

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Budget Planners

I.D. No. BNK-28-03-00006-E

Filing No. 679

Filing date: June 30, 2003

Effective date: June 30, 2003

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

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

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

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

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

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

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

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

Subject: Regulation of budget planning activities.

Purpose: To set forth the regulatory requirements and standards of operation.

Text of emergency rule:

PART 402 BUDGET PLANNERS

§ 402.1 Definitions.

For purposes of this Part:

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

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

(c) The term "capital certificate" shall have the same definition as is set forth in Section 501 of the New York Not For Profit Corporation Law.

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

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

§ 402.2 Application for a license.

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

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

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

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

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

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

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

(6) A copy of the applicant's bylaws.

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

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

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

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

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

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

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

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

(15) A litigation affidavit prepared for each applicant.

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

(17) The applicant's financial statements for the past three years or, for new corporations, a pro-forma financial statement. Financial statements shall include a balance sheet, a statement of revenues and expenses, and a statement of cash flows.

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

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

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

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

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

(19) Such other pertinent information as the superintendent may require.

§ 402.3 Services to be provided by licensee.

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

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

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

§ 402.4 Duration of qualifier experience.

If at any time the licensee ceases to be in compliance with the requirement of section 580.1(e) of the New York Banking Law, it shall notify the superintendent within ten calendar days of such noncompliance. Within three calendar days of making such notification, the licensee shall submit to the superintendent, the name and qualifications of any other director, whether or not a member of the governing board, who has been engaged by the licensee to satisfy the requirements of section 580.1(e).

§ 402.5 Provision for surety bond.

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

(b) Such bond shall be in favor of the superintendent. The bond, or deposit agreement entered into pursuant to section 402.7 below, shall contain substantially the following language:

"The proceeds of this [bond/deposit agreement] shall constitute a trust fund in favor of the superintendent to be used exclusively to reimburse payments by debtors that have not been properly distributed to creditors or to reimburse fees determined by the superintendent to be improperly charged or collected and, in the event of the insolvency, liquidation or bankruptcy of such licensee, to pay outstanding banking department examination costs and assessments."

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

(a) A licensee, in lieu of obtaining a bond pursuant to this Part, may keep on deposit with such banks, savings banks, savings and loan associations, trust companies, private bankers, national banks, federal savings banks, or federal savings and loan associations in this State, as such licensee may designate and the superintendent may approve, interest-bearing bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district, or instrumentality of this State or guaranteed by this State, or dollar deposits. The amount of the deposit shall be \$250,000 (based on the lower of principal amount or market value), or such larger or smaller amount as the superintendent may require.

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

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

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

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

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

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

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

§ 402.7 Deposit agreement; certificate of licensee.

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

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

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

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

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

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

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

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

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

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

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

§ 402.9 Debtors contact with licensees and Banking Department.

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

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

§ 402.10 Right of debtors to rescind contract.

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

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

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

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

§ 402.11 Term and termination; assignment.

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

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

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

§ 402.12 Unfair or deceptive acts or practices.

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

§ 402.13 Reports to be filed with the superintendent.

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

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

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

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

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

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

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

§ 402.14 Changes to licensee's fee structure.

Any modification of the licensee's fee structure for debtors shall require that the licensee notify the superintendent in writing of the proposed change(s) at least thirty calendar days prior to implementation. The superintendent shall review the fee structure taking into consideration the expenses of the operation, the financial status of the debtor(s) and such other factors as the superintendent shall deem relevant. The licensee may implement the modified fee structure unless the superintendent disapproves of the change(s) in writing within thirty days of notification of the proposed change(s) unless such time period is extended in writing by the superintendent.

§ 402.15 No commingling of licensee's funds.

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

(b) Accounts must be maintained in a New York branch of a bank, savings bank, savings and loan association, trust company, private banker,

national bank, federal savings bank, or federal savings and loan association.

§ 402.16 Licensee's privacy policy.

