice.

9. FEDERAL STANDARDS:

There are no Federal standards regarding the subject matter of the proposed amendment, licensure in massage therapy.

10. COMPLIANCE SCHEDULE:

Regulated parties will be required to comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to meet the requirements of the amendment.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment establishes requirements for registered programs leading to licensure in massage therapy. Sixteen institutions offer such programs. Of these, six are classified as small business because they are for-profit entities employing 100 or fewer employees.

The other requirements, established by the proposed amendment, will not affect small businesses because they relate to licensure requirements for individuals.

2. COMPLIANCE REQUIREMENTS:

The amendment clarifies the intent of the Commissioner's regulations. It requires programs leading to licensure in massage therapy, including those located at institutions classified as small businesses, to include at least 1,000 clock hours of classroom instruction or the semester equivalent. The current language of the regulation requires the program to include 1,000 hours (50 minutes each) of classroom instruction. The State Education Department has required programs leading to licensure to include at least 1,000 clock hours of classroom instruction, and all such programs have met this requirement. The amendment will conform the language of the regulation to existing practice.

The amendment clarifies the requirements for the endorsement of a license in massage therapy issued by another jurisdiction. The amendment conforms to current practice, and specifies in detail the requirements for the two paths to licensure by endorsement. This change will not affect small businesses.

3. PROFESSIONAL SERVICES:

The proposed amendment will not require institutions that offer programs leading to licensure in massage therapy, including those that are classified as small businesses, to hire professional services to comply.

4. COMPLIANCE COSTS:

The proposed amendment will not impose any cost on including institutions that offer programs leading to licensure in massage therapy, including those classified as small businesses. The amendment clarifies requirements and conforms them to current practice. Massage therapy programs are already required to include at least 1,000 clock hours of instruction. Accordingly, the amendment will not impose any additional costs on them.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed regulation will not impose any technological requirements on regulated parties, including those that are classified as small businesses, and is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The Department believes that the requirements should apply to all institutions that offer programs leading to licensure in massage therapy, no matter the size of the institution and its for-profit status, to ensure an adequate level of educational preparation for licensed massage therapists to practice in this State.

7. SMALL BUSINESS PARTICIPATION:

The State Education Department consulted with the State Board for Massage Therapy during the development of the proposed amendment. This Board includes an owner of a small business that offers licensure-qualifying massage therapy programs. The Department also sent a draft of

the proposed amendment to professional associations representing this licensed profession. These associations have members who own small businesses that offer massage therapy programs and members who work as faculty at such institutions. The State Education Department has solicited comments on the proposed amendment from all institutions that offer registered programs leading to New York State licensure in massage therapy, including the six that are classified as small businesses.

(b) Local Governments:

The proposed amendment will clarify clock hour requirements for programs leading to licensure in massage therapy and requirements for the endorsement of a license in massage therapy issued by another state, country, or territory. It will not impose an adverse economic impact or reporting, recordkeeping, or other compliance requirements on local governments. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The amendment concerns programs leading to licensure in massage therapy offered by colleges and other schools of massage therapy. Currently, six such programs are offered by institutions that are located in rural counties of the State. The Department expects that each year about two or three individuals who apply for an endorsement of a license in massage therapy issued by another jurisdiction will come from a rural county of the State. Over the past two years, of the 42 individuals who applied for endorsement, five resided in a rural county of New York State.

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

The purpose of the proposed amendment is to clarify clock hour requirements for programs leading to licensure in massage therapy and requirements for the endorsement of a license in massage therapy issued by another state, country, or territory.

The amendment clarifies Commissioner's regulations by requiring programs leading to licensure in massage therapy to include at least 1,000 clock hours of classroom instruction or the semester equivalent.

The amendment is also needed to clarify the requirements for the endorsement of a license in massage therapy issued by another jurisdiction. The amendment conforms to current practice, and specifies in detail the requirements for the two paths to licensure by endorsement, Path A and Path B.

Path A to licensure requires the applicant to: (1) meet the requirements of section 59.6 of the Commissioner's regulations, (2) meet the professional education requirements prescribed in section 78.1 of the Commissioner's regulations, (3) have a current certificate in cardiopulmonary resuscitation (CPR), (4) have at least two years of acceptable professional experience in massage therapy, (5) pass a satisfactory written examination, and (6) be in good standing as a licensee in each jurisdiction in which the applicant is licensed to practice massage therapy.

Path B to licensure requires the applicant to: (1) meet the requirements of section 59.6 of the Commissioner's regulations, (2) present evidence of a high school graduation or its equivalent, (3) have completed a massage therapy program of at least 500 clock hours at a school or institute of massage therapy, (4) have completed a least 800 clock hours of classroom instruction in prescribed subjects, (5) have a current certificate in cardiopulmonary resuscitation (CPR), (6) have at least five years of acceptable professional experience in massage therapy within 10 years immediately preceding application, (7) pass a satisfactory written examination, and (8) be in good standing as a licensee in each jurisdiction in which the applicant is licensed to practice massage therapy.

The proposed amendment does not impose paperwork requirements beyond those currently required. The proposed amendment will not require regulated parties in rural areas or elsewhere to hire professional services in order to comply.

3. COSTS:

The proposed amendment does not impose any initial capital costs or any additional annual costs on public or private entities located in rural areas, including institutions offering licensure-qualifying programs in massage therapy and applicants for endorsement of a license in massage therapy issued by another jurisdiction. The amendment clarifies requirements and conforms them to current practice. Massage therapy programs

are already required to include at least 1,000 clock hours of instruction and the requirements for the endorsement of a license in massage therapy issued by another jurisdiction are those currently being implemented. Accordingly, the amendment will not impose any additional costs on regulated parties.

4. MINIMIZING ADVERSE IMPACT:

The amendment concerns requirements that an individual must meet to be licensed in massage therapy. The Department has determined that such requirements should apply to all applicants seeking licensure, no matter their geographic location, to ensure professional competency across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of massage therapy. Included in this group were the State Board for Massage Therapy and professional associations representing this profession. These entities have members who live or work in rural areas. In addition, every educational institution that offers programs leading to licensure in massage, including those located in rural areas of the State, were asked to comment on the proposed amendment.

Job Impact Statement

The proposed amendment will clarify clock hour requirements for programs leading to licensure in massage therapy and requirements for the endorsement of a license in massage therapy issued by another state, country, or territory.

The amendment will have no impact on the number of jobs or employment opportunities in psychology or in any other field in New York State. The amendment concerns requirements that individuals must meet for licensure in massage therapy. It will not result in an increase or decrease in the number of jobs or employment opportunities in this field. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in massage therapy or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

New York Public Health Law Section 2500-a lists six conditions to be tested for and authorizes the Commissioner of Health to designate additional diseases or conditions for inclusion in the screening program by regulation. In October 2000, the Commissioner issued a letter to all physicians in New York State informing them of the intended program expansion to include CF, CAH and MCADD. No negative comments were received from the medical community in response. The Newborn Screening Program also has engaged in ongoing discussions with immediately affected providers and consumers, directors of specialty treatment centers and parents of affected children. The specialty treatment centers conduct follow-up care of presumptive-positive infants identified by screening. Specialty centers have raised only one concern: about access to genetic counseling for families of infants identified as unaffected by CF, but who are carriers of related genetic variants. The program has responded that such counseling services are available to all State residents through contract facilities under the New York State Genetic Services Program.

Within the last six weeks, the program has resolved methodological issues and testing algorithms, so that implementation of the new testing can now proceed. While it was not practicable to implement testing prior to this time, now that the program is technically equipped to perform the testing, failure to begin to do so immediately would mean infants will go untested, undetected, and may therefore suffer irreversible medical harm and even death. Therefore, mandatory inclusion of the three additional conditions under the implementing regulations is time-constrained. To avoid unnecessary 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: Newborn screening.

Purpose: To add three conditions to the current eight that comprise New York State's newborn screening test panel.

Text of emergency rule: 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 sections 2500-a and 2500-f of the Public Health Law shall be done by the testing laboratory according to recognized clinical laboratory procedures.

(b) Diseases and conditions to be tested shall include: phenylketonuria, branched-chain ketonuria, homocystinuria, galactosemia, homozygous sickle cell disease, hypothyroidism, biotinidase deficiency [and], human immunodeficiency virus (HIV) exposure and infection, *cystic fibrosis*, *congenital adrenal hyperplasia*, and *medium-chain acyl-CoA dehydrogenase deficiency (MCADD)*.

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 October 28, 2003.

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

Regulatory Impact Statement

Statutory authority:

Public Health Law (PHL) Section 2500-a requires institutions caring for infants 28 days or under of age, as well as persons required to register the birth of a child, to cause newborns to be tested for phenylketonuria, branched-chain ketonuria, homocystinuria, galactosemia, homozygous sickle cell disease, hypothyroidism, and other diseases and 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 that would require newborn testing in accordance to the Department's mandate to prevent infant and child mortality, morbidity, and diseases and defects of childhood. Pursuant to this authority, biotinidase deficiency and human immunodeficiency virus (HIV) have been added to the newborn testing panel by regulatory amendment since the enactment of Section 2500-a.

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 three disorders to the list of seven 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. The Legislature recently affirmed its objective for a healthy young citizenry by enacting a State

Department of Health

EMERGENCY RULE MAKING

Newborn Screening

I.D. No. HLT-33-03-00004-E

Filing No. 836

Filing date: July 31, 2003

Effective date: July 31, 2003

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

Action taken: Amendment of section 69-1.2 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: 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 rulemaking would be contrary to the public interest. This regulatory amendment adds three conditions to the current eight that comprise New York State's newborn screening test panel, pursuant to existing Subpart 69-1.2. Funding to expand the current newborn screening program to include testing for cystic fibrosis (CF), congenital adrenal hyperplasia (CAH), and medium-chain acyl-CoA dehydrogenase deficiency (MCADD) was approved in the 2000-2001 New York State budget. During the intervening period since August of 2000, the necessary personnel and technology have been procured to implement the new testing, and develop a system for follow-up and assurance of access to necessary treatment for identified infants.

budget with dedicated funding for expansion of the State's Newborn Screening Program's testing panel, applying new technologies for the most accurate and timely identification of affected infants. The Department anticipates this express commitment to maintaining a premier program to continue in the form of annual appropriations to ensure funding for staffing and non-personal services.

Needs and benefits:

Following legislative enactment of PHL Section 2500-a, the New York State Newborn Screening Program began as a statewide mandatory initiative to detect infants with serious but treatable neonatal conditions, and refer those infants for immediate medical intervention and follow-up. Regulations promulgated by the Commissioner of Health in 10 NYCRR Subpart 69-1 set forth requirements for specimen collection, testing, result reporting and case follow-up. Data compiled from New York State's Newborn Screening Program and other states' programs have shown that timely intervention and treatment can drastically improve affected infants' survival chances and quality of life. Advancing technology, emerging novel 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 amendment of Subpart 69-1.2.

This amendment would add three disorders — cystic fibrosis (CF), congenital adrenal hyperplasia (CAH) and medium-chain acyl-CoA dehydrogenase deficiency (MCADD) — to the scope of newborn screening services already provided by the Department. The three new disorders meet established criteria applied worldwide for newborn screening program test panels. These criteria are: the conditions must be medically significant; their incidence and prevalence must represent a matter of public health concern, or they must affect a substantial number of newborns, so that the resulting cost to society for health care and lost productivity is significant; reliable assays for diagnosis of the conditions, suitable for large-scale population screening, must be available; and early detection of the disorders during the neonatal period must allow for medical intervention effective in amelioration, or prevention of medical complications and other consequences.

An American Academy of Pediatrics task force reviewing newborn screening has suggested that state newborn screening programs consider testing for CF — one of the most common serious inherited disorders. Chronic illness and even death can result from alterations in the viscosity (thickness) of body secretions, especially in the lungs, pancreas and gastrointestinal tract, caused by CF. Such alterations lead to impaired absorption of nutrients in the gastrointestinal tract, and eventual malnutrition and failure to thrive; as well as impaired lung function resulting in increased chronic bacterial bronchitis and abundant inflammation in the airways, respiratory failure, and even death. Early detection and intervention ensures improved infant nutritional status and linear growth, as well as more stable lung function. In New York State's birth population, CF has a combined incidence of one in 3,700 births, resulting in an expected annual incidence of 86 CF cases.

CAH is the third most common condition that can be detected by newborn screening and the most immediately lethal. This inherited endocrine disorder may cause sexual misassignment of female infants as male at birth, with eventual accelerated skeletal maturation and short stature in both sexes. Treatment with supplements slows precocious maturation, and surgery can correct genital malformations. CAH affects one in 5,000 newborns in the State, yielding an expected annual incidence of 50 cases. Testing for CAH is now a part of many states' screening profiles, including the neighboring states of Massachusetts, Rhode Island, Pennsylvania and New Jersey. In 1999, the Department received 25 unsolicited letters from physicians, endocrinology experts and families of affected infants, urging addition of CAH testing for New York's newborns.

MCADD is one of several abnormalities in the body's ability to metabolize fats, resulting in toxic build-up of fatty acids. Although the disorder's presentation is variable, it may cause hypoglycemia, lethargy, vomiting, seizures and coma. One-third of infants die during the first clinical episode, and MCADD is thought to be the cause of one to two percent of sudden infant deaths. Survivors of severe clinical episodes may experience muscle weakness, failure to thrive and cerebral palsy, as well as learning difficulties. However, the disorder is effectively treated when detected early, primarily through avoidance of fasting. MCADD has an estimated incidence of one in 18,000 births in the State, an expected annual incidence of 14 cases of the condition.

Costs:

Costs to private regulated parties:

Regulated parties include the approximately 170 hospitals, and diagnostic and treatment centers providing birthing services in the State, their

chief executive officers, and birth attendants who assist with at-home births (i.e., licensed midwives). These entities 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, birthing facilities and, to a lesser extent, at-home birth attendants would likely incur minimal additional costs related to fulfilling their responsibilities for ensuring referral of infants who screen positive for CF, CAH or MCADD, specifically, human resources costs of approximately 1.0 person/hour (for nursing and counseling staff with clerical support) for communicating the need of and/or arranging referral for medical evaluation of the additional identified infants. Overall, for 95 percent of the State's birthing facilities (i.e., 156 of 163), the number of infants requiring referral would increase from seven or fewer to no more than ten per week; therefore, no additional staff would be required at these institutions.

Facilities and practitioners receiving referrals, including: hospitals; specialized care centers; clinical specialists (i.e., medical geneticists); and primary and ancillary care providers (i.e., pediatricians, nutritionists and physical therapists), would incur costs for medical evaluation, including confirmatory testing in some cases, ongoing care, and treatment supplies such as antibiotics and dietary supplements. Specifically, such parties would incur human resources costs of approximately \$300 for an initial comprehensive medical evaluation of an infant with an abnormal screening test 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 referred infants will ultimately be found not to be afflicted with the target condition, using clinical assessment and relatively simply confirmatory tests.

Hospitals, specialized care centers and independent providers will incur additional costs for providing post-evaluation and ongoing medical management services to the approximately two percent of identified 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 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 currently in the newborn screening panel, as well as that of children diagnosed with CF, CAH or MCADD, by targeted testing at the primary care level. Payors include indemnity health plans, managed care organizations, New York State's medical assistance program (Medicaid), Child Health Plus and the Children with Special Health Care Needs program. 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. Patients' families may also incur costs to the extent that a provider's charge for a service or supply item is not reimbursed in full by a third-party payor, and the provider is one of the few that balance-bill the patient. Some families may incur travel costs, since specialized care services are more readily available in large metropolitan areas.

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 CF, and to lesser extent CAH and MCADD, 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 the proposed rule's speeding early diagnosis may result in increased overall lifetime costs for patients who would have died in the absence of screening, e.g., those with MCADD, substantial cost-savings are likely to be accrued from avoided 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 systems. Furthermore, early detection affords affected individuals with the opportunity for improved quality of life, a benefit that cannot be quantified.

The Department estimates that approximately 500 infants will screen as presumptively positive for CF annually. These presumptive-positive infants will require sweat tests and comprehensive level office visits at CF centers to determine final diagnosis. The cost of these services is estimated at \$225,000 annually, using the prevailing rate of \$300 and \$150 for a comprehensive office visit and sweat test, respectively. Most presumptive-

positive infants will be found to have at least one genetic mutation associated with CF. Many will be carriers of mutations for CF (i.e., able to pass the gene on to their children). In addition to targeted testing and genetic counseling of families with affected infants, carriers' families should be offered further diagnostic testing and genetic counseling to determine risk for conceiving future children with CF. The annual cost of genetic counseling is estimated at \$75,000, using the prevailing rate of \$150 per session. For the approximate 86 confirmed CF cases expected annually, treatment is directed at improving nutrition, antibiotic therapy and chest physiotherapy, and is costly. However, emerging evidence of benefits from early treatment points to potential costs savings over a lifetime. Potential long-term savings include those associated with reductions in the number of outpatient treatments for respiratory illnesses and hospitalizations, as well as maintenance of an affected child's nutritional status from an early age in contrast to having to "catch up."

The Department estimates 5,000 infants to screen positive for CAH annually. CAH-positive infants would require additional testing at an endocrine center at a cost of approximately \$150 each, plus one or more comprehensive office visits, for a total cost of \$2 million. Approximately 50 infants would be diagnosed with the condition. If not treated, CAH can cause heart failure and death within a few days from birth. Although CAH cannot be cured, it can be effectively treated with hormone replacement therapy. The costs of medical management, hormone-replacing medication and special dietary needs for affected infants pale by comparison to the hundreds of thousands of dollars needed to care for a severely disabled child and the lost potential of an individual's contribution to society.

As many as 140 infants may screen positive for MCADD and require referral to endocrine centers for final diagnosis. These infants would require additional (confirmatory) testing and one or more comprehensive office visit(s), at a total cost of approximately \$75,880. In 2000, the Program in Population Health at the University of Wisconsin collected data showing that costs for medical management of an affected child afforded early MCADD diagnosis are minimal. For example, families and/or payors would incur approximate annual costs of \$4,000 and \$300 for diet supplementation and laboratory testing, respectively. On the other hand, costs for treatment of infants not afforded early detection through newborn screening are significantly higher. A cost analysis conducted in 1999 by the National Newborn Screening and Genetics Resource Center in Austin, Texas, determined that costs for medical treatment of complications from a severe episode in an undiagnosed infant could be as high as \$500,000, and total medical costs, including management of complications such as autism, seizures and cerebral palsy, could rise to more than \$1 million for a lifespan of six years or under. Such costs may be translated into cost savings whenever early diagnosis is achieved through screening for MCADD.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

New York State currently bears the cost of the annual appropriation for the State's Newborn Screening Program. Although funding for the 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. In addition to recent dedicated funding for program expansion, the Department expects that appropriations for staffing and non-personal services will continue. Department programs other than the Newborn Screening Program may incur minimal costs for distribution of informational material on testing for the three new conditions and for occasional use of existing public health nursing staff to track affected infants.

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.

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. Based on Department projections of increased numbers of specimens requiring follow-up under this proposed rule, facilities that submit such specimens will sustain a minimal increase in paperwork, specifically, that necessary to conduct and document follow-up and/or referral of one to three additional screening-positive cases per week. Pediatricians and other primary health care providers, as well as specialized care centers, involved in evaluation and management of affected infants, will experience minimal additional paperwork, including documentation of follow-up testing to the Department. Birthing facilities will need to complete and mail to the Department a single-page form to designate a staff physician to receive referrals of infants with presumptive-positive results for the new disorders.

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.

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. Moreover, failure to act upon the availability of new technologies for diagnosis of CF, CAH or MCADD in newborns contramands the Department's mandate to promote and protect the public health. 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 three conditions.

Federal standards:

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

Compliance schedule:

On October 16, 2000, the Commissioner of Health sent a letter to all New York State-licensed physicians informing them of the Department's intent to add tests for CF, CAH and MCADD to the State's newborn screening panel. The Newborn Screening Program distributed the Commissioner's letter to hospital CEOs and their designees responsible for newborn screening; directors of pediatric units; directors of specialized care centers; local health departments; and pediatricians and midwives identified by the program as involved with newborn screening. The Department received few comments from these mailings, the vast majority of which only posed specific questions about the initiative, to which written responses were provided. No adverse comments were submitted by the medical community. In June 2002, and as recently as September 23, 2002, the program sent a reminder letter to hospital CEOs and directors of specialized care centers about implementation of the new testing.

The Department also convened a Newborn Screening Task Force, comprised of directors of specialty care centers, payors, national experts in newborn screening quality assurance, health professionals working in other states' expanded screening programs and parents, to discuss this initiative, specifically, the scope of needed follow-up services and their availability at specialized care centers and other health care settings, and to review informational materials on CF, CAH and MCADD designed for distribution to medical professionals and lay persons. The Task Force met at least six times since November 2000, and, during July 2002, the Newborn Screening Program laboratory director met with representatives of various specialty centers to assess and shape the infrastructure necessary for care of affected infants. The Task Force identified 17 CF clinics, 17 endocrine (for CAH) disorder clinics and six inherited metabolic (for MCADD) care centers available to evaluate presumptively identified infants and render medical care to affected infants. The only concern raised entailed access to genetic counseling for families of infants determined to be unaffected by CF but who are carriers of the predisposing gene for the condition. The concerned party was assured that access to genetic counseling for all State residents is available through contract facilities under the

New York State Genetic Services Program, which includes CF specialty care centers Statewide.

Based on Department outreach efforts, strong support for the amendment is expected from patient advocacy organizations representing affected individuals, as well as the medical community at large. The Department is not aware of any opposition to expanded newborn testing, and there appears to be no prospect of organized opposition. It is believed that the health care system has been effectively primed for integrated care of identified infants. Consequently, regulated parties should be able to comply with these regulations as of their effective date, effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This proposed amendment to add cystic fibrosis (CF), congenital adrenal hyperplasia (CAH) and medium-chain acyl-CoA dehydrogenase deficiency (MCADD) to the list of conditions 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 specialized care 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, birthing facilities and at-home birth attendants (i.e., nurse-midwives) would be required to follow-up infants screening positive for CF, CAH or MCADD, 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, effective 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 a positive screening test for CAH will be referred to the facility physician already designated to receive positive screening results for hypothyroidism, and those with positive screening for MCADD will be referred to the physician receiving positive screening results for phenylketonuria (PKU). Birthing facilities will need to identify a staff physician with the specialty training necessary for appropriate CF diagnosis and treatment.

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 CF, CAH or MCADD, primarily because the new testing proposed under this regulation is expected to result in no more than one additional referral per week. Communicating the need of 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 such as antibiotics 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 result. 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 simply 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 identified 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 visit and \$150 for a genetic or nutritional counseling session. The Department believes that most infants presumptive-positive for CF will be found to have at least one gene mutation associated with CF; carriers of CF mutations would be able to pass the gene on to their children. Therefore, in addition to confirmatory testing and genetic counseling of families with affected infants, carriers' families should be offered genetic counseling at a cost of \$150 per session, to determine their risk of conceiving future children with CF.

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 CF, CAH or MCADD 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 the 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 CF, and to lesser extent CAH and MCADD, 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 of 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., MCADD patients, 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 record keeping practices.

Small Business and Local Government Participation:

On October 16, 2000, the Commissioner of Health sent a letter to all New York State-licensed physicians informing them of the Department's

intent to add testing for CF, CAH and MCADD to the State's newborn screening panel. The Newborn Screening Program distributed the Commissioner's notification to local health departments, and small businesses and local government-operated facilities engaged in newborn screening, specifically: hospital chief executive officers and their designees; directors of pediatric units; and pediatricians and midwives identified by the program as involved in newborn screening. The Department received few comments in response to these mailings, the vast majority of which only posed specific questions about the initiative, to which written responses were provided. No adverse comments were submitted by the medical community.

Based on Department outreach efforts, strong support for the amendment is expected from patient advocacy organizations representing affected individuals, as well as the medical community at large. The Department is not aware of any opposition to expanded newborn testing, or of any prospect of organized opposition from small businesses or local government. It is believed that the health care system has been effectively primed for integrated care of identified infants. Consequently, regulated parties that are small business owners or facilities operated by local government should be able to comply with these regulations as of their effective date, effective upon filing with the Secretary of State.

Rural Area Flexibility Analysis

Effect of Rule:

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 cystic fibrosis (CF), congenital adrenal hyperplasia (CAH) and medium-chain acyl-CoA dehydrogenase deficiency (MCADD) to the list of conditions 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. No specialized care center operates in a rural area. New York State licenses 67,790 physicians and 350 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.

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. Activities related to 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 CF, CAH or MCADD, 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 in infants requiring referral of more than two per week. Therefore, the Department anticipates that regulated parties in rural areas will be able to comply with these regulations as of their effective date, effective 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 is expected to be able to assume the resulting minimal increase in workload. Infants screening positive for CAH will be referred to the facility physician designated to receive positive screening results for hypothyroidism, and those screening positive for MCADD, to the physician designated to receive positive screening results for phenylketonuria (PKU). Birthing facilities will need to designate a staff physician with the specialty training necessary for diagnosis and treatment of CF.

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 CF, CAH or MCADD, since the added testing proposed under this regulation is expected to result in no more than one more referral per week. Communicating the need of 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 such as antibiotics 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 simply 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 identified 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 visit, and \$150 for a genetic or nutritional counseling session. The Department believes that most infants identified with CF will be found to have at least one mutation associated with CF; carriers of CF mutations will be able to pass the gene on to their children. Therefore, in addition to confirmatory testing and genetic counseling of families with affected infants, carriers' families should be offered genetic counseling at a cost of \$150 per session, to determine the risk of conceiving children with CF in the future.

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 CF, CAH or MCADD, 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 CF, and to lesser extent CAH and MCADD, 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 the proposed rule's advancement of early diagnosis may result in increased overall lifetime costs for patients who would have died in the absence of screening, e.g., those with MCADD, substantial cost-savings are likely to be accrued from prevented medical complications, to be 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. Moreover, early detection affords affected individuals with 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 facilities located in rural areas.

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.

Participation by Parties in Rural Areas:

On October 16, 2000, the Commissioner of Health sent a letter to all New York State-licensed physicians informing them of the Department's intent to add testing for CF, CAH and MCADD to the State's newborn screening panel. The Newborn Screening Program distributed the Commissioner's letter to local health departments, and all rural facilities engaged in newborn screening, specifically, hospital chief executive officers and their designees; directors of pediatric units; and pediatricians and licensed midwives identified by the program as involved in newborn screening. The Department received few comments from these mailings, the vast majority of which only posed specific questions about the initiative, to which written responses were provided. No adverse comments were submitted by the medical community.

Based on Department outreach efforts, strong support for the amendment is expected from patient advocacy organizations representing affected individuals, as well as the medical community at large. The Department is not aware of any opposition to expanded newborn testing, or of any prospect of organized opposition from providers located or operating in rural areas. It is believed that the health care system has been effectively primed for integrated care of identified infants. Consequently, regulated parties should be able to comply with these regulations as of their effective date, effective upon filing with the Secretary of State.

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 three disorders — cystic fibrosis (CF), congenital adrenal hyperplasia (CAH) and medium-chain acyl-CoA dehydrogenase deficiency (MCADD) — 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.

EMERGENCY RULE MAKING

Monkeypox

I.D. No. HLT-33-03-00005-E

Filing No. 837

Filing date: July 31, 2003

Effective date: July 31, 2003

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

Action taken: Amendment of sections 2.1 and 2.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225(4), (5)(a), (g), (h), (i) and 206(1)(d) and (e)

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

Specific reasons underlying the finding of necessity: On July 11, 2003 The New York State Commissioner of Health designated monkeypox as a communicable disease pursuant to authority set forth in 10 NYCRR Section 2.1(a). In order for this designation to continue, regulations adding monkeypox to the list of communicable diseases need to be adopted by the Public Health Council at its next scheduled meeting. By adopting this rule, the Public Health Council will confirm the Commissioner's designation and continue monkeypox on the list of communicable diseases which providers are required to report to local and/or the State health departments and require physicians to submit specimens for laboratory examination when they suspect a person is infected with monkeypox. Continuing monkeypox on the list of communicable diseases will also permit isolation of patients if necessary for disease control. Immediate adoption of this rule is necessary for accurate identification and monitoring of monkeypox cases and to prevent community transmission through enforcement of isolation measures if needed.

Monkeypox is a rare viral disease that manifests itself in animals with a rash, or blisters, fever, eye discharge and swollen lymph nodes. In humans, it resembles smallpox and is associated with fever, headache, backache, swollen lymph nodes, and a blister-like rash. It is transmitted from animal

to person and from person to person through direct contact or respiratory droplets. Monkeypox is found mostly in central and western Africa and was first noted in monkeys in 1958. The human fatality rate has ranged from 1 to 10 percent in Africa. The first cases in humans were seen in 1970.

In May 2003, the first outbreak of human monkeypox in the United States was reported with 19 confirmed or suspected cases in Wisconsin, Illinois and Indiana. Clinical onset was as early as May 15th, as late as June 3rd. Since then, there have been other suspect cases in other states. To date, no cases have been identified in New York State. These human cases of monkeypox were a result of contact with ill prairie dogs. The sick prairie dogs became infected through contact with infected African rodents that had been imported to the United States. There is concern that monkeypox could spread to other animals housed with affected prairie dogs or African rodents from the infected shipment. The New York State Department of Health (NYSDOH) has identified 20 prairie dogs that have been shipped to dealers or individuals in New York State. Twelve of these prairie dogs have been identified, collected and euthanized per guidance issued by CDC and lab results were negative. The NYSDOH continues to work with the local health department to track down the remaining 8 prairie dogs.

If monkeypox spreads in the general population, there could be severe public health consequences; therefore, immediate adoption of this rule is necessary. Surveillance efforts for monkeypox cases in New York State rely on the immediate reporting of suspect or probable monkeypox in animals and humans. Adding monkeypox to the list of communicable diseases will trigger mandatory provider reporting of monkeypox cases and enable mandatory isolation of suspect or confirmed cases if necessary. Requiring physicians to submit specimens from suspected cases for laboratory examination will further efforts to identify and respond to cases. Complete and timely reporting by physicians to the city, county or district health officer of all cases of monkeypox will assist local health departments and the State Department of Health in the earliest possible recognition of an outbreak, and enable steps to contain it.

Subject: Monkeypox.

Purpose: To require reporting of suspected cases of Monkeypox.

Text of emergency rule: Subdivision (a) of Section 2.1 is amended to read as follows:

2.1 Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

- Amebiasis
- Anthrax
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chancroid
- Chlamydia trachomatis infection
- Cholera
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Encephalitis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemolytic uremic syndrome
- Hemophilus influenzae (invasive disease)
- Hepatitis (A; B; C)
- Hospital-associated infections (as defined in section 2.2 of this Part)
- Legionellosis
- Listeriosis
- Lyme disease

Lymphogranuloma venereum
 Malaria
 Measles
 Melioidosis
 Meningitis
 Aseptic
 Hemophilus
 Meningococcal
 Other (specify type)
 Meningococemia
 Monkeypox
 Mumps
 Pertussis (whooping cough)
 Plague
 Poliomyelitis
 Psittacosis
 Q Fever
 Rabies
 Rocky Mountain spotted fever
 Rubella
 Congenital rubella syndrome
 Salmonellosis
 Severe Acute Respiratory Syndrome (SARS)
 Shigellosis
 Smallpox
 Staphylococcal enterotoxin B poisoning
 Streptococcus pneumoniae invasive disease
 Syphilis, specify stage
 Tetanus
 Toxic Shock Syndrome
 Trichinosis
 Tuberculosis, current disease (specify site)
 Tularemia
 Typhoid
 Vaccinia disease (as defined in section 2.2 of this Part)
 Viral hemorrhagic fever
 Yellow Fever
 Yersiniosis

Meningococcal
 Meningococemia
 Monkeypox
 Plague
 Poliomyelitis
 Q Fever
 Rabies
 Rocky Mountain spotted fever
 Salmonellosis
 Severe Acute Respiratory Syndrome (SARS)
 Shigellosis
 Smallpox
 Staphylococcal enterotoxin B poisoning
 Streptococcus pneumoniae invasive
 Syphilis
 Tuberculosis
 Tularemia
 Typhoid
 Viral hemorrhagic fever
 Yellow Fever
 Yersiniosis

* * *

Section 2.5 of Part 2 is amended as follows:

2.5 Physician to submit specimens for laboratory examination in cases or suspected cases of certain communicable diseases. A physician in attendance on a person affected with or suspected of being affected with any of the diseases mentioned in this section shall submit to an approved laboratory, or to the laboratory of the State Department of Health, for examination of such specimens as may be designated by the State Commissioner of Health, together with data concerning the history and clinical manifestations pertinent to the examination:

Anthrax
 Babesiosis
 Botulism
 Brucellosis
 Campylobacteriosis
 Chlamydia trachomatis infection
 Cholera
 Congenital rubella syndrome
 Conjunctivitis, purulent, of the newborn (28 days of age or less)
 Cryptosporidiosis
 Cyclosporiasis
 Diphtheria E. coli 0157:H7 infections
 Ehrlichiosis
 Giardiasis
 Glanders
 Gonococcal infection
 Group A Streptococcal invasive disease
 Group B Streptococcal invasive disease
 Hantavirus disease
 Hemophilus influenzae (invasive disease)
 Hemolytic uremic syndrome
 Legionellosis
 Listeriosis
 Malaria
 Melioidosis
 Meningitis
 Hemophilus

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 October 28, 2003.