Each licensee shall comply with the privacy provisions contained in Title 5 of the Gramm-Leach-Bliley Act of 1999 and the regulations promulgated thereunder by the Federal Trade Commission, which are found in 16 CFR Part 313.

§ 402.17 Office Display.

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

(1) the name and principal address of the licensee

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

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

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

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

§ 402.18 Change of location.

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

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

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

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

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

§ 402.19 Reports of arrests, convictions, etc.

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

§ 402.20 Reports of misconduct.

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

§ 402.21 Books and records.

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

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

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

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

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

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

(b) Ledgers. Each licensee shall maintain a general ledger and such subsidiary ledgers as is necessary to accurately record all assets, liabilities,

net assets, income and expenses, and contingencies. Such ledgers shall be posted at least monthly. As of the end of each month a trial balance shall be prepared and kept readily available for inspection by Banking Department personnel.

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

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

§ 402.22 Licensee's return of unused debtor funds.

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

§ 402.23 Effective date.

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

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire September 27, 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

Regulatory Impact Statement

1. Statutory Authority:

New York Banking Law Article 12-C Section 587 provides the statutory authority for the superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning.

2. Legislative Objective:

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

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

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

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

Notably, the amendments to Article 12-C intended to increase consumer protections for the Debtors who contract with licensed budget planners include, but are not limited to: a) requiring licensed budget

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

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

The proposed New Part 402 sets forth a comprehensive framework for the regulation of entities licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. New Part 402 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law and Article 28-B of New York's General Business Law.

3. Needs and Benefits:

Proposed New Part 402 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. In response to the recent legislation in this area, the rule facilitates the stricter regulation of budget planning activities to provide more consumer protections for the clients of licensed budget planners.

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

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

It is the Banking Department's belief that the rule as proposed is necessary to eliminate any confusion that licensed budget planners may have with respect to the regulatory framework within which they must conduct their business. Notably, the rule has been updated to provide clarity in that it sets forth definitions as well as all of the new reporting/

disclosure, recordkeeping and compliance requirements that are reflective of the increased consumer protections afforded to clients of budget planners based on recently enacted legislation intended for that purpose. At the same time, the proposed rule is reflective of reporting/disclosure, recordkeeping and other requirements currently followed by licensed budget planners.

4. Costs:

(a) Costs to State Government: None

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

(b) Costs to Local Government: None

(c) Costs to Regulated Entities:

Reporting/Disclosure and Recordkeeping

The proposed rule contains certain recordkeeping and reporting/disclosure requirements not currently required of licensed budget planners either under New York's Banking Law, the Superintendent's regulations, or administratively by the Banking Department. It is anticipated that costs will be incurred by the regulated entities to comply with the new requirements, but that the costs will be minimal. In particular, most of the information newly required by the proposed rule to be maintained and reported is of the type likely to already be maintained by the licensees for their management and operational purposes. For example, for examination and supervisory purposes, the proposed rule requires that licensees maintain general ledgers, subsidiary ledgers, and individual client files. In addition, the rule requires licensees to report certain information regarding changes in fee structure, and the number of clients for the New York business, and the amount of client funds held by the licensee for disbursement to creditors. These types of records and information are fundamental to the operation of a budget planning business. As such, they should be readily available for reporting/disclosure as required by proposed new Part 402. The annual cost of continued compliance should also be minimal for the same reason.

Budgeting, Educational and Counseling Services

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

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

Establishment of Toll Free Number or "Collect" Calling Number

The proposed rule requires licensed budget planners to establish either a toll free number or a phone number that may be called on a "collect" basis. This requirement was put in place to facilitate the ease with which clients who are in budget planning contracts with licensees may make inquiries of, or complaints to, the licensee. The Banking Department is unable to estimate what the cost will be for licensees to comply with this requirement for the following reasons. First, as the Banking Department understands the billing arrangements for the establishment of toll free numbers, rates to establish such are negotiable based upon, among other things, the particular service provider, and the services that a company may already obtain with the provider. Second, the cost per minute for such a call is negotiable as well. Finally, the volume of calls made either to a toll free number or on a "collect" basis to a particular licensee is not certain. Therefore, based on factors that are unknown, it is not possible to develop an estimate of the costs for such calling arrangements.