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

Regulatory Impact Statement

Statutory Authority:

Sections 225(4) and 225(5)(a), (g), (h), and (i) of the Public Health Law (“PHL”) authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health, designation of diseases for which specimens shall be submitted for laboratory examination, and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to “investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.” PHL Section 206(1)(e) permits the commissioner to “obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state.” PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection and control of persons and things infected with or exposed to such diseases.

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding Monkeypox to reportable disease and laboratory specimen submission requirements, thereby permitting enhanced disease monitoring and authorizing isolation and quarantine measures if necessary to prevent further transmission.

Needs and Benefits:

Monkeypox is a rare viral disease that manifests itself in animals with a rash, or blisters, fever, eye discharge and swollen lymph nodes. In humans, it resembles smallpox and is associated with fever, headache, backache, swollen lymph nodes, and a blister-like rash. It is transmitted from animal to person and from person to person through direct contact or respiratory droplets.

Monkeypox is found mostly in central and western Africa and was first noted in monkeys in 1958. The human fatality rate has ranged from 1 to 10 percent in Africa. The first cases in humans were seen in 1970.

In May 2003, the first outbreak of human monkeypox in the United States was reported with 19 confirmed or suspected cases in Wisconsin, Illinois and Indiana. Clinical onset was as early as May 15th, as late as June 3rd. Since then, there have been other suspect cases in other states. To date, no cases have been identified in New York State. These human cases of monkeypox were a result of contact with ill prairie dogs. The sick prairie dogs became infected through contact with infected African rodents that had been imported to the United States. There is concern that monkeypox could spread to other animals housed with affected prairie dogs or African

rodents from the infected shipment. The New York State Department of Health (NYSDOH) has identified 20 prairie dogs that have been shipped to dealers or individuals in New York State. Twelve of these prairie dogs have been identified, collected and euthanized per guidance issued by CDC and lab results were negative. The NYSDOH continues to work with the local health department to track down the remaining 8 prairie dogs. The Centers for Disease Control has issued guidelines for pet owners so that they can be on the lookout for monkeypox symptoms. The NYSDOH is developing documents for pet owners and veterinarians providing monkeypox information and guidance for handling of sick animals and reporting and testing procedures.

If monkeypox spreads in the general population, there could be severe public health consequences. On July 11, 2003, the New York State Commissioner of Health determined that monkeypox is communicable and a significant threat to the public health, and designated monkeypox as a communicable disease under 10 NYCRR Section 2.1. Per this authority, this designation will expire unless confirmed at the next scheduled meeting of the Public Health Council on July 25, 2003. Adding monkeypox to the reportable disease list will confirm the Commissioner's designation and permit the NYSDOH to systematically monitor for the disease, make its progress known to both State and federal officials, and permit decisions about isolation or quarantine of suspect or confirmed cases to be made on a timely basis.

COSTS:

Costs to Regulated Parties:

Since monkeypox is a newly emerging disease, it is not possible to accurately predict the extent of an outbreak or potential costs. In the event of the occurrence of monkeypox cases, however, it is imperative to the public health that suspect cases be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality and to protect the public health.

The costs associated with implementing the reporting of this disease are lessened as reporting processes and forms already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting communicable disease to public health authorities.

Human monkeypox testing is currently conducted only at the NYSDOH Wadsworth Laboratory and the federal Centers for Disease Control and Prevention (CDC). These tests are under development and are continually being optimized. At this time, it is not possible to accurately predict the extent of an outbreak or potential costs. However, thus far, costs appear to be minimal. Costs to hospitals, practitioners and clinical laboratories relate to the cost of shipping specimens to the Wadsworth Laboratory. One sample must be shipped per patient to the Wadsworth Laboratory using a collection kit and shipping containers provided by Wadsworth. Shipping costs are estimated to be \$25.00 per sample.

Animal monkeypox testing is currently conducted only at the NYSDOH Wadsworth Laboratory. The Wadsworth Rabies Laboratory is conducting necropsies on the submitted animals and the Clinical Bacteriology Laboratory is conducting tissue testing. Wadsworth is providing shipping containers for animal specimens to local health departments. Shipping costs are estimated to be \$25.00 per sample. Local health departments are also hand-delivering specimens to the NYSDOH.

Costs to Local and State Governments:

The additional cost of reporting monkeypox is expected to be mitigated because the staff who are involved in reporting this disease at the local and State health departments are the same as those currently involved with reporting of other communicable diseases listed in 10 NYCRR Section 2.1.

The cost of laboratory testing is expensive (discussed in the section below), and is paid for by the NYSDOH Wadsworth Laboratory and CDC. There is no charge to local governments for this testing.

The additional cost to local or state governments associated with investigating and implementing control strategies to curtail the spread of monkeypox could become significant depending upon the extent of an outbreak. Because the possibility of human-to-human transmission cannot be excluded, a combination of standard, contact and airborne precautions should be applied in health care settings to minimize spread. Suspect cases are to be reported to the local health department, who should immediately notify the Regional Epidemiologist or the NYSDOH after-hours duty officer.

By preventing the spread of monkeypox, savings may include reducing costs associated with public health control activities, morbidity, treatment and premature death.

Costs to the Department of Health:

The NYSDOH already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits

them to the federal Centers for Disease Control and Prevention. The addition of monkeypox to the list of communicable diseases should not lead to substantial additional costs for data entry, particularly as the Department adopts systems for electronic submission of case reports.

As mentioned above, monkeypox testing is expensive. In New York State, human monkeypox testing is currently only performed by the NYSDOH Wadsworth Laboratory. Positive samples are sent to CDC for additional testing. The cost per patient tested by the Wadsworth Laboratory is approximately \$390.00. The cost for laboratory testing is about \$350.00 per patient, which includes supplies and reagents only, not technician time. One sample must be shipped per patient at a cost of \$40.00 (shipping container, estimated to cost \$15.00; shipping estimated to cost \$25.00). These samples include diagnostic samples for testing for the presence of the monkeypox agent and also convalescent sera from the same patient.

Animal monkeypox testing is currently performed by the NYSDOH Wadsworth Laboratory. The cost per animal specimen is approximately \$50 per specimen, which includes supplies and reagents only, not staff time. Wadsworth Laboratory is providing shipping containers to local health departments. The estimated cost of these containers is \$15 each.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to and is already used by regulated parties.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports from physicians in attendance on persons with or suspected of being affected with monkeypox, will be required to immediately forward such reports to the State Health Commissioner and to investigate and monitor the cases reported.

Duplication:

There is no duplication of this initiative in existing State or federal law.

Alternatives:

No other alternatives are available.

Reporting of cases of monkeypox is of critical importance to public health. There is an urgent need to conduct surveillance, identify human cases in a timely manner, and reduce the potential for further exposure to contacts.

Federal Standards:

Currently there are no federal standards requiring the reporting of monkeypox. The Department of Health and Human Services Centers for Disease Control (CDC) and the Food and Drug Administration have issued a joint order of embargo and prohibition on the sale, transport and importation of prairie dogs and certain rodents from Africa to mitigate the harm of further introductions of monkeypox virus into the United States. This further includes a ban on the intrastate sale or offering for any other type of commercial or public distribution of these species. The CDC has issued infection-control/exposure management guidelines for suspected human cases that include: general precautions, patient placement, vaccination of healthcare workers and household contacts of suspected cases of monkeypox, monitoring of exposures healthcare personnel of patients, and isolation precautions. CDC has also issued guidelines for animal cases that include: case definition and classification, guidance for veterinarians, pet owners.

Compliance Schedule:

Reporting of monkeypox is currently mandated, pursuant to the authority vested in the Commissioner of Health by 10 NYCRR Section 2.1(a). This mandate will be extended upon filing of a Notice of Emergency Adoption of this regulation with the Secretary of State and made permanent by publication of a Notice of Adoption of this regulation in the *New York State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

It is unclear what impact the proposed reporting change will have on small business (hospitals, clinics, nursing homes, physicians, and clinical laboratories). The ultimate impact is dependent on the extent of any monkeypox outbreak. There are approximately 6 hospitals, 15 nursing homes and 1,000 clinical laboratories that employ fewer than 100 people in New York State. There are 397 licensed clinics; information about how many operate as small businesses is not available. There are approximately 70,000 physicians in New York State but it is not known how many can be categorized as small businesses. This regulation will apply to all local health departments.

Compliance Requirements:

Hospitals, clinics, physicians, nursing homes, and clinical laboratories that are small businesses and local governments will utilize revised NYSDOH reporting forms and specimen shipping procedures.

Professional Services:

No additional professional services will be required since providers are expected to be able to utilize existing staff to report occurrences of monkeypox and to ship samples to the Wadsworth Laboratory for testing. Local health departments have also hand-delivered animal specimens to NYSDOH utilizing existing local and regional staff.

Compliance Costs:

No initial capital costs of compliance are anticipated. Annual compliance costs will depend upon the number of monkeypox cases. The reporting of monkeypox should have a negligible to modest effect on the estimated cost of disease reporting by hospitals, but the exact cost cannot be estimated. The cost would be less for physicians and other small businesses. Isolation authority, and the related costs, may also need to be invoked by local governments. The magnitude of these costs is dependent on the number of monkeypox cases in New York State.

Human and animal monkeypox testing is currently conducted only at the NYSDOH Wadsworth Laboratory and the CDC. Costs to hospitals, practitioners and clinical laboratories relate to the cost of shipping one specimen per patient to the Wadsworth Laboratory. Costs to local governments relate to the cost of shipping animal specimens to the Wadsworth Laboratory. Shipping costs for both human and animal specimens are estimated at \$25.00 per specimen. Shipping containers are provided by the Wadsworth Laboratory. Once monkeypox testing is refined and validated, other laboratories may begin testing.

Minimizing Adverse Impact:

There are no alternatives to the reporting or laboratory testing requirements. Adverse impacts have been minimized since revised forms and reporting staff will be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

Feasibility Assessment:

Small businesses and local governments will likely find it easy to report conditions due to the availability to them of electronic reporting and tabulation.

There is an additional burden and cost to hospitals, practitioners and local health departments of shipping monkeypox samples to the Wadsworth Laboratory.

Small Business and Local Government Participation:

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

Rural Area Flexibility Analysis**Effect on Rural Areas:**

The proposed rule will apply statewide. Given that the number of cases that will be reported from rural areas is unknown, it is not possible to calculate the actual impact on local health units, physicians, hospitals and laboratories that are located in rural areas.

Compliance Requirements:

Local health units, hospitals, clinics, physicians and clinical laboratories in rural areas will continue to utilize NYSDOH reporting forms that will be revised to include monkeypox. Existing procedures will be used to ship specimens to the Wadsworth Laboratory for testing.

Professional Services:

No additional professional services will be required. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

Minimizing Adverse Impact:

There are no alternatives to the reporting requirements. Adverse impacts have been minimized since familiar forms and reporting staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-bb(2) were rejected inconsistent with the purpose of the regulation.

Rural Area Input:

The New York State Association of County Health Officers (NYSACHO), including representatives of small counties, has been informed about this change and support the need for it.

Job Impact Statement

This regulation adds monkeypox to the list of diseases that health care providers must report to public health authorities and submit laboratory specimens. The staff who are involved in reporting monkeypox at the local and State health departments are the same as those currently involved with

reporting, monitoring and investigating other communicable diseases. Similarly, existing staff at the local and State health departments collect and submit monkeypox specimens, and current State laboratory staff test monkeypox specimens. Since monkeypox is a newly emerging disease, it is not possible to accurately predict the extent of any outbreak and the degree of additional demands it will place on existing staff. The NYSDOH has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

EMERGENCY RULE MAKING

Treatment of Opiate Addiction

I.D. No. HLT-33-03-00006-E

Filing No. 838

Filing date: July 31, 2003

Effective date: July 31, 2003

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

Action taken: Addition of section 80.84 and amendment of section 80.86 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3308(2), 3351 and 3352

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 of the regulations is necessary to protect the public health and safety. The regulations are based on the federal Drug Addiction Treatment Act of 2000 (DATA), which dramatically expands opioid dependent patients' access to treatment of addiction. The provisions in the DATA become effective immediately upon the FDA approval of a Schedule III-V controlled substance for the treatment of opiate addiction. A product containing buprenorphine just received FDA approval for such use and is the first such product to receive FDA approval for this indication.

Pre-existing Public Health Law requires the Commissioner to specifically designate in regulation any controlled substance approved for the treatment of opiate addiction.

The proposed amendments to Part 80 specifically state that buprenorphine may be utilized for the treatment of opiate addiction. Due to its significant potential for abuse and diversion, it is important that the department monitor the prescribing, administering and dispensing of buprenorphine by pharmacies and physicians. Such monitoring can be accomplished by the registration of physicians and pharmacies and by requiring dispensers to transmit such prescription data to the department.

These regulations are necessary to protect the public from the significant abuse potential of buprenorphine, while still allowing access to legitimate treatment. Greater access to addiction treatment will promote health for the opiate dependent patient, and protect society at large by reducing the violence associated with drug crimes. Public health will be protected by allowing opiate dependent patients a legal means of maintaining their disease, as an alternative to seeking drugs from illegal sources.

Subject: Treatment of opiate addiction.

Purpose: To allow the treatment of opiate addiction in an office-based setting while curtailing controlled substance diversion.

Text of emergency rule: Section 80.84 is added to read as follows:

80.84 Physicians and pharmacies; prescribing, administering and dispensing for the treatment of narcotic addiction.

Pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000 (106 P.L. 310, Div. B, Title XXXV @ 3502(a), 114), an authorized physician may prescribe, administer or dispense an approved controlled substance, and a licensed registered pharmacist may dispense an approved controlled substance, to a patient participating in an authorized controlled substance maintenance program approved pursuant to Article 32 of the Mental Hygiene Law for the treatment of narcotic addiction.

(a) An approved controlled substance shall mean the following controlled substance which has been approved by the Food and Drug Administration (FDA) and the New York State Department of Health for the treatment of narcotic addiction:

(1) buprenorphine

(b) An authorized physician is a physician registered with the department to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction pursuant to this section and specifically registered with the Drug Enforcement Administration to prescribe, administer or dispense an approved controlled substance for the

treatment of narcotic addiction, and approved for such purpose pursuant to the provisions of Article 32 of the Mental Hygiene Law.

(1) The total number of such patients of an authorized physician or group practice at any one time shall not exceed 30.

(2) A physician must register with the department every two years to provide such treatment. Such registration will be provided at no cost.

(3) An authorized physician prescribing an approved controlled substance for the treatment of narcotic addiction, in addition to preparing and signing a prescription in accordance with Section 3335 of the Public Health Law, shall also write his/her unique DEA identification number on the prescription.

(4) An authorized physician dispensing an approved controlled substance for the treatment of narcotic addiction shall file with the department a report summarizing the dispensing by the 10th day of the month following the month in which the approved controlled substance was dispensed. Such report shall be distinct from the patient's medical record, and prepared on forms provided by the department which will include but not be limited to the following information:

- (i) patient name;
- (ii) patient address, including street, city, state, zip code;
- (iii) patient date of birth;
- (iv) patient's sex;
- (v) date of dispensing;
- (vi) metric quantity;
- (vii) national drug Code number of the drug;
- (viii) number of days supply;
- (ix) prescriber's Narcotic Addiction Drug Enforcement Administration number;
- (x) date prescription written;

(c) An authorized pharmacy is a pharmacy registered with the department to dispense an approved controlled substance for the treatment of narcotic addiction.

(1) A pharmacy must register with the department every two years to provide such treatment. Such registration will be provided at no cost.

(2) A pharmacist may dispense an approved controlled substance for the treatment of narcotic addiction pursuant to a prescription issued by an authorized physician. Such dispensing shall be in accordance with Section 3336 of the Public Health Law.

(3) A pharmacist dispensing such a prescription shall file the prescription information with the department either electronically in accordance with Section 80.73 (c)(2) of this Part, or manually on an approved departmental form. The pharmacist shall report the practitioner's narcotic addiction treatment registration number in lieu of the practitioner's Drug Enforcement Administration registration number.

(d) Each incident or alleged incident involving the theft, loss or possible diversion of controlled substances shall also be reported to the department immediately.

Section 80.86 is amended to read as follows:

80.86 Records and reports of treatment programs. (a) All persons approved pursuant to article [23] 32 of the Mental Hygiene Law to operate a [substance abuse] chemical dependence program, other than authorized physicians and pharmacists as defined in Section 80.84 of this Part who are registered with the department to prescribe, administer or dispense approved controlled substances for the treatment of narcotic addiction, and who possess a Federal registration by the Drug Enforcement Administration, United States Department of Justice to purchase, possess and use controlled substances shall keep the following records:

(1) records of controlled substances received by approved persons including date of receipt, name and address of distributor, type and quantity of such drugs received and the signature of the individual receiving the controlled substance. A duplicate invoice or separate itemized list furnished by the distributor will be sufficient to satisfy this record requirement provided it includes all required information and is maintained in a separate file. In addition, duplicate copies of Federal order forms for schedule II controlled substances must be retained; and

(2) records of controlled substances administered or dispensed including date of administration or dispensing, name of patient, signature of person administering or dispensing, type and quantity of drug and such other information as may be required by this Part.

(b) By the 10th day of each month, a person other than an authorized physician as defined in Section 80.84(b) of this Part, approved to conduct a maintenance program pursuant to article [23] 32 of the Mental Hygiene Law, shall file with the department a report summarizing its controlled substances activity in the preceding month. Such a report shall be on forms provided by the department and shall include:

(1) an inventory of the quantity of controlled substances on hand at the commencement and at the conclusion of such month's activity;

(2) the date of the inventory;

(3) the signature of the persons performing the inventory;

(4) the total quantity of controlled substances received, the distributor from whom each order was received, and the form and dosage unit in which such substance was received;

(5) a separate listing of the total quantity of controlled substances prescribed, dispensed and administered during such month;

(6) total quantity of methadone surrendered to the department for destruction;

(7) total number of patients treated during the month; and

(8) each incident or alleged incident involving the theft, loss or possible diversion of controlled substances.

(c) Each incident or alleged incident involving the theft, loss or possible diversion of controlled substances shall also be reported to the department immediately.

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 October 28, 2003.

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

Regulatory Impact Statement

Statutory Authority:

United States Public Law 106-310, the Children's Health Act of 2000 was enacted on October 17, 2000. Title XXXV of this law, Waiver Authority for Physicians Who Dispense or Prescribe Certain Narcotic Drugs for Maintenance Treatment or Detoxification Treatment, is better known by the short title Drug Addiction Treatment Act of 2000 (DATA).

DATA allows physicians to prescribe and dispense narcotics in Schedules III, IV, and V of the Controlled Substances Act (CSA) that have been specifically approved by the Food and Drug Administration (FDA) for the purpose of maintenance or detoxification of opiate addiction.

The drug buprenorphine was just approved by FDA for this purpose. The federal law supercedes any existing state law that prohibits such treatment.

New York State Public Health Law, Article 33, Section 3308 states that the Commissioner is authorized and empowered to make any regulations necessary to supplement the purpose of Article 33. Section 3351 states that the Commissioner shall designate in regulation the name of all controlled substances appropriate for use in the treatment of opiate addiction. Section 3352 states that persons certified to operate treatment programs should follow certain record-keeping requirements, as the Commissioner shall require by regulation.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted to govern and control the possession, prescribing, manufacturing, dispensing, administering, and distribution of licit controlled substances within New York State. In the year 2000 a legislative purpose was added to the law to clarify that its purpose is to allow for the legitimate use of controlled substances, while curtailing their illicit use.

Needs and Benefits:

Prior to the adoption of DATA, the treatment of opiate addiction was limited to authorized methadone clinics and licensed substance abuse programs. According to the National Institute of Drug Abuse (NIDA), the regulatory burden involved in delivering methadone to opioid-dependent individuals has been so heavy that it has prevented expansion of the system.

The result has been a "treatment gap," which NIDA defines as the difference between the total number of opioid-dependent persons and those in treatment. In an effort to close the treatment gap, NIDA explored other strategies and studied the use of other drugs to treat opioid addiction. Restrictions were intended to decrease abuse and diversion while permitting legitimate treatment. However a treatment gap continues to exist.

There are approximately 125 MMTPs in New York State with a license capacity to treat 46,000, or 23%, of the estimated 200,000 opiate dependent patients in New York State. Also, over three-quarters of the MMTPs are located in the New York City area, therefore addicts living in rural areas may not have access to an MMTP. It is also believed that many

middle and upper class addicts do not seek enrollment in MMTPs due to the stigma associated with MMTPs.

The DATA expands availability of treatment of opiate dependent patients allowing physicians to prescribe narcotic drugs for opiate addiction, requiring only self-certification, and moves the treatment of addiction from the clinic to the private physician's office and the patient's own pharmacy. The law allows qualified physicians to prescribe and dispense Schedule III, IV, and V narcotics that have been approved by FDA for use in maintenance or detoxification treatment. Currently the only such drug approved for such use is buprenorphine.

Buprenorphine is a partial opioid agonist with a significant potential for abuse. To meet the legislative purpose of Article 33 and the intent of the DATA, additional regulations are necessary to ensure buprenorphine is not diverted into illegal channels, while ensuring access to care.

These regulations require that the physician register with the Department of Health, as well as the Office of Alcohol and Substance Abuse Services (OASAS), to provide such treatment. This will ensure that the physician possesses the addiction treatment qualifications required by DATA and is in good standing with respect to adherence to controlled substance laws. The physician will be required to report the names of such patients whom they are providing such treatment. Pharmacies that wish to dispense buprenorphine will also be required to register with the department. Registered pharmacies will be required to file buprenorphine prescription data with the department in the same manner they currently follow for Schedule II controlled substances and benzodiazepines. The department will have the capability of monitoring the utilization of buprenorphine by the analysis of this data in the same manner currently utilized for controlled substances with significant abuse potential.

DOH/OASAS Task Force:

In the fall of 2000, the Department of Health (DOH) partnered with the Office of Alcoholism and Substance Abuse Services (OASAS) to begin planning for the implementation of DATA. The agencies established a joint task force charged with establishing complementary regulations, as well as a joint application process by which New York State physicians could register to provide this new treatment modality.

The task force met routinely for over two years. The result was a streamlined application process by which physicians could register with New York State to provide such treatment, as well as streamlined regulations.

The agencies sent a joint mailing to physicians detailing the regulatory requirements and registration process. The agencies established a joint registration application by which qualified physicians. Qualified physicians simply completed the joint application and sent it to OASAS. Once OASAS reviews and approves the application, the approved application is sent to DOH for their approval. Due to the joint application process, the agencies work closely together through the registration process.

Both agencies also adopted emergency regulations in the fall of 2002. The task force ensured the adoption of emergency regulations that meet the needs and responsibilities of both agencies, while ensuring accessibility of this new treatment to the citizens of New York State.

Outreach:

DOH met with the pharmaceutical Society of the State of New York (PSSNY), as well as the Medical Society of the State of New York (MSSNY), during the drafting of this regulation. PSSNY did not have present any concerns with the regulations. MSSNY was opposed to the concept of a patient registry. The original regulations contained a requirement for physicians to maintain a registry of the patients whom they were treating, and to share such registry with the DOH. MSSNY stated that the registry requirement might deter patients from seeking such treatment. Due to such concerns, DOH decided to remove the patient registry requirement from the regulations.

Costs:

This proposal does not pose any cost to the physician, pharmacy, or the department. The registration of physicians and pharmacies will be provided free of charge. 93% of all pharmacies in the state are already set up to transmit data to the department electronically in the required format, therefore only minimal software modification will be necessary. The remaining 7% submit the data manually on a departmental form.

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:

The Department of Health anticipates a simple registration form for physicians and pharmacies that wish to register for this program. Participa-

tion in this program is entirely voluntary. The Department of Health has partnered with OASAS to streamline the registration process for physicians.

Ninety-three percent of all New York State pharmacies currently have the capacity to send the department prescription data electronically. The department can't predict how many pharmacies will participate in this program. Approximately 60% of the pharmacies in the State have registered thus far to participate in the Expanded Syringe Access Program (ESAP), and it is anticipated that participation in this new incentive will be similar. Those choosing manual submission may simply complete a manual submission form in the same manner they currently utilize for Schedule II controlled substances and benzodiazepines.

Physicians who prescribe buprenorphine will be required to keep the same records they currently maintain for all controlled substances. Physicians choosing to dispense buprenorphine will be required to submit a manual submission form or submit the data electronically, in the same manner as required for pharmacies.

Methadone clinics are currently required to submit dispensing reports to the department; therefore the collection of dispensing data for drugs that treat addiction is not a new concept.

Duplication:

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

Alternatives:

The proposed regulation is designed to curtail the potential diversion and abuse of buprenorphine in this new treatment modality. Buprenorphine is a narcotic with significant abuse potential and will be utilized in a population of patients who have a prior history of controlled substance abuse. The federal law sets basic parameters for such treatment but leaves specific oversight up to the individual states. The department believes it is in the best interest of public health to monitor the prescribing and dispensing of this drug for this new treatment modality.

There are no alternatives that would ensure accessibility to treatment while curtailing the potential for abuse and diversion.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government. This amendment does not prohibit the provisions of the federal DATA, it simply achieves consistency with existing New York State standards aimed at curtailing the diversion of medication with a high potential for diversion.

Compliance Schedule:

Physicians and pharmacies may begin to register with the department immediately. Once a physician has registered with the department for this program, and has received his/her unique identification registration number from the Drug Enforcement Administration (DEA), he/she may begin to prescribe and/or dispense buprenorphine for the treatment of opiate addiction. Once a pharmacy has registered with the department for this program, they may begin to dispense buprenorphine for this treatment.

Regulatory Flexibility Analysis

Effect of Rule:

Physician and pharmacy participation in this program is voluntary. There are currently 72,920 physicians licensed to practice medicine in New York State. According to the New York State Board of Pharmacy, as of September 2002, there are a total of 4,434 pharmacies in New York State. Of these, 62 are sole proprietorship, 274 are partnerships, 72 are small chains (fewer than 3 pharmacies per chain) and the rest are large chains or other corporations (some of which may be small businesses) or located in public institutions.

Compliance Requirements:

Pharmacies that choose to register for this program will be required to submit the buprenorphine prescription information in the same manner that they currently utilize for CII and benzodiazepine prescriptions; either electronically or manually. Physicians who choose to dispense will also be required to submit buprenorphine prescription information either electronically or manually, in the same format they currently utilize when dispensing CII and benzodiazepines. The record-keeping requirements for physicians and pharmacies will be consistent with existing requirements.

Professional Services:

Registered pharmacies that choose to submit the required prescription data electronically may need to make a minor change to their current software. Because almost all New York State pharmacies already have a program in place to submit this data, the department does not anticipate that they will be charged for adding buprenorphine data to the current data they submit to the department. The department does not expect a large number of physicians to dispense buprenorphine. Of those that do, the

department does not expect them to submit the required data electronically; therefore there no professional services will be required.

Compliance Costs:

The department anticipates that there will be no compliance costs associated with this regulation.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Small businesses may choose not to submit electronically, in which case no new, or additional, equipment would be required. Those businesses that do opt to submit data electronically will require only a standard personal computer and software already utilized by the pharmacy community.

Minimize Adverse Impact:

The proposed rule was designed to minimize the impact on small businesses by allowing the dispenser to have the choice of submitting specified data electronically or manually. The rule does not require non-computerized pharmacies or physicians to become computerized. The department has worked with the pharmacy societies and software vendors to adopt transmission standards already utilized by the pharmacy community. Also, at the request of the pharmacy societies, the department is allowing dispensers to submit electronic information in batch format, as opposed to a more costly point-of-sale transmission.

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Finding:

Pursuant to 202-bb of the State Administrative Procedure Act, a Rural Area Flexibility Analysis is not required.

The proposed amendment does not impose any adverse impact on rural areas. The proposed amendment makes the treatment of addiction in rural settings more feasible, as addicts will no longer have to travel to a methadone clinic to obtain their medication. Many rural areas do not have a methadone clinic in close proximity.

Measures Taken to A Certain Finding:

Approximately 93% of the pharmacies in the State currently transmit controlled substance prescription data to the department in the format allowed by this proposal. The remaining 7%, many of which may be in rural areas, do not use computers and will not be forced to computerize. They, as well as physicians, will be allowed to transmit their data manually on a departmental form.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. This proposal expands the treatment options for physicians and pharmacies and is not expected to have impact on increasing or decreasing jobs overall.

Categories and Numbers Affected:

This rule affects the 4,423 pharmacies in New York State. Approximately 93% of the pharmacies are currently submitting controlled substance prescription data to the department electronically.

It is anticipated that a small percentage of the 72,920 physicians in the State will register to participate in this program. Of that number, it is expected that most of the physicians will only perform the prescribing of buprenorphine. It is expected that a very small percentage of physicians will actually dispense buprenorphine. Most patients will be receiving their buprenorphine from a registered pharmacy.

Regions of Adverse Impact:

There are no regions of the State where this rule would have a disproportionate adverse impact on jobs or employment opportunities.

Minimizing Adverse Impact:

There are no unnecessary adverse impacts on existing jobs pursuant to this rule; therefore no measures to minimize such impacts were necessary. Promotions of the development of new employment opportunities are not affected by this rule.

Self-Employment Opportunities:

This proposal does not have any measurable impact on opportunities for self-employment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Watershed Rules and Regulations for the City of Syracuse

I.D. No. HLT-33-03-00008-P

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

Proposed action: Repeal of section 131.1 and addition of new section 131.1 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 1100

Subject: Watershed rules and regulations for the City of Syracuse.

Purpose: To update the existing watershed rules.

Substance of proposed rule: Application

This is a revision of the rules and regulations that were last updated in 1974. These rules are authorized under provisions of Section 1100 of the Public Health Law. They apply to the source of the public water supply of the City of Syracuse. This water supply, Skaneateles Lake, is located approximately 19 miles southwest of the City of Syracuse. The lake and its watershed are located within parts of Onondaga, Cayuga, and Cortland Counties.

Definitions

Included are 59 definitions determined necessary to clarify the intent of the rules. Specific provisions are included to define terms such as "agricultural associated animal waste" and the "Whole Farm Planning Program" established by the City of Syracuse. The three zones that encompass the lake and watershed are also defined here.

General Provisions

This section outlines requirements for the City of Syracuse to be notified by the applicant of permit applications or environmental impact statements for building or land disturbance activities in order for the City to make comment within the statutory or procedural time frames of the permitting agency. Notification is also required for spills. Disposal of snow into the lake is prohibited other than incidental deposition.

Specific Regulations Zone I (the area within 500 feet of the water supply intakes)

Recreational use or discharge of materials in this area is prohibited.

Specific Regulations Zone II (the entire lake surface area excluding Zone I)

Discharge of materials in this area is prohibited unless approved by the agencies having jurisdiction.

Specific Regulations Zone III (the tributary watershed)

Wastewater Treatment

Outlines provisions dealing with both new and replacement of onsite wastewater treatment systems including holding tanks and privies. For new construction, conformance with existing New York State standards is required, however holding tanks are required to be 50 feet from the lake or watercourse. Existing or new holding tanks that pose a potential risk for contamination may be required to be provided with containment structures or similar provisions. Alterations to existing wastewater systems are required to conform with new construction standards unless a waiver is obtained. Proposals for alteration, addition to or change in use of existing structures are subject to the county health department having jurisdiction over the adequacy of the existing wastewater treatment system.

Septage and Sludge

Prohibits storage or land application of septage, sludge or human excreta.

Animal Waste Storage and Disposal and Fertilizer and Manure Use

Requires that storage and use of these materials be in accordance with "Agricultural Management Practices Catalogue for Non-point Source Pollution Prevention and Water Quality Protection in New York State" or conform to a plan developed within the context of the Whole Farm Planning Program.

Pesticide and Herbicide Use

Requires conformance with New York State Department of Environmental Conservation (NYSDEC) standards.

Sediment Generation and Control

Requires that farm tillage practices be in accordance with "Agricultural Management Practices Catalogue for Non-point Source Pollution Prevention and Water Quality Protection in New York State" or conform to a plan developed within the context of the Whole Farm Planning Program.

Land disturbing activities such as general construction, highway construction and maintenance, and forestry operations (silviculture) which expose 5,000 or more square feet of soil (i.e., vegetation has been removed, or the landscape has been graded or filled resulting in bare soil surfaces) are prohibited within environmentally sensitive areas as defined in the regulations, except where measures have been put in place to prevent erosion and sediment production. The applicant is required to submit a plan outlining the measures to the City of Syracuse at least 10 business days prior to undertaking the activity. Also requires that highway construc-

tion activities be performed so as to preclude erosion and sediment production and that plans be developed to address this issue.