(d) Costs to the Banking Department for Implementation and Continued Administration of the Rule: Since out-of-state persons or entities that enter into contracts with New York residents for budget planning services

will now have to be licensed under Article 12-C of New York's Banking Law, the Banking Department may incur certain initial administrative costs with respect to the processing of applications, and the providing of regulatory services by Banking Department staff for these newly licensed entities. It is not possible to estimate these costs at this time since the Banking Department is not certain of the number of such new licensees.

5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

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

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

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

7. Duplication:

The proposed rule revises the existing regulation at the State level with respect to licensed budget planners.

8. Alternatives:

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

(b) Do not propose the rule.

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

Additionally, if this rule is not proposed, the ability to provide a comprehensive framework to enable licensed budget planners to understand, in a clear and concise way, the scope of the activities that they are permitted to partake in, as well as the reporting/disclosure, recordkeeping

and other compliance requirements that they must adhere to, would not be realized.

9. Federal Standards:

None.

10. Compliance Schedule:

As was explained in the section on Costs to Regulated Entities contained herein, most of the information newly required by the proposed rule to be maintained and reported/disclosed is of the type likely to be already maintained by licensed budget planners for management and operational purposes. As such, the Banking Department anticipates that the current licensees will be able to come into compliance with these newly imposed requirements without delay, or within a few weeks.

With regard to the establishment of a toll free, or a "collect" calling number, the Banking Department does not anticipate that coming into compliance with this requirement would take more than a day or two in order to arrange for the required telephone systems.

With respect to the requirement that licensed budget planners provide adequate budgeting, educational and counseling services to their clients, it is presumed that most, if not all of the current licensees already provide some type of educational services to their clients, as Type B not-for-profit corporations formed for an educational purpose under New York's Not-For-Profit Corporation Law. However, it is possible that the current licensees may need a short period of time to perhaps reorganize or make some additional plans to provide the level of counseling required by this rule, in the event that the services they currently offer in this area do not satisfy the requirement. It is expected that the same may hold true for budget planners from out-of-state who may become licensed in New York to conduct the business of budget planning, presuming that these entities currently provide some form of budgeting, educational or counseling services for their clients.

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

Regulatory Flexibility Analysis

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under the New York Not-For-Profit Corporation law. Under New York's Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Consequently, because the rule affects Type B not-for-profit corporations in which ownership is prohibited, such corporations do not qualify as small businesses in New York State. Furthermore, Type-B not-for-profit corporations are not local governments.

Since budget planners licensed under New York's Banking Law are not small businesses or local governments, the rule will not impose any appreciable or substantial adverse economic impact, or reporting, or recordkeeping or other compliance requirements on small businesses or local governments. Accordingly, a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a rural area based on the character and nature of the rule. The rule is comprised of record keeping, reporting and other compliance requirements currently imposed on licensed budget planners. Specifically, certain of the reporting, recordkeeping and compliance requirements that make up the rule for entities that obtain a license under Article 12-C of the New York Banking Law to conduct the business of budget planning are currently imposed on licensees under the following: a) Article 12-C or other provisions of New York's Banking Law and General Business Law; or b) current Superintendent's Regulations; or c) as administrative requirements of the Banking Department. In addition, the rule contains certain new reporting, recordkeeping and other compliance requirements based on the need for increased consumer protection as evidenced by recent legislative amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law. The amendments were designed to strengthen regulation of the budget planning industry.

Since the rule contains certain reporting, recordkeeping and other compliance requirements currently imposed on licensed budget planners, as well as new reporting, recordkeeping and compliance requirements related to recent legislation in this area enacted in response to the need for

increased consumer protection for the clients of licensed budget planners, it is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, a Rural Area Flexibility Analysis is not submitted.