New Solid Waste Management Facilities

Prohibits new facilities whether regulated or exempt from regulation under 6 NYCRR Part 360 or any other local laws or regulations. Exceptions include composting at residences and farms, liquid storage of leachate other than in surface impoundments, construction debris landfills at residences and farms, transfer stations, recyclables handling facilities exempted under Part 360, used oil storage at farms and gas stations, and construction debris processing but not disposal.

Hazardous Material

Prohibits disposal of this material.

Radioactive Material

Prohibits disposal of this material.

Petroleum Storage

Requires that the City of Syracuse also be notified of required notifications to the NYSDEC regarding inventory monitoring, leak detection reports and leaks.

Stockpiles

Storage of chloride salts (road salt) and coal is prohibited except in structures designed to minimize contact with precipitation and built on low permeability pads which control seepage and runoff, and is located at a lineal distance of no less than 500' from the lake or watercourse.

Chloride Salt (road salt) Application

Chloride salt (road salt) use for deicing is restricted to the minimum amount needed for public safety.

Construction and Closure of Wells

Requires conformance with existing New York State Department of Health and/or NYSDEC regulations.

Cemeteries

All cemeteries must be operated to prevent contamination of the public water supply.

Inspections

Authorizes the City of Syracuse to conduct inspections of the watershed and requires an annual report of violations both cited and abated and an ongoing inventory and census of watershed activities.

Remedies for Violation

Cites remedies for violation of the rules and regulations.

Variances

Outlines provisions for variances; including application requirements and review by the City of Syracuse and New York State Commissioner of Health.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The New York State Department of Health is authorized by Section 1100 of the Public Health Law to promulgate rules and regulations to protect any or all public supplies of potable water from contamination.

Legislative Objectives:

The updating of the present Watershed Rules and Regulations has been undertaken to reflect modern watershed management techniques for public water supplies. In addition, the New York State Department of Health (NYSDOH) has required that the Watershed Rules and Regulations be updated as a condition of the Filtration Waiver which has been granted to the City of Syracuse (last granted June 29, 1999 for a period of five years).

Needs and Benefits:

The regulations protect the primary source of the public water supply of the City of Syracuse, Skaneateles Lake. This Skaneateles watershed has a variety of mixed uses: agricultural, residential, recreational, and small business, which creates a need for the application of the most current watershed management techniques to control diffuse sources of pollution that could reach the water supply. It is to the public benefit to protect the public water supply from contamination and to control potential sources of pollution that might degrade water quality in the future.

Costs:

Costs to Private Regulated Parties:

Holding Tanks

There may be costs associated with the replacement of the 5-7 holding tanks within 50 feet of the Lake at the time when they fail or are replaced. If the tank cannot be relocated at the time of replacement to a point greater than 50 feet from the Lake or watercourse, the private party may be required to install a containment structure around the tank and/or pump chamber. This would require an additional sum of approximately \$500-\$3,000 in total construction costs. (Piping and a double-encased pump chamber are approximately \$500-\$2,000. Alternatively, a new tank is approximately \$1,200-\$1,400. A concrete pad [average 7 foot square] and curb/wall would cost approximately \$1,600). The city and local county departments already may specify secondary containments of this type, so this requirement will formalize an existing practice.

Privies

A private party constructing a new uncontained privy will be required to excavate a 6 foot test pit to ensure 2 foot separation between the bottom of the hole and bedrock or the water table. In the past 15 years, approximately one (1) new privy has been constructed. A backhoe rented for two hours to complete this task is approximately \$150-\$200.

Erosion and Sediment Control Plan

An erosion and sediment control plan will be required for land disturbances greater than or equal to 5,000 S.F. and up to (but not including) 1 acre. Annually, based on construction records in recent years, this requirement is projected to apply to approximately twenty to twenty-four (20-24) private parties submitting applications to building single family homes. About 40% of these applications are from the Town of Skaneateles, which already requires erosion and sediment control plans for "major" permit applications and applications for single family homes within 200 feet of the lake. Therefore, the rule will impact on private parties will be fewer than 20 applicants per year. Costs will include approximately 2 days of professional engineering/landscape architectural services for field inspection and production of a plan (\$1,000-\$1,500, total), and perhaps, on the average, \$500-\$1,000 for a single-family home site for installation of erosion and sediment control measures. The design costs may be less if an architect, landscape architect, or engineer has already been hired to prepare a site plan.

Farm Practices

If farm operators choose to follow Draft Watershed Regulations regarding Animal Waste Storage and Disposal, Fertilizer and Manure Use, and Farm Tillage Practices as written, costs could be very high (upwards of \$50,000 to several hundred thousand dollars, depending on the case). Figures are approximated from data from the Skaneateles Lake Watershed Agricultural Program (SLWAP), administered by the Onondaga Soil and Water Conservation District.

Farms may elect to conform to the plan developed by the SLWAP's Whole Farm Planning Program in lieu of following the proposed regulations and can receive 100% cost share benefits for water quality-related items from the City of Syracuse for participation.

Environmental Impact Statement

Any person, agency or entity preparing an Environmental Impact Statement must file a copy with the State Commissioner of Health, the county health department (Onondaga, Cortland, or the Cayuga County Health Department) serving the area where the activity is proposed and the City of Syracuse. The cost might be approximately \$3-\$8 dollars a copy (30-100 pages @ .06 cents/page plus binding.) The total for the distribution of four (4) copies would be about \$12 to \$32.

Petroleum Storage

Individual property owners would submit copies of mandatory notifications to the New York State Department of Environmental Conservation (NYSDEC) regarding inventory monitoring, leak detection test reports, or report of a leak, etc. to the City of Syracuse. Cost to the individual is minor, approximately \$2-\$4 (copies & postage).

Applications:

There will be minimal copying costs to the applicant associated with sending copies of all permit applications or variance applications and permits to the City of Syracuse, approximately \$3-4 per application.

Costs to the agency, the state and local governments for the implementation and continuation of the rule:

When a disparity occurs between a permitting agency and the City of Syracuse over the water quality impacts of the subject of a permit, the agency may spend additional personnel hours reviewing and resolving the issue. This activity must be accomplished within the statutory or procedural time frames of the permitting agency. The permitting agency, however, makes the ultimate finding and is not required to accommodate the comments of the City of Syracuse, and therefore has control of the total amount of time spent.

Watershed highway departments (both local and state), and school districts must comply with erosion and sediment control requirements of the proposed rule for disturbances of 5,000 S.F. up to one (1) acre, which is below the threshold of one (1) acre required by the NYSDEC for Phase II Stormwater Rules.

It is estimated that a one-time survey report on erosion control procedures with typical construction details will be provided to the City of Syracuse for review and comment. The cost to the municipality for the preparation of this report by a licensed or certified professional would be approximately \$2,000-\$5,000. Such a manual may already be required by the NYSDEC, and could be used to supply information to the City of Syracuse as well.

The materials generally required to protect roadside ditch erosion and small construction projects are hay-bale dikes (\$2/ea. installed), silt fence (\$4/L.F.—both prices installed), and annual seeding (\$500/acre, including labor). For a site up to one acre in size, this might entail 400 L.F. of silt fence (\$400.), eight (8) hay bales (\$16) and one (1) acre of seeding at \$500/acre for a total of \$916.

Costs to the NYSDOH for implementation and continued administration of the rule will include initial expenses for review the various documents (express terms, Draft Environmental Proposal, Regulatory Impact Statement, Rural Area Flexibility Analysis, Job Impact Statement) and are projected for a total of 30-45 personnel days.

Costs to county departments of health to enforce the revised rules and regulations will be primarily in personnel costs. Approximately 5 personnel-days of work per year are estimated. A personnel-day, including fringe, might be worth \$228 for an individual making \$45,000 per year. Total cost for five days would be \$1,140.

Local Government Mandates:

This regulation imposes the following new mandate on eight watershed towns, villages, and three counties. The highway maintenance departments of the municipalities will be required to submit an erosion control procedure with typical details for road maintenance erosion control practices to the City of Syracuse for acceptance. Specific erosion and sediment control plans for road construction that exceeds the regulation threshold must also be submitted to the City of Syracuse for acceptance.

The proposed rule imposes a moderate commitment (approximately 15 personnel-days) for City of Syracuse personnel in carrying out the new mandates of the revised Watershed Rules and Regulations in terms of inspection and evaluation of compliance after promulgation of this rule. This would include the review and comment on erosion and sediment control plans, applications for permits and Environmental Impact Statements; follow-up on spills and leaks; and inspection of pumping date logs for holding tanks and privies.

Paperwork:

Copies of permit applications (building, land/shoreline disturbance) shall be forwarded to the City of Syracuse by the applicant at the same time they are submitted to the permitting agency.

Copies of erosion/stormwater control plans must be submitted to the City of Syracuse by the applicant at least 10 days prior to undertaking any land disturbing activity.

Applications and design drawings for the construction, alteration, addition or repair of existing wastewater treatment works, including privies, shall be submitted by the applicant to the City of Syracuse for review, recommendation, or comment. Copies of approvals issued shall be sent to the City of Syracuse by the county health department having jurisdiction.

Any person, agency or entity preparing an Environmental Impact Statement shall file a copy with the Commissioner of Health, the Onondaga County Health Department, the health department of the county where the activity is proposed, and the City of Syracuse.

When mandatory notifications to NYSDEC are required regarding petroleum bulk storage tanks, such as inventory monitoring, leak detection test reports, or discovery of a leak, etc., notification must also be made to the City of Syracuse. Permit applications for installation of new or modification of existing facilities shall be forwarded to the City of Syracuse for review and comment.

The owner of, or person who is in actual or constructive possession or control of materials involved in a spill must notify the City of Syracuse, the NYSDEC, the Onondaga County Department of Health, and the health department of the county in which the spill occurred.

Date logs and receipts for pumping of holding tanks and vault-style privies will now be required to be maintained by the owner of the tank/privy.

Farmers not participating in SLWAP may need to plan and record manure spreading activities and crop rotations.

Duplication:

The Watershed Rules and Regulations duplicate the requirement to produce an erosion and sediment control plan in some instances in the Town of Skaneateles. It is also duplicative of SPDES Phase II storm water permits for construction disturbing any area greater than or equal to one acre to less than five acres, or duplicative of SPDES Phase I for construction disturbing five acres or more. The proposed rule will cover all land-disturbing activities of the approximate area disturbed during the construction of a single-family house.

The proposed rule is also duplicative of current NYSDEC regulations on Confined Animal Feeding Operations (CAFOs) of 300-999 Animal Units (medium CAFO) with potential or demonstrated water pollution impacts; and all farms with 1,000 or greater Animal Units (large CAFO). The duplicative parts of the rule involve animal waste storage and disposal, and manure use. A CAFO plan, which involves a Comprehensive Nutrient Management Plan, meets the requirements of this proposed rule in the area of animal waste storage and disposal, and manure use.

Five of the 60 farms in the watershed are currently regulated by the NYSDEC as defined CAFO's. Four of the five CAFO's already have whole farm plans, which meet the requirements of both CAFO regulations and this proposed rule.

Alternatives:

Because it has been 28 years since the last revision of the Watershed Rules and Regulations, the "No Action" alternative was considered by the City of Syracuse and the NYSDOH to be insufficient to protect and maintain the water quality within the public water supply. Legal and other aspects of the Watershed Rules and Regulations needed to be brought up to date.

The NYSDOH found that the existing Watershed Rules and Regulations would require revisions reflecting modern watershed management practices to further protect the water supply while the filtration waiver is in effect. The City of Syracuse chose to pursue filtration avoidance after considering the alternative of building a filtration plant, which was evaluated to be far more costly to construct and operate than to comply with the filtration avoidance criteria.

Federal Standards:

Stormwater Phase II Program

The proposed rule exceeds the standards for the EPA-mandated Stormwater Phase II programs. In New York State, the Phase II Rule will take effect in March 2003 and is being promulgated by the NYSDEC. The revised Watershed Rules and Regulations will bring the requirement for a sediment and erosion control plan (required by Phase II for disturbances of 1 acre or more) to a lower threshold of 5,000 S.F. This lower square footage corresponds approximately to the area disturbed for the footprint of a single-family house.

The justification for applying the requirement for a sediment and erosion control plan to a lower threshold is the sensitivity of an unfiltered water supply to increased turbidities. Quoting from EPA Fact Sheet 3.0, January 2000 (Storm Water Phase II Final Rule - Small Construction Program Overview), "Sediment runoff rates from construction sites are typically 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those of forest lands. During a short period of time, construction activity can contribute more sediment to streams than can be deposited over several decades."

Confined Animal Feeding Operation (CAFO):

Complying with a whole farm plan, which by this rule will be a permissible substitution for complying with the rule's requirements for animal waste storage and disposal and manure use, will exceed the CAFO requirement in terms of threshold. The two use different units for determination of threshold for compliance.

A CAFO is determined by Animal Unit ("AU") (one AU = 1,000 lbs. of live weight body mass) and the potential to discharge pollutants to surface waters, or being a significant source of source of surface water pollution. The definition of farm for the proposed rule, as it applies to participation in the (SLWAP) is based on land used in a single operation for the production for sale of crops, livestock, or livestock products of an average (over the past two years) gross sales value of \$10,000 or more. The threshold for this proposed action will be all farms in the watershed that perform animal waste storage, disposal or field spreading.

The justification for exceeding the minimum federal standards is again, the sensitivity of the unfiltered public water supply to pathogens. Pathogens are common in mammal manure. Cryptosporidium is particularly prevalent in the manure of calves.

Compliance Schedule:

Compliance will be immediately upon promulgation, with two exceptions. First, it is estimated that the Town of Scott would need five (5) years to comply with the requirement regarding road salt stockpiles. Second, it is estimated that farm operators who chose not to comply with a whole farm plan prepared and implemented through the SLWAP would need two years to comply with requirements for animal waste storage and disposal and manure use (spreading) and five (5) years to comply with required farm tillage practices. Variances would be considered for these cases.

Regulatory Flexibility Analysis

Effect of Rule:

Erosion & Sediment Control:

This regulation will affect all small businesses and local governments in the watershed, if and when they undertake an activity disturbing an area greater than 5,000 S.F. Small businesses in the watershed are two (2) town highway departments, three (3) fire departments, three (3) marinas, two (2) golf courses, four (4) gas stations/service utilities, two (2) car dealerships, five (5) automobile garages, and six (6) miscellaneous businesses, for a total of five (5) municipal facilities and twenty-two (22) non-farming small businesses. Businesses in the merchant district of the Village of Skaneateles that do not have extensive property surrounding the building are not included in this number. Approximately sixty (60) farms would also be affected if and when they do non-farm-related land disturbance on their properties.

Petroleum Bulk Storage:

This action would also affect town highway departments and individual business owners (such as marina, gas station, residential and farm owners and commercial oil/propane delivery suppliers) that have New York State Department of Environmental Conservation (NYSDEC) regulated bulk petroleum storage.

Farm management practices:

This action is expected to affect approximately seven (7) to ten (10) farm operators who are not currently enrolled in the Skaneateles Lake Watershed Agricultural Program (SLWAP). Participation in the SLWAP (principally funded by the City of Syracuse) is entirely voluntary. The program currently pays for 100% of the costs to develop and implement a whole farm plan, which meets the requirements of this proposed regulation in regard to animal waste storage and disposal, fertilizer and manure use, and farm tillage practices. This program is analogous to the New York State Department of Agriculture's Agricultural Environmental Management program. Fifty (50) of approximately sixty (60) total watershed farms are participating in SLWAP as of 2002.

Stockpiles:

The Town of Scott will be affected by the road salt stockpile requirements of the regulation.

Compliance Requirements:

Erosion and sediment control:

Small businesses and local governments will be required to file, follow, and maintain an erosion and sediment control plan for all land-disturbing activities 5,000 S.F. or greater in area.

Petroleum bulk storage:

Local governments and individual business owners with NYSDEC-regulated petroleum bulk storage (such as Department of Public Works), school districts, marinas, gas station operators, residential and commercial oil/propane delivery suppliers and farm operators) will be required to submit copies of NYSDEC mandatory notifications regarding inventory monitoring, leak detection test reports, or report of a leak, etc. and permit applications for the installation of new or the modification of existing facilities to the City of Syracuse.

Farm management practices:

Farms will be required to install or follow management practices for agricultural uses in areas that have a high probability of contributing to a contravention of water quality.

Operators of currently unplanned farms who are eligible and elect to participate in the SLWAP (in lieu of installing individual management practices on their own) would invest 40-50 hours of personal time in meeting with the Watershed Project Team. A standard payment is made to each farmer for his/her time. An additional week to two and a half weeks of work (including record keeping, soil sampling, mowing, handling manure, and annual review) spent on the plan is anticipated per year, depending on the size of the farm. This time is generally offset by increased profitability on the farm. The program pays the total cost of constructed management practices. Figures are estimated from eight years of data from the Skaneateles Lake Watershed Agricultural Program.

Stockpiles:

The Town of Scott would have to minimize the exposure of its DPW road salt stockpile to precipitation, overland runoff, and the ground.

Professional Services

Erosion & sediment control:

While it is possible for a small business or local government to obtain the information necessary to file a sediment and erosion control plan, it is more likely that a registered professional engineer or landscape architect would be hired to prepare the plan.

Farm management practices:

A farmer who chooses to follow the agricultural sections of the proposed rule may decide to hire an independent agricultural engineer to design, and a contractor to install, management practices.

Stockpiles:

The Town of Scott might have to hire the services of a professional to design a road salt storage cover and pad. More likely, a "cover-all type" design would be provided directly from a manufacturer. The Town of Scott highway department superintendent has indicated that this solution to their need for road salt storage protection has already been investigated.

Compliance costs:

Erosion & sediment control:

Initial capital costs would occur at the time of a land disturbance. The current cost of an erosion and sediment control plan (with engineering stamp) is approximately \$1,000-\$1,500 for a small business property of one acre. Implementation costs of simple erosion control measures could be \$500-\$1,000. Basic measures include silt fence at \$4/L.F. and hay bales at \$2/each, installed.

If a sedimentation basin is called for in an erosion and sediment control plan, there will be a recurring maintenance cost every 3-5 years. Depending on the size of the basin, 3-4 hours of backhoe work @ \$70/hour might be required. It might take another two hours to re-grade the area with a bulldozer (also \$70/hr) and re-seed approximately a quarter-acre site (small basin) at \$125. This would be approximately a day's work for a small basin, and might cost a total of \$550. Other minor on-going maintenance may be required, such as catch basin cleaning. Costs for the above items will not vary much between sizes of businesses or local governments, since the range of area regulated will only vary from 5,000 S.F. to one (1) acre.

Petroleum Bulk Storage:

Cost to the individual business for copying and forwarding mandatory petroleum storage reports to the City of Syracuse is minor, approximately \$2 or less per year.

Farm management practices:

For farmers who elect not to participate in SLWAP, costs could be very high for the private installation of management practices on farms (upwards of \$50,000 to several hundred thousand dollars, depending on the scope of pollution problems). Figures are approximated from the implementation costs of the Skaneateles Lake Watershed Agricultural Program (1995-2002).

Stockpile costs:

Covering salt storage to comply with the proposed regulations is estimated to cost \$110,000, in the one case where it is required.

Economic and Technical Feasibility:

Erosion & sediment control:

Economic and Technical Feasibility for this requirement is well proven, since this action has very similar requirements to those of the NYSDEC Stormwater Phase II regulations. The types of sediment and erosion controls called for in this action are outlined in the same manuals accepted by the NYSDEC for its Phase II program. The minimum size regulated by proposed watershed rules and regulations is greater than or equal to 5,000 S.F. of disturbance. Stormwater Phase II requires a Stormwater Pollution Prevention Plan for disturbances between 1 and 5 acres (Phase I regulated 5 acres or more).

Farm management practices:

The United States Department of Agriculture (USDA) has tested and approved the technical feasibility of management practices that it specifies in Natural Resource Conservation Services standards and specifications. These standards are referred to in Article 17-1403 of the New York State Environmental Conservation Law, to which the proposed watershed rules and regulations refer.

Stockpiles:

It is feasible, technologically, for the Town of Scott to have a salt storage cover, pad and walls designed and built for its road salt stockpile. Economic feasibility for immediate compliance is less apparent. Unarguably, this would be large expense for a rural town.

Minimizing Adverse Impact:

Erosion and Sediment Control:

In a local government alteration or construction project of sufficient size to let in a public bid, the documents could specify that New York State Department of Transportation (NYSDOT) standards for erosion and sediment control are incorporated into the contract, lessening the time spent by a professional on details and specifications. A plan specific to each site would still be required. With this exception, the proposed rule could not be designed to minimize economic impact on small business or local governments, since control plans must be designed and tailored to specific site conditions.

Farm management practices:

As an alternative to following the proposed watershed rules and regulations (Animal Waste Storage and Disposal, Fertilizer and Manure Use, and Farm Tillage Practices), farm operators may elect to comply with the plan prepared by the SLWAP. Participants currently receive 100% cost share benefits from the City of Syracuse for preparation and implementation of an initial whole farm plan. The SLWAP has fifty (50) farms voluntarily participating.

It is estimated that farm operators who choose not to comply with a whole farm plan prepared and implemented through the SLWAP would need two years to comply with recommended state guidelines for animal waste storage and disposal and manure use (spreading) and five (5) years to comply with farm tillage practices as recommended. This would allow time for farmers to apply for state and federal grants for these practices. Flexibility in management practice design choices coupled with a reasonable timetable will minimize any adverse impact.

Stockpiles:

It is estimated that the Town of Scott would need five (5) years to comply with the proposed regulation requiring covering/pad/walls for its road salt stockpile. This would allow time for the town to seek grant funding. Again, flexibility in design choices coupled with a reasonable timetable will minimize any adverse impact.

Small Business and Local Government Participation:

Draft rules and regulations were distributed, explained, and discussed at a meeting of the Ad Hoc Task Force for an Agricultural Watershed Protection Program on Skaneateles Lake. The Task Force produced a set of twelve recommendations in a report completed July 1, 1994, which outlined the process for the development of the Whole Farm Planning Program, which is defined in the draft regulations. The seven watershed farmers on the Task Force represent all three of the watershed counties. A copy of the draft was mailed to the Skaneateles Merchants' Association for review.

The topic of the draft watershed rules and regulations appeared on the agenda of several Onondaga County Water Quality Management Agency meetings, and at a meeting organized by that agency for interested individuals, held in the Town of Skaneateles. An outline of the revisions to the draft was distributed at the meeting. Two public hearings (SEQRA) were held on November 17, 1994 and January 5, 1995.

The City of Syracuse Watershed Control Coordinator attended and spoke at a meeting of the Tri-County Skaneateles Lake Association, and three annual meetings of the USDA's Agricultural Stabilization and Conservation Service, Conservation Review Group which were also attended by area farmers.

On March 4, 2002, the Onondaga County Department of Health Advisory Committee held an informal meeting to gather additional public input and identify issues that may have become important since the public hearings. Public comment topics were also discussed at a meeting of the Onondaga County Health Department Council on Environmental Health in 2002. The NYSDEC, Division of Legal Affairs, and the New York State Department of Agriculture and Markets provided additional comments in the fall of 2002. In addition, the three county health departments reviewed and commented on drafts of the rules.

Rural Area Flexibility Analysis**Types and estimated numbers of rural areas:**

The proposed rule will apply to one, 59-square mile rural area surrounding Skaneateles Lake. The area is a mostly homogeneous farming and rural residential area, with the exception of the more suburban Village of Skaneateles to the north. The City of Syracuse is approximately 19 miles northeast of the Village of Skaneateles.

Reporting, record keeping and other compliance requirements, and professional services:

Reporting:

Copies of permit applications (building, land/shoreline disturbance) shall be forwarded to the City of Syracuse by the applicant at the same time they are submitted to the permitting agency.

Copies of erosion/stormwater control plans must be submitted to the City of Syracuse by the applicant at least 10 days prior to undertaking any land disturbing activity.

Applications and design drawings for the construction, alteration, addition or repair of existing wastewater treatment works, including privies, shall be submitted by the applicant to the City of Syracuse for review, recommendation, or comment. Copies of approvals issued shall be sent to the City of Syracuse by the county health department having jurisdiction.

Any person, agency or entity preparing an Environmental Impact Statement shall file a copy with the Commissioner of Health, the Onondaga County Health Department, the county health department of the county where the activity is proposed, and the City of Syracuse.

When mandatory notifications to New York State Department of Environmental Conservation (NYSDEC) are required regarding petroleum bulk storage tanks, such as inventory monitoring, leak detection test reports, or discovery of a leak, etc., notification must also be made to the City of Syracuse. Permit applications for installation of new or the modification of existing facilities shall be forwarded to the City of Syracuse for review and comment.

The owner of, or person who is in actual or constructive possession or control of materials involved in a spill must notify the City of Syracuse, the NYSDEC, the Onondaga County Department of Health, and the health department in which the spill occurred.

Recordkeeping:

Owners of land-based holding tanks must keep a log of the dates when the tank was pumped and must include pumping receipts from the waste hauler. The log shall be made available upon request to the NYSDOH or county health department having jurisdiction or the City of Syracuse. A similar log with receipts shall be kept by owners of self-contained vault-type privies and made available to the City of Syracuse.

Farmers not participating in Skaneateles Lake Watershed Agricultural Program (SLWAP) may need to plan and record manure spreading activities and crop rotations.

Other compliance requirements:

In lieu of whole farm planning, farmers may obtain a copy of Agricultural Management Practices Catalogue (NYSDEC 1992) and consult with a local soil and water conservation district to obtain specifications for individual management practices.

Petroleum bulk storage:

Local governments and individual business owners with NYSDEC-regulated petroleum bulk storage (such as Department of Public Works), school districts, marinas, gas station operators, residential and commercial oil/propane delivery suppliers and farm operators) will be required to submit copies of NYSDEC mandatory notifications regarding inventory monitoring, leak detection test reports, or report of a leak, etc. and permit applications for the installation of new or the modification of existing facilities to the City of Syracuse.

Farm management practices:

Farms will be required to install or follow management practices for agricultural uses in areas that have a high probability of contributing to a contravention of water quality.

Operators of currently unplanned farms who are eligible and elect to participate in the SLWAP (in lieu of installing individual management practices on their own) would invest 40-50 hours of personal time in meeting with the Watershed Project Team. A standard payment is made to each farmer for his/her time. An additional week to two and a half weeks of work (including record keeping, soil sampling, mowing, handling manure, and annual review) spent on the plan is anticipated per year, depending on the size of the farm. This time is generally offset by increased profitability on the farm. Constructed management practices are paid for at 100% by the program. Figures are estimated from eight years of data from the Skaneateles Lake Watershed Agricultural Program.

Stockpiles:

The Town of Scott would have to minimize the exposure of its DPW road salt stockpile to precipitation, overland runoff, and the ground.

Professional Services**Erosion & sediment control:**

While it is possible for a small business or local government to obtain the information necessary to file a sediment and erosion control plan, it is more likely that a registered professional engineer or landscape architect would be hired to prepare the plan.

Farm management practices:

A farmer who chooses to follow the agricultural sections of the proposed rule may decide to hire an independent agricultural engineer to design, and a contractor to install, management practices.

Stockpiles:

The Town of Scott might have to hire the services of a professional to design a road salt storage cover and pad. More likely, a "cover-all type" design would be provided directly from a manufacturer. The Town of Scott highway department superintendent has indicated that this solution to their need for road salt storage protection has already been investigated.

Costs:**Initial capital costs:****Erosion & sediment control:**

Initial capital costs would occur at the time of a land disturbance. The preparation of an erosion and sediment control plan would cost approximately \$750-\$1,500 for a small business property of one (1) acre or less. Implementation costs of simple erosion control measures could be \$500-\$1,000.

Petroleum Bulk Storage:

Cost to the individual business for copying and forwarding mandatory petroleum storage reports to the City of Syracuse is minor, approximately \$2 or less per year.

Farm management practices:

Costs could be very high for the private installation of management practices on farms (upwards of \$50,000 to several hundred thousand dollars, depending on the case). Figures are approximated from the implementation costs of the SLWAP (1995-2002).

Annual costs:

If a sedimentation basin is called for in an erosion and sediment control plan, there will be a recurring maintenance cost every 3-5 years. Depending on the size of the basin, 3-4 hours of backhoe work @ \$70/hour might be required. It might take another two hours to regrade the area with a bulldozer (also \$70/hr) and re-seed approximately a quarter-acre site (small basin) at \$125. This would be approximately a day's work for a small basin, and might cost a total of \$550.

Other minor on-going maintenance may be required such as catch basin cleaning.

Annual costs for farms not participating in SLWAP would include approximately an initial \$2,000 nutrient management plan prepared by a consultant, plus \$7-10 per acre for an annual update, including preparation of crop rotations. Annual revisions of nutrient management plans and crop rotations are currently provided free of charge to participants in SLWAP.

Annual maintenance of management practices includes mowing of buffers and water and sediment control basins at an average of \$5/acre. The average farm has about 5 acres of area to mow, for a total of \$25 per year/per farm. Annual maintenance for a road salt stockpile "coverall" is minimal, and involves tightening some cracks per manufacturer's instructions once a year. Some "coverall-type" units have a 20-year guarantee.

Minimizing adverse impact:**Erosion and Sediment Control:**

In the case of the county highway departments and the New York State Department of Transportation (NYSDOT) that are repeatedly involved in projects that disturb earth, it is likely that a report/guidance document with standardized details and specifications will be prepared to comply with Phase II Stormwater regulations that will go into effect in March 2003. A site-specific erosion and sediment control plan for each project would be submitted to the City of Syracuse that refers to the standard specifications and details published by the NYSDOT. This might save some effort and expense in working up separate details and specifications for each project. With this exception, the proposed rule could not be designed to minimize economic impact on small business or local governments, since control plans must be designed and tailored to specific site conditions.

Farm management practices:

As an alternative to following the proposed watershed rules and regulations (Animal Waste Storage and Disposal, Fertilizer and Manure Use, and Farm Tillage Practices), farm operators may elect to comply with the plan prepared by SLWAP. Participants currently receive 100% cost share benefits from the City of Syracuse for preparation and implementation of an initial whole farm plan. The SLWAP has fifty (50) farms voluntarily participating.

It is estimated that farm operators who elect not to comply with a whole farm plan prepared and implemented through the SLWAP would need two years to comply with recommended state guidelines for animal waste storage and disposal and manure use (spreading) and five (5) years to comply with farm tillage practices as recommended. This would allow time for farmers to apply for state and federal grants for these practices. Flexibility in management practice design choices coupled with a reasonable timetable will minimize any adverse impact.

Stockpiles:

It is estimated that the town of Scott would need five (5) years to comply with the proposed regulation requiring minimization of contact of its road salt pile with precipitation and overland runoff. This would allow time for the town to seek grant funding.

Rural area participation:

Residents, community leaders, businesses, and governments of the rural area were given multiple opportunities to participate in the rule-making process. Draft rules and regulations were distributed, explained, and discussed at a meeting of the Ad Hoc Task Force for an Agricultural Watershed Protection Program on Skaneateles Lake. The Task Force produced a set of twelve recommendations in a report completed July 1, 1994, which outlined the process for the development of the Whole Farm Planning Program, which is defined in the draft regulations. The seven watershed farmers on the Task Force represent all three of the watershed counties. A copy of the draft was mailed to the Skaneateles Merchants Association for review.

The topic of the draft watershed rules and regulations appeared on the agenda of several Onondaga County Water Quality Management Agency meetings, and at a meeting organized by that agency for interested individuals, held in the Town of Skaneateles. An outline of the revisions to the draft was distributed at the meeting. Two public hearings State Environmental Quality Review Act (SEQRA) were held on November 17, 1994 and January 5, 1995.

The City of Syracuse Watershed Control Coordinator spoke at a meeting of the Tri-County Skaneateles Lake Association, and three annual meetings of the United States Department of Agriculture's Agricultural Stabilization and Conservation Service, Conservation Review Group, which were also attended by area farmers.

On March 4, 2002, the Onondaga County Department of Health Advisory Committee held an informal meeting to gather additional public input and identify issues that may have become important since the public hearings. Public comment topics were discussed at a meeting of the Onondaga County Health Department Council on Environmental Health in 2002. The NYSDEC Division of Legal Affairs and the New York State Department of Agriculture and Markets provided additional comments in the fall of 2002. In addition the three county health departments reviewed and commented on drafts of the rules.

Job Impact Statement**Nature of impact:**

The primary impact of the rule will be in the area of professional services required to prepare an erosion and sediment control plan for applicants seeking to disturb watershed land between 5,000 S.F. and up to one (1) acre. This correlates to the approximate area required to build a single family home. (Disturbances of one (1) acre to five (5) acres will be regulated by NYSDEC Stormwater Phase II regulations, which has requirements that will come into effect in March, 2003. Disturbances of 5 acres and above are currently regulated under New York State Department of Environmental Conservation (NYSDEC) Stormwater Phase I regulations.)