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

Job Impact Statement

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

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

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

Department of Correctional Services

NOTICE OF ADOPTION

Inmate Correspondence Program

I.D. No. COR-17-03-00003-A

Filing No. 676

Filing date: June 27, 2003

Effective date: July 16, 2003

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

Action taken: Repeal of section 720.4(a) and addition of new section 720.4(a) to Title 7 NCRRR.

Statutory authority: Correction Law, section 112

Subject: Inmate Correspondence Program.

Purpose: To prevent errant delivery of mail.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-17-03-00003-P, Issue of April 30, 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

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Mentoring Programs

I.D. No. EDU-05-03-00007-C

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

The notice of proposed rule making, I.D. No. EDU-05-03-00007-P was published in the *State Register* on February 5, 2003.

Subject: Mentoring programs at school districts and boards of cooperative educational services.

Purpose: To require school districts and boards of cooperative educational services to include a mentoring program for new teachers in their professional development plans covering the time period, Feb. 2, 2004 and thereafter.

Substance of rule: The purpose of the proposed amendment is to require school districts and boards of cooperative educational services (BOCES) to include a mentoring program for new teachers in their professional development plans covering the time period, February 2, 2004 and thereafter.

Paragraph (2) of subdivision (dd) of section 100.2 of the Regulations of the Commissioner of Education is amended to require the professional development plans of school districts and BOCES that cover the above-referenced time period to provide for a mentoring program. The requirements for this portion of the professional development plan are prescribed in a new subparagraph (iv).

Clause (a) of subparagraph (iv) states the purpose of the mentoring program.

Clause (b) of subparagraph (iv) requires the professional development plan to describe how the school district or BOCES will provide a mentoring program for teachers in the classroom teaching service who must participate in a mentoring program to meet the teaching experience requirement for the professional certificate, as prescribed in section 80-3.4 of this Title.

Clause (c) of subparagraph (iv) requires the mentoring program to be developed and implemented consistent with any collective bargaining obligation required by Article 14 of the Civil Service Law, provided that nothing herein shall be construed to impose a collective bargaining obligation that is not required by Article 14 of the Civil Service Law.

Clause (d) of subparagraph (iv) provides that information obtained by a mentor through interaction with the new teacher while engaged in the mentoring activities of the program shall not be used for evaluating or disciplining the new teacher, except as prescribed in this clause.

Clause (e) of subparagraph (iv) requires the school district or BOCES to describe listed elements of its mentoring program in its professional development plan.

Paragraph (5) of subdivision (dd) of section 100.2 of the Regulations of the Commissioner of Education is amended to require school districts and BOCES to maintain prescribed documentation of the implementation of the mentoring program.

Changes to rule: No substantive changes.

Expiration date: February 5, 2004.

Text of proposed rule and changes, if any, 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 Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Stationary Combustion Installations

I.D. No. ENV-28-03-00024-P

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

Proposed action: Amendment of Parts 201 and 227 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311

Subject: Stationary combustion installations.

Purpose: To reduce the emission limits for stationary internal combustion engines and allow more flexibility for sources utilizing a CEMS.

Public hearing(s) will be held at: 1:00 p.m., Aug. 19, 2003 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; 1:00 p.m., Aug. 21, 2003 at Mahoney State Office Bldg., 65 Court St., Hearing Rm. Part 1, Buffalo, NY; and 1:00 p.m., Aug. 22, 2003 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rms. 129A and B, Albany, NY.

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

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

Substance of proposed rule: The proposed changes to 6 NYCRR Part 227 mark the latest in a sustained series of actions undertaken by New York State, in concert with the U.S. Environmental Protection Agency (EPA) and other states, to control emissions of ozone precursors, nitrogen oxides (NO_x), and volatile organic compounds (VOCs), so that New York State may attain the one-hour National Ambient Air Quality Standard (NAAQS) for ozone.