Categories and numbers:

The number of single family housing applications required by this rule alone to prepare an erosion and sediment control plan is estimated to be 16-20 per year. That level of activity is unlikely to bring new employment opportunities to the watershed, but will provide a few projects to local and regional professional (or semi-professional) firms (either Architects, Landscape Architects, Professional Engineers or Soil and Water Conservation Districts).

Regions of adverse impact:

This rule is not expected to have an adverse impact on any current jobs or employment opportunities. The only future jobs that would be affected are those connected with any hereafter prohibited Solid Waste Management Facilities, such as commercial composting facilities, landfills, solid waste incinerators, sludge and septage land application facilities, commercial construction and demolition debris landfills, regulated medical waste disposal facilities, recyclable handling and recovery disposal facility, waste tire storage disposal facility, used oil disposal facility, and construction and demolition debris processing facilities, where the intent is to dispose of such materials within the watershed. The likelihood of these facilities being proposed for future siting in the Skaneateles Lake watershed is diminished by any need of the facility to have a point source discharge, since such discharges are already prohibited by the New York State Environmental Conservation Law, Section 17-1709.

Minimizing adverse impact:

The rule does not prohibit all Solid Waste Management Facilities, and exempts those facilities that would have no or minimal negative environ-

mental impact. These include: some temporary waste storage facilities and transfer stations, which include those for tires, medical waste, oil, and transfer stations as described in 6 NYCRR Part 360-11, including clean-up days, where no disposal on the land is permitted. These types of future facilities, if allowed in the watershed by the permitting agency (currently NYSDEC), would create new jobs in the region.

Self-employment opportunities:

This action is not expected to create any new self-employment opportunities. It may create 16-20 opportunities a year for professional or semi-professional individuals to create erosion and sediment control plans for land disturbances the approximate size of a single family house.

Insurance Department

NOTICE OF ADOPTION

Certified Capital Companies

I.D. No. INS-22-03-00012-A

Filing No. 840

Filing date: Aug. 4, 2003

Effective date: Aug. 20, 2003

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

Action taken: Amendment of sections 400.1 and 400.6 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; Tax Law, sections 11 and 1511; Public Officers Law, section 89; L. 1997, ch. 389; L. 1998, ch. 544; L. 1999, ch. 407 (part S); and L. 2000, ch. 63 (part FF)

Subject: Applications for certifications and tax credits allocated and allowed under certified capital programs enacted after 1998.

Purpose: To update provisions.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-22-03-00012-P, Issue of June 4, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Teresa Marchon, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fees or Other Allowances

I.D. No. INS-33-03-00001-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 sections 202.1 and 202.3 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Compensation to agents and fees or other allowances payable for individual life insurance issued on a mass merchandising basis under plans sponsored by union—management welfare funds.

Purpose: To update obsolete references to statutory provisions and delete a provision pertaining to another regulation that has been previously repealed.

Text of proposed rule: Subdivisions (a) and (b) of Section 202.1 are amended to read as follows:

(a) The term "employee welfare fund" shall mean the fund as defined in section [37-a(1)] 4402(a) of the Insurance Law.

(b) The term "union" shall mean a labor organization as defined in section [37-a(8)] 4402(g) of the Insurance Law.

Section 202.3 is amended to read as follows:

§ 202.3 Fees or other allowances.

[(a)] An insurer shall not make any payment of fees or allowances of whatever nature, and by whatever name, to any person, firm or corporation

in connection with the sale or administration of policies covered by this Part other than commissions to an insurance agent or general agent, except in reimbursement for the reasonable value of one or both of the following services performed on behalf of the insurer:

(1) Maintaining essential employee records.

(2) Billing premiums.

In no event shall any payment for the above services exceed the estimated cost to the insurer of performing such services itself.

[(b) Policies covered by this Part shall be excluded in the determination of expense reimbursement allowance credits as defined in section 11.2(a) of Part 11 of this Title (Regulation No. 49) entitled "Reimbursement for Office and Other Agency Expenses Incurred in Connection with the Acquisition and Servicing of Ordinary Life Insurance Policies and Ordinary Annuity Contracts."]

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Data, views or arguments may be submitted to: John Gemma, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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 agency has determined that no person is likely to object to the rule as written since the only changes being made are to update certain statutory references and delete a provision pertaining to another regulation that was previously repealed.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely updates certain statutory references and deletes a provision pertaining to another regulation that was previously repealed.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Statements of Financial Condition and Advertisements

I.D. No. INS-33-03-00009-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 repeal Part 75 (Regulation 2) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Statements of financial condition and advertisements.

Purpose: To repeal an obsolete regulation whose provisions are irrelevant or inapplicable because of statutory changes and revisions of the format of certain schedules to the annual statement. The subject matter of the regulation is now covered in other more current regulations.

Text of proposed rule: Part 75 of Title 11 (Regulation No. 2) is hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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 agency has determined that no person is likely to object to the rule as written since the only change being made is to repeal an obsolete regulation. The provisions of the regulation have become irrelevant or inapplicable due to statutory changes and revisions of the format of certain schedules to the annual statement. The content of this regulation is now covered in other more current regulations, such as Regulation No. 52 (11 NYCRR Part 80, entitled "Controlled Insurers") and Regulation No. 172 (11

NYCRR Part 83, entitled "Financial Statement Filings and Accounting Practices and Procedures").

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely repeals an obsolete regulation. The provisions have become irrelevant or inapplicable due to statutory changes and revisions of the format of certain schedules to the annual statement. The content of this regulation is now treated in other more current regulations, such as Regulation No. 52 (11 NYCRR Part 80, entitled "Controlled Insurers") and Regulation No. 172 (11 NYCRR Part 83, entitled "Financial Statement Filings and Accounting Practices and Procedures").

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting of Income and Expenses

I.D. No. INS-33-03-00010-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 repeal Part 90 (Regulation 33) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Reporting of income and expenses.

Purpose: To repeal a Part whose provisions have become obsolete because of statutory changes and revisions of the format of certain schedules to the annual statement that is filed by life insurers and certain accident and health insurers. The subject matter of Part 90 is now covered in Regulation No. 172 (Part 83).

Text of proposed rule: Part 90 of Title 11 (Regulation No. 33) is hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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 agency has determined that no person is likely to object to the rule as written since the only change being made is to repeal an obsolete Part. The content of Part 90 is now covered in Regulation No. 172 (11 NYCRR Part 83, entitled "Financial Statement Filings and Accounting Practices and Procedures") and the current instructions to the annual statement filed by life insurers and certain accident and health insurers. The provisions of Part 90 have become obsolete due to statutory changes and major revisions of the format of certain schedules to the annual statement.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely repeals an obsolete Part. The content of Part 90 is now treated in Regulation No. 172 (11 NYCRR Part 83, entitled "Financial Statement Filings and Accounting Practices and Procedures") and the current instructions to the annual statement filed by life insurers and certain accident and health insurers. The provisions of Part 90 have become obsolete due to statutory changes and major revisions of the format of certain schedules to the annual statement.

Department of Labor

NOTICE OF ADOPTION

Minimum Wage Allowances

I.D. No. LAB-11-03-00003-A

Filing No. 807

Filing date: Aug. 1, 2003

Effective date: Aug. 20, 2003

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

Action taken: Amendment of Parts 137, 138, 141, 142, 143 and 190 of Title 12 NYCRR.

Statutory authority: Labor Law, art. 19, sections 651-653; art. 19-A, section 673(1) and (2); and art. 2, section 21(11)

Subject: Minimum wage allowances.

Purpose: To conform wage orders with statutory amendments.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-11-03-00003-P, Issue of March 19, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Counsel's Office, Bldg. 12, Rm. 509, State Campus, Albany, NY 12240, (518) 457-4380, e-mail: usbdww@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special September Eleventh Bidders Registry

I.D. No. LAB-33-03-00003-P

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

Proposed action: Addition of Part 127 to Title 12 NYCRR.

Statutory authority: Labor Law, section 349

Subject: Special September Eleventh Bidders Registry.

Purpose: To establish procedures for the application process in which apparel manufacturers and contractors may qualify for placement on the registry and the removal of manufacturers and contractors from the registry.

Text of proposed rule: CHAPTER II

SUBCHAPTER A

PART 127

SPECIAL SEPTEMBER ELEVENTH BIDDERS REGISTRY

.1 Scope and Purpose

This Part sets forth the procedures and policies to establish and maintain the Special September Eleventh Bidders Registry created by New York State Labor Law Section 349. The purpose of this Part is to establish procedures for the application process in which apparel manufacturers and contractors may qualify for placement on the Registry and the removal of manufacturers and contractors from the Registry.

.2 Definitions

- a) "Commissioner" shall mean the commissioner of labor;*
- b) "Department" shall mean the department of labor;*
- c) "Manufacturer" shall mean any person who (i) in fulfillment or anticipation of a wholesale purchase contract, contracts with a contractor to perform the cutting, sewing, finishing, assembling, pressing or otherwise producing any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which, pursuant to such contract, is to be sold or offered for sale to a retailer or other entity, or (ii) cuts, sews, finishes, assembles, presses or otherwise produces any men's, women's, children's or infants' apparel, or a section or component, designed or intended to be worn by any individual which is to be sold or offered for sale;*
- d) "Contractor" shall mean any person who, in fulfillment of a contract with a manufacturer, performs the cutting, sewing, finishing, assembling, pressing or otherwise producing any men's, women's, children's or*

infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale;

e) "Labor law" shall mean the labor law of New York State.

f) "Workers' Compensation Law" shall mean the Workers' Compensation Law of New York State.

g) "Violation" shall mean that a final agency determination has been made by the agency of jurisdiction.

h) "Registry" shall mean the Special September Eleventh Bidder Registry of apparel manufacturers and contractors adversely impacted by the September Eleventh, two thousand one attack on the United States of America, established by Labor Law Section 349.

i) "State" shall mean New York State

.3 Authority

The authority for the implementation and adoption of this Part establishing and maintaining a Registry in the State of New York is vested in the Commissioner, under the authority of Section 349 of the Labor Law.

.4 Application

(a) Any manufacturer or contractor wishing to be considered for placement on the Registry shall submit an application to the Department, which shall contain all the following information:

1. Evidence that the manufacturer or contractor is currently registered and was registered pursuant to Labor Law Section 341 as of September 11, 2000. Such evidence may include, but is not limited to a copy of the official registration certificates issued by the Department.

2. Evidence satisfactory to the Commissioner that the manufacturer or contractor had been continuously doing business from September 11, 2000 to and including September 11, 2001.

3. Evidence of cooperative labor management efforts that demonstrate to the Commissioner's satisfaction that the manufacturer or contractor has made and continues to make a commitment to improving the economic well being of its employees. Such efforts may include, but are not limited to the following: employee training programs, childcare programs, health benefits, or retirement benefits.

4. Evidence satisfactory to the Commissioner that the manufacturer or contractor, or any owner or partner of the manufacturer or contractor, has not been found in violation of the Workers' Compensation Law or any other state or federal labor law, rule or regulation in the previous five years.

5. Evidence satisfactory to the Commissioner that the manufacturer or contractor was adversely affected by the September 11, 2001 attack on the United States of America, which may include but is not limited to the following:

(i) production shut down for a period subsequent to September 11, 2001 (identify time period)

(ii) laid off employees (list employees laid off);

(iii) reduced hours of operation;

(iv) employee difficulty in gaining access to the location;

(v) disruption of deliveries;

(vi) lost utilities;

(vii) lost access to production equipment;

(viii) any other loss which diminished the economic worthiness of the manufacturer or contractor.

(b) The Department shall review each application, relevant Department records, and where applicable other state and/or federal records to determine if the manufacturer or contractor is qualified to be included on the Registry. The Department shall notify the manufacturer or contractor making such application of its determination as soon as it is practicable. The Department's review must find the following for the manufacturer or contractor to be included on the Registry:

1. the manufacturer or contractor has been and is currently registered in compliance with Labor Law Section 341; and

2. the manufacturer or contractor had been continuously doing business from September 11, 2000 to and including September 11, 2001; and

3. the manufacturer or contractor has demonstrated it has and continues to make cooperative labor management efforts to improve the economic well being of its employees; and

4. neither the manufacturer or contractor, nor any owner or partner of the manufacturer or contractor, has been found in violation of the Labor Law, rule, or regulation in the previous five years; and

5. neither the manufacturer or contractor, nor any owner or partner of the manufacturer or contractor, has been found in violation of the Workers' Compensation Law, rule or regulation in the previous five years; and

6. neither the manufacturer or contractor, nor any owner or partner of the manufacturer or contractor, has been found in violation of any federal labor law, rule or regulation in the previous five years; and

7. the manufacturer or contractor was adversely affected by the September 11, 2001 attacks on the United States.

.5 Registry Availability

The Department shall update the Registry as manufacturers or contractors are added or removed. The Registry shall be provided to the Commissioner of the Office of General Services and shall be updated as manufacturers and contractors are added to or deleted from the list. The Department shall make the Registry available upon request either by hard copy or electronically to all interested parties.

.6 Removal

Manufacturers and contractors may be removed from the Registry if the Department finds reasonable cause to do so. Reasonable cause shall include the submission of false or misleading information or any finding of a violation of the Workers' Compensation Law or any other state or federal labor law, rule or regulation. The Department shall notify the manufacturer or contractor on the registry of its intent to remove the manufacturer or contractor from the Registry and shall allow the manufacturer or contractor to voluntarily remove its name from the list or submit justifiable reasons to remain on the Registry within ten days of the notice. The Department shall review any relevant submission from the manufacturer or contractor. If it finds that the manufacturer or contractor does not qualify, such manufacturer or contractor will be immediately removed from the registry.

Text of proposed rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Legal Assistant, Department of Labor, Counsel's Office, Rm. 509, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: usbdww@labor.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority: Labor Law Section 349 authorizes the Labor Department to promulgate the necessary rules and regulations to establish a registry of apparel manufacturers and contractors adversely impacted by the events of 9/11/01.

2. Legislative objectives: The legislative objective is to ensure the economic well being of those employees of manufacturers and contractors adversely affected after the events of 9/11/01. In furtherance of this objective, the regulations will provide purchasing preferences for contracts with SUNY, CUNY, state and local governments to apparel firms affected by the terrorist attack in lower Manhattan. Pursuant to New York State Finance Law Section 162(4-a), the preferences will be extended to the firms even if their bid is 15% above the lowest bidder. The proposed accords will ensure that only apparel firms that were affected by 9/11/01 are included in the bidders registry. Furthermore, the legislature intended for the Registry to be in effect from 2002 to 2005 to help benefit the apparel industry that was negatively impacted by the attack on 9/11/01.

3. Needs and benefits: The purpose of the proposed regulations is to achieve the statutory objectives of the legislation. Specifically, the registry would be established and provide for requirements for application and acceptance onto the registry by a manufacturer or contractor. The regulations are needed to implement the intent of the legislation by establishing the necessary administrative apparatus. The benefits of the proposed regulations include the statutory objectives of ensuring the economic well being of those employees of manufacturers and contractors adversely affected by the effects of 9/11/01. All apparel businesses that were in business and registered with the Department of Labor at the time of 9/11/01 were notified and mailed Bidders Registry applications. All businesses were informed that they could contact the Apparel Industry Task Force if they had any questions or needed clarification on the application. The Registry will be made available to all interested parties upon request, either by hard copy or electronically.

4. Costs: (a) Costs to State Government: The cost to the State would include, but is not limited to the cost of application production and distribution, application review, and application response, all of which are projected to be less than \$4,000.00.

(b) Costs to private regulated parties: The cost to the private regulated parties, being manufacturers and contractors in the apparel industry, would be minimal and would include, but is not limited to, the cost of application review and completion by executive staff, and costs associated with mailing, all of which are projected to be less than \$20.00 per applicant.

5. Local government mandates: The rule helps local government by providing a list of apparel firms that the law applies to. Such list will be made available via the internet.

6. Paperwork: No additional paperwork is necessary other than the original application and any supplemental information, if required. The Department will make the Registry available to all interested parties upon request, either by hard copy or electronically.

7. Duplication: The proposed regulations do not duplicate existing state or federal requirements.

8. Alternatives: There are no significant alternatives to be considered. The legislative intent to create a bidders registry and the Labor Department's authorization to oversee it was mandated by statute.

9. Federal standards: Not applicable. There are no federal standards regarding creating a Bidders Registry.

10. Compliance schedule: There is no compliance schedule in the law. Apparel firms may apply for a listing on the registry or withdrawal at any time during the three-year period.

Regulatory Flexibility Analysis

1. Effect of rule: Applies only to Apparel businesses in New York State that had apparel registration certificates as of September 11, 2000 and had been continuously doing business until and including September 11, 2001, and who, in the past five years, have not been found in violation of the workers compensation law or any state or federal labor law, rule or regulation.

2. Compliance requirements: An application process is required to be added to the registry.

3. Professional services: No professional services are required.

4. Compliance costs: Minimal costs may be necessary to obtain information, complete and file the application.

5. Economic and Technological Feasibility: No economic or technological costs are needed.

6. Minimizing adverse impact: The proposed rule will have no adverse economic impact on small businesses that were negatively effected by the events of September 11, 2001, because they may be eligible for a 15% bidders preference in New York State Government apparel contracts. Small businesses that were not negatively effected by the events of September 11, 2001, may have benefited economically or at least remained status quo, thus this regulation attempts to proportion the adverse economic impact that occurred after the events of September 11, 2001.

7. Small business and local government participation: All apparel businesses that were in business at the time of September 11, 2001 were notified and mailed Bidders Registry applications. All businesses were informed that they could contact the Apparel Industry Task Force if they had any questions or needed clarification.

Rural Area Flexibility Analysis

Since over 95 percent of the Registered Apparel firms in New York State are located within the New York City Metropolitan area, this rule will not impose any adverse economic impact or create reporting, record keeping or other compliance requirements for public and private entities in rural areas, as defined in Section 102(10) of the State Administrative Procedure Act. Therefore, a Rural Area Flexibility Analysis is not required by Section 202-bb of such act.

Job Impact Statement

The intent of the Bidders Registry was to increase jobs in New York State by giving purchasing preferences to New York State businesses for state and local government apparel contracts to New York State registered apparel firms that were adversely impacted by the events of September 11, 2001. The Bidders Registry will have an additional positive affect on the 30,000 to 50,000 apparel jobs in New York State by giving a 15% bidders preference to companies on the Registry.

The intent of the legislature was to assist the businesses who were adversely impacted by the events of September 11, 2001, therefore, there may be a significant adverse impact on businesses not listed on the Bidders Registry.

Office of Mental Health

NOTICE OF ADOPTION

Construction of Facilities

I.D. No. OMH-19-03-00003-A

Filing No. 805

Filing date: July 30, 2003

Effective date: Aug. 20, 2003

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

Action taken: Amendment of sections 77.3(a)(1), 87.9(c) and 587.19(b) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

Subject: Standards for physical facilities of hospitals for the mentally ill, schools for the retarded and alcohol facilities; standards for family care homes, and operation of outpatient programs.

Purpose: To delete outdated references to the New York State Building Construction Code, which has been repealed, and replace them with references to the new Residential Code of New York State, the Building Code of New York State and/or the Property Management Code of New York State, which were adopted on Jan. 1, 2003.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-19-03-00003-P, Issue of May 14, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Cortland County Motor Vehicle Use Tax

I.D. No. MTV-23-03-00005-A

Filing No. 841

Filing date: Aug. 5, 2003

Effective date: Aug. 20, 2003

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

Action taken: Addition of section 29.12(s) to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Cortland County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-23-03-00005-P, Issue of June 11, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Standby Service Rates by New York State Electric & Gas Corporation

I.D. No. PSC-27-02-00012-A
Filing date: July 30, 2003
Effective date: July 30, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 02-E-0779, approving revisions to New York State Electric and Gas Corporation's (NYSEG) tariff schedule, P.S.C. No. 115—Electricity.

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

Subject: Tariff filing by NYSEG.

Purpose: To approve a new standby electric service in accordance with commission opinion and order, "Guidelines for the Design of Standby Rates."

Substance of final rule: The Commission adopted with modifications the terms of New York State Electric and Gas Corporation's proposal establishing new standby service rates for customers that do not use the utility's transmission and distribution facilities for all their electric energy requirements, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (02-E-0779SA1)

NOTICE OF ADOPTION

Test Periods in Major Rate Cases by St. Lawrence Gas Company, Inc.

I.D. No. PSC-35-02-00017-A
Filing date: Aug. 4, 2003
Effective date: Aug. 4, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 02-G-1011, approving a request by St. Lawrence Gas Company, Inc. (St. Lawrence) for a waiver of the 150-day provision of the commission's statement of policy regarding test periods in major rate proceeding.

Statutory authority: Public Service Law, sections 22, 65 and 66

Subject: Statement of policy on test periods in major rate cases.

Purpose: To waive the 150-day provision of the commission's statement of policy on test periods in major rate cases.

Substance of final rule: The Commission granted St. Lawrence Gas Company, Inc. a waiver of the 150-day provision of the policy statement adopted in Case 26821, subject to the terms and conditions set forth in this 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-G-1011SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Asset One LLC

I.D. No. PSC-08-03-00005-A
Filing date: July 31, 2003
Effective date: July 31, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 03-E-0137, approving Asset One LLC's request to submeter electricity at 300 State St., Rochester, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity for new, renovated or existing commercial buildings.

Purpose: To allow Asset One LLC to submeter electricity.

Substance of final rule: The Commission authorized Asset One LLC to submeter electricity at 300 State Street in Rochester, New York, located in the territory of Rochester Gas and Electric Corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (03-E-0137SA1)

NOTICE OF ADOPTION

Issuance of Long-Term Debt and New Securities by Rochester Gas and Electric Corporation

I.D. No. PSC-10-03-00007-A
Filing date: Aug. 1, 2003
Effective date: Aug. 1, 2003

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

Action taken: The commission, on June 18, 2003, adopted an order in Case 03-M-0178, authorizing Rochester Gas and Electric Corporation (RG&E) to issue and sell long-term debt, issue new securities and enter into other risk management transactions.

Statutory authority: Public Service Law, sections 69, 107 and 108

Subject: Issuance of long-term debt and new securities.

Purpose: To issue long-term debt and new securities for the purpose of refunding preferred stock.

Substance of final rule: The Commission granted Rochester Gas and Electric Corporation (RG&E) the authority to issue and sell \$202 million of debt securities for traditional utility purposes through December 31, 2004, \$176 million for the purpose of early redemptions of debt and preferred stock through December 31, 2007. In addition, RG&E is permitted to enter into interest rate risk management instruments to manage its interest costs and floating rate exposure, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-M-0178SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Columbus Centre Developer LLC

I.D. No. PSC-11-03-00011-A

Filing date: July 30, 2003

Effective date: July 30, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 02-E-1598, approving Columbus Centre Developer LLC's request to submeter electricity at 80 Columbus Center, New York, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity for new, renovated or existing commercial buildings.

Purpose: To allow Columbus Centre Developer, LLC to submeter electricity.

Substance of final rule: The Commission authorized Columbus Centre Developer LLC to submeter electricity at 80 Columbus Center in New York City, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(02-E-1598SA1)

NOTICE OF ADOPTION

Major Rate Increase by St. Lawrence Gas Company, Inc.

I.D. No. PSC-11-03-00013-A

Filing date: Aug. 4, 2003

Effective date: Aug. 4, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 02-G-1275, approving the amendments to St. Lawrence Gas Company, Inc.'s (St. Lawrence) tariff schedule for gas Service—P.S.C. No. 2.

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

Subject: Tariff filing by St. Lawrence.

Purpose: To increase annual gas operating revenues.

Substance of final rule: The Commission authorized St. Lawrence Gas Company, Inc. (St. Lawrence) to increase its annual gas revenues by 2.7% starting on September 1, 2003, and to file tariff amendments necessary to implement the requirements of this order by no later than August 27, 2003 to become effective on September 1, 2003, subject to the terms and conditions set forth in this 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-G-1275SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Columbus Centre Developer LLC

I.D. No. PSC-12-03-00016-A

Filing date: July 31, 2003

Effective date: July 31, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 02-E-1599, approving Columbus Centre Developer LLC's request to submeter electricity at 25 Columbus Center, New York, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity for new, renovated or existing commercial buildings.

Purpose: To allow Columbus Centre Developer LLC to submeter electricity.

Substance of final rule: The Commission authorized Columbus Centre Developer LLC to submeter electricity at 25 Columbus Center in New York City, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(02-E-1599SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Charitable Leadership Foundation

I.D. No. PSC-13-03-00004-A

Filing date: July 30, 2003

Effective date: July 30, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 03-E-0260, approving Charitable Leadership Foundation's request to submeter electricity at 150 New Scotland Ave., Albany, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity for new, renovated or existing commercial buildings.

Purpose: To allow Charitable Leadership Foundation to submeter electricity.

Substance of final rule: The Commission authorized Charitable Leadership Foundation to submeter electricity at 150 New Scotland Avenue, Albany, New York, located in the territory of Niagara Mohawk Power Corporation, 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.
(032-E-0260SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Bank Street Commons

I.D. No. PSC-20-03-00015-A

Filing date: Aug. 1, 2003

Effective date: Aug. 1, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 03-E-0551, authorizing Accurate Energy Group to submeter electricity at 15 and 25 Bank St., White Plains, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity for new or renovated residential rental units.

Purpose: To permit Accurate Energy Group to submeter electricity.

Substance of final rule: The Commission approved a request of Accurate Energy Group to submeter electricity at 15 and 25 Bank Street, White Plains, New York, located in the territory of Consolidated Edison of New York, Inc., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0551SA1)

NOTICE OF ADOPTION

Aggregation of Electric Services by Niagara Mohawk Power Corporation

I.D. No. PSC-22-03-00018-A

Filing date: Aug. 1, 2003

Effective date: Aug. 1, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 03-E-0764, allowing Niagara Mohawk Power Corporation (Niagara Mohawk) to revise its tariff schedule, P.S.C. No. 207—Electricity.

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

Subject: Tariff amendments.

Purpose: To revise rule no. 47—aggregation of electric services.

Substance of final rule: The Commission approved with modifications a request by Niagara Mohawk Power Corporation to revise Rule No. 47 to permit customers to aggregate their service under certain situations, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0764SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and Southwestern Bell Mobile Systems, LLC

I.D. No. PSC-33-03-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Citizens Communications of New York and Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless for approval of an interconnection agreement executed on June 9, 2003.

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

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

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

Substance of proposed rule: Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Citizens Communications of New York and Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Citizens Communications of New York and Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless 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 June 9, 2004, 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: 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.

(03-C-1047SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection Agreement between Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc. and New York Coin Telephone Company, Inc.

I.D. No. PSC-33-03-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc. and New York Coin Telephone Company, Inc. for approval of an interconnection agreement executed on June 9, 2003.

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

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

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

Substance of proposed rule: Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc. and New York Coin Telephone Company, Inc. have reached a negotiated agreement whereby Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc. and New York Coin Telephone Company, Inc. will interconnect their networks at mutually agreed upon points of interconnec-

tion 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 June 1, 2004, 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: 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.

(03-C-1048SA1)

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

Day Ahead Demand Reduction Program by Orange and Rockland Utilities, Inc.

I.D. No. PSC-33-03-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by Orange and Rockland Utilities, Inc. (the company) to make a change in the rates, charges, rules, and regulations contained in its tariff schedule, P.S.C. No. 2—Electricity to become effective Oct. 23, 2003.

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

Subject: Rider K—Day Ahead Demand Reduction Program.

Purpose: To eliminate the penalty multiplier applicable when the customer's load reduction is less than the customer's bid, to conform to a FERC-approved change in the NYISO's Day-Ahead Demand Reduction Program.

Substance of proposed rule: Orange and Rockland Utilities, Inc. proposes to revise its Rider K - Day Ahead Demand Reduction Program to its P.S.C. No. 2 - Electricity to become effective October 23, 2003. The company proposes to eliminate the penalty multiplier applicable when the customer's load reduction is less than the customer's bid, to conform to a FERC- approved change in the NYISO's Day-Ahead Demand Reduction Program.

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.

(03-C-1054SA1)

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

Off-Peak Firm Rate by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-33-03-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates,

charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 9.

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

Subject: Service Classification No. 12—off-peak firm rate (rate 2).

Purpose: To change the timing associated with notifying its Service Classification No. 12 rate 2—off-peak firm customers of monthly rate changes.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. proposes changes to its Schedule P.S.C. No. 9 - Gas to change the timing associated with notifying its S.C. No. 12 Rate 2 - off-peak firm customers of monthly rate changes in order to recognize NYMEX closing prices in the establishment of the monthly rate.

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.

(03-G-1044SA1)

Racing and Wagering Board

**EMERGENCY
RULE MAKING**

Trifecta Wagering in Thoroughbred Graded Stake Races

I.D. No. RWB-33-03-00007-E

Filing No. 839

Filing date: Aug. 1, 2003

Effective date: Aug. 1, 2003

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

Action taken: Amendment of section 4011.22(i) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 227

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

Specific reasons underlying the finding of necessity: This rule amendment provides authorization for the conduct of trifecta wagering on thoroughbred graded stakes races in the event there are five betting entries in the race, rather than the mandatory minimum of six as prescribed by the current rule. Vast amounts of wagers would be subject to loss in the event trifecta wagering was cancelled due to the reduction in available betting entries from six to five. This would result in the loss of significant revenues to the State, breeders and the industry. An emergency rulemaking is necessary because the board has determined that emergency adoption is necessary for the preservation of the general welfare and that standard rulemaking procedures would be contrary to the public interest.

Subject: Authorization for the conduct of trifecta wagering in thoroughbred graded stakes races in those situations where there are five betting entries.

Purpose: To authorize the conduct of trifecta wagering in thoroughbred graded stakes races in those situations where there are five betting entries in order to avoid the mandatory cancellation of the trifecta betting pool, thereby preserving the wagering opportunities and corresponding revenues associated with this type of wager.

Text of emergency rule: Paragraph i of 9 N.Y.C.R.R. Section 4011.22 Trifecta is hereby amended to read:

(i) No trifecta wagering shall be conducted on any race having fewer than six betting entries, *provided however, that in a Graded Stakes race no*

trifecta wagering shall be conducted on any race having fewer than five betting entries. If fewer than six betting entries start in other than a Graded Stakes race, the trifecta shall be declared off and the gross pool refunded. If fewer than five betting entries start in a Graded Stakes race, the trifecta shall be declared off and the gross pool refunded. If a trifecta pool is cancelled and if time permits, with the approval of the board's steward, a track may schedule exacta wagering in place of trifecta wagering. For purposes of this rule, a Graded Stakes race shall mean those races designated as Grade I, Grade II or Grade III by the American Graded Stakes Committee.

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 October 29, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Robert A. Feuerstein, Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206-1668, (518) 453-8460, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

Statutory authority: Section 101(1) of the Racing, Pari-Mutuel Wagering and Breeding Law vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 227 of the Racing, Pari-Mutuel Wagering and Breeding Law provides that the Board shall make rules regulating the conduct of pari-mutuel betting.

Legislative objectives: This proposed amendment advances the legislative objective of regulating the conduct of pari-mutuel racing in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

Needs and Benefits: This rule amendment is necessary to address those situations where, in Graded Stakes races, the trifecta wagering opportunity would be eliminated or cancelled because there are not six betting interests, as required by the existing Rule 4011.22(i). The benefit of the rule amendment would be the retention of the wagering opportunities with the corresponding preservation of revenues to the State, localities, and the racing and breeding industries.

Costs. This rule amendment affects only the required minimum number of betting interests in a thoroughbred trifecta Graded Stakes race. The rule will impose no new costs for state or local governments. The rule will impose no costs upon regulated parties. The rule will not impose any new costs on the Racing & Wagering Board for the implementation and continued administration of the rule.

Paperwork: There is no additional paperwork required by or associated with this rule amendment.

Local government mandates: This rule would impose no local government mandates.

Duplication: There are no other state or federal requirements similar to the provisions contained in the rule amendment.

Alternative approaches: There are no other significant alternatives to this rule, which was narrowly drafted to accomplish the stated benefits in thoroughbred races of significant merit and interest.

Federal standards: The rule does not exceed any minimum standards of the federal government because there are no applicable federal rules.

Compliance schedule: This emergency rule amendment is effective upon filing. Compliance can be accomplished immediately without need for modification of existing procedures.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the rule will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. The rule will apply only to associations and corporations that conduct pari-mutuel thoroughbred racing and those facilities that accept wagers on races conducted at those facilities. Those associations, corporations and entities do not qualify as a small business or local government.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because the rule amendment will not impose any adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas.

The Racing & Wagering Board has made this determination based upon the nature of the rule amendment, which merely changes the number of required betting interests for trifecta wagering on certain thoroughbred races. Trifecta wagering is an existing form of approved wagering. Further, the Racing & Wagering Board has made these determinations based upon its knowledge and familiarity with the various pari-mutuel wagering operations throughout New York State.

Job Impact Statement

A job impact statement is not submitted with this notice because the New York State Racing & Wagering Board has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. This is evident from the nature of the rule, which preserves wagering opportunities and associated revenues. The New York State Racing and Wagering Board has made this determination based upon its knowledge and familiarity with pari-mutuel wagering operations throughout New York State.