Part 227 provides the NO_x emission reductions needed to comply with the proposed EPA rule making which conditionally approved the November 1998 1-Hour Ozone Attainment Demonstration for the NYMA/LOCMA. The proposed conditional approval requires the state, among other things, to adopt sufficient measures to address the required level of reductions identified by EPA for ozone attainment, and to submit those measures to EPA as a revision to the SIP no later than October 31, 2001. The proposed conditional approval is a result of a federal consent decree (NRDC vs. EPA, Civ. No. 99-2976) setting forth the procedures for approving ozone attainment demonstrations.

Promulgation of these revisions to Part 227 is intended to reduce NO_x emissions from stationary combustion installations in order to address the emission shortfalls associated with the one-hour ozone NAAQS and make progress towards reducing eight-hour ozone levels. New York State and other states in the New York - Northern New Jersey - Long Island - New Jersey -Connecticut Ozone Non-Attainment Area must reduce the EPA-identified shortfall for both NO_x and VOCs by the year 2007; for NO_x that shortfall is seven tons-per-day.

The new requirements are proposed to become effective on April 1, 2005 and will help the NYMA achieve attainment with the one-hour ozone NAAQS, as well as reduce eight-hour ozone levels throughout New York State. The proposed amendments to Part 227 reduce NO_x emission rate limits for only one of the source categories - stationary internal combustion engines, and will require between 25 and 75 percent NO_x emissions control beyond existing Reasonably Available Control Technology (RACT) standards. The applicability threshold in the severe ozone non-attainment area are proposed to be lowered from 225 bhp to 200 bhp. Engine test cells at engine manufacturing facilities which are utilized for either research and development or reliability performance testing, are exempted from the proposed requirements. The rule making will allow increased flexibility for sources which utilize a CEMS.

Industrial boilers, stationary combustion turbines, and cement kilns (all source categories) will not be affected by the proposed revision to Part 227.

Emission sources which received alternative emission limits pursuant to 6 NYCRR 227-2.5(c) will need to reevaluate their alternative emission limit.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Jennings, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, e-mail: mxjennin@gw.dec.state.ny.us

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

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

Additional matter required by statute: Pursuant to art. 8 of the State Environmental Quality Review Act, a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file. This rule must be approved by the Environmental Board.

Summary of Regulatory Impact Statement

The promulgation of revised Subpart 227-2 is authorized by Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311 of the Environmental Conservation Law (ECL). The proposed changes to 6 NYCRR Subpart 227-2 mark the latest in a sustained series of actions undertaken by New York State to control emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs), which are precursors to the formation of ozone, so that New York State may attain the national ambient air quality standard (NAAQS) for ozone, an air pollutant. Implementation of the program proposed by the revisions to Subpart 227-2 will, in concert with counterpart programs established by other states and Federal Implementation Plans imposed by the U.S. Environmental Protection Agency (EPA), lower levels of ozone in New York State and decrease the adverse public health and welfare effects described above.

Ozone in the stratosphere is naturally occurring and desirable because it shields the earth from harmful ultraviolet rays from the sun which may cause skin cancer. Ozone at ground level, however, causes throat irritation, congestion, chest pains, nausea and labored breathing. It aggravates respiratory conditions such as chronic lung and heart diseases, allergies, and asthma. Ozone also damages the lungs and may contribute to lung disease. Unlike other pollutants, ozone is a secondary pollutant not emitted directly, but formed in the atmosphere by a variety of photochemical reactions involving VOCs and NO_x in the presence of sunlight. NO_x is a by-product of fossil fuel combustion and is emitted primarily by utilities, motor vehicles and major industrial facilities.

On December 16, 1999, the EPA issued a proposed rule conditionally approving the November 1998 one-hour ozone attainment demonstration for the NYMA/LOCMA (64 FR 70364). Among other things, this conditional approval required the State to adopt sufficient measures to address the required level of reductions identified by EPA as necessary for the State to reach attainment by 2007. On April 18, 2000, the Department submitted a proposed SIP revision to EPA which described the State's strategy aimed at achieving the necessary additional VOC emissions reductions. On February 4, 2002, this enforceable commitment was approved by EPA as part of the State's SIP (67 FR 5170). The revisions to Subpart 227-2 will enable the State to meet the NO_x reduction target identified by EPA.

The changes proposed for Subpart 227-2 are one component of several changes proposed for adoption by the member states of the Ozone Transport Commission, which includes New York State. The new requirements are proposed to become effective on April 1, 2005 to help the NYMA achieve attainment with the one-hour ozone NAAQS. The changes proposed for Subpart 227-2 would reduce the emission limits for stationary internal combustion engines. The owner or operator of a subject facility must undertake an evaluation of control technologies and/or strategies like fuel switching, selective catalytic reduction, or system-wide averaging as compliance options. Alternative control or emission limits will be granted to those sources which demonstrate that the applicable emission limits are not economically or technically feasible. This alternative reasonably available control technology (RACT) emission limit must be approved by the New York State Department of Environmental Conservation (Department) and by EPA as a revision to the State Implementation Plan.

The cost of NO_x abatement associated with the proposed controls is reasonable and cost effective. The annualized costs for the proposed changes to Subpart 227-2 are expected to be below \$3,000 per ton of NO_x removed, with some outlier facilities approaching \$5,000 to \$6,000 per ton of NO_x removed. Capital costs will vary with engine size, but an average cost of \$25 to \$40 per unit of horsepower appears to be a reasonable estimate of those costs, with the per horsepower cost increasing inversely with engine size. A report on alternative control techniques issued by the Emission Standards Division, Office of Air Quality Planning and Stan-

dards of the EPA contains cost algorithms for the pollution prevention techniques and control technology applied to internal reciprocating engines. Those algorithms yields costs; which run from \$250 to \$1,700 per ton for engines larger than 1,000 horsepower for the elimination of NO_x. For smaller engines, the cost spans \$400 to \$3,500 per ton. The upper limit for cost effectiveness for the current version of Subpart 227-2 was \$3,000 per ton of NO_x removed in 1994 dollars. Adjusting for inflation, using the Consumer Price Index for the metropolitan area, the cost is \$3,730 per ton. Therefore, the costs for NO_x control associated with the proposed revisions to Subpart 227-2 are reasonable.

The proposed changes to Subpart 227-2 do not duplicate any existing state or federal law, rule or regulation.

No additional record keeping or reporting will be required by the proposed revisions to Subpart 227-2.

The Department evaluated both the "no-action" alternative and an alternative which would have implemented the full OTC model rule. Both alternatives were rejected as not meeting the needs, constraints and objectives of the EPA, the regulated community, and the Department.

Regulatory Flexibility Analysis

The Department of Environmental Conservation (the Department) proposes to revise 6 NYCRR Part 227, Stationary Combustion Installations, by revising the NO_x emission limits for stationary internal combustion engines in Subpart 227-2, Reasonable Available Control Technology (RACT) for Oxides of Nitrogen (NO_x).

Effects on Small Businesses and Local Governments:

Fewer than twenty small businesses are anticipated to be impacted by the proposed changes in emission limits. Seven are landfill gas recovery facilities, nine are commercial energy producers and/or cogeneration facilities, and the rest are used for miscellaneous purposes. Seven local government entities will be impacted by this regulation - Town of Brookhaven, NYC DEP, NYC HHC, Nassau County Health Department, Village of Freeport, Village of Rockville Centre, and the State of New York.

Compliance Requirements:

The proposed changes to Subpart 227-2 incorporate the following reporting, record keeping or other affirmative actions which are not required under the current regulation:

- The owner/operator of those facilities required to emission test under subdivision (a) of 227-2.6 shall submit a compliance test protocol to the Department for approval at least 30 days prior to emission testing, instead of 90 days, and submit a compliance test report containing the results of the emission test to the Department no later than 60 days after completion of the emission test.
- The Department is also proposing to simplify the record keeping and reporting requirements for facilities subject to Acid Rain Program monitoring (40 CFR Part 75) or NO_x Budget Trading Program (6 NYCRR Part 204). These facilities will be allowed the choice of either following the procedures in 40 CFR Parts 60 and 75 and 6 NYCRR Part 204 to demonstrate compliance with Subpart 227-2 or using the existing recordkeeping and reporting provisions in Subpart 227-2.

Professional Services:

Most small businesses and local governments do not have environmental staff that can complete the requirements of the proposed Subpart 227-2 revisions. Therefore, they will likely need to utilize consulting services to prepare compliance plans and design any necessary changes to meet the revised emission limits. Compliance stack testing services will also need to be procured in order to write stack test protocols and conduct testing.

Compliance Costs:

The annualized costs for the proposed changes to Subpart 227-2 are expected to be below \$3,000 per ton of NO_x removed, with some facilities approaching \$5,000 to \$6,000 per ton of NO_x removed. Capital costs will vary with engine size. An average cost of \$25 to \$40 per horsepower is expected, with the per horsepower cost increasing with smaller engine sizes. A report on alternative control techniques issued by the Emission Standards Division, Office of Air Quality Planning and Standards of the EPA contains cost algorithms for the pollution prevention techniques and control technology applied to internal reciprocating engines. Using those algorithms, it was determined that the costs for reducing NO_x run from \$250 to \$1,700 per ton for engines larger than 1,000 horsepower. For engines smaller than 1,000 horsepower, the cost spans \$400 to \$3,500 per ton. The upper limit for cost effectiveness for the current version of Subpart 227-2 was \$3,000 per ton of NO_x removed in 1994 dollars. Adjusting for inflation, using the Consumer Price Index for the metropolitan area, the cost is \$3,730 per ton. Therefore, the costs for NO_x control associated with the proposed revisions to Subpart 227-2 are reasonable.

Minimizing Adverse Impact:

The proposed revisions to Subpart 227-2 have been developed to minimize the cost burden to small businesses and local governments. Impacts were limited by restricting the revisions to only the internal combustion engine sector. Thus, these revisions will affect fewer than twenty small businesses and twelve local government facilities. If the option to regulate boilers and turbines was chosen, an additional forty local government facilities would be affected, along with a minimum of twenty small businesses. The control technology costs to meet RACT for boilers and turbines are equivalent to those for stationary internal combustion engines (\$400 to \$3,500 per ton of NO_x reduced). The projected control costs to local governments and small businesses with internal combustion engines has been conservatively estimated to be half of the cost to those facilities with boilers and turbines.

Several control options exist for stationary internal combustion engines. Various control technologies are available that would enable sources to comply with the revised emission limits. These include low emission combustion, selective catalytic reduction, and non-selective catalytic reduction. Sources will also be allowed to meet a 90 percent reduction from their 1990 baseline emissions as a control option. If the source can show that they meet the 90 percent control and that it is below the proposed limits then they will be required to meet only the proposed limits (and nothing more stringent). Other options like fuel switching and system wide averaging may also be used to comply with the new RACT limits. Finally, a facility that shows based on economic or technical considerations that the proposed limits are not RACT for its operation may receive a case-by-case RACT determination from the Department.

In summary, the type of sources that will be regulated under the proposed Subpart 227-2 revisions have a number of compliance options available. Also, by limiting this regulation to stationary internal combustion engines, the Department has minimized the cost of control to local governments and small businesses. This has limited the adverse economic impacts on local governments and small businesses as a result of the implementation of the proposed rule.

Small Business and Local Government Participation:

Initially, the Department sent a copy of the proposed revisions to every permittee affected by the proposed changes. The original comments received were mostly requests for clarification. Also, the Department held a public outreach session on January 9, 2003. The attendees received a working copy of the revised rule and a draft copy of the Regulatory Impact Statement (RIS). The outreach session included a presentation explaining the proposed changes. The Department solicited comments. The Department evaluated and responded to the comments that were received. Small businesses and local governments will be given other opportunities to participate in the rule making. The proposed revisions will undergo a publication of general notice in both the "Environmental Notice Bulletin" and "State Register". Finally, public hearings will be held to allow those facilities affected by the rule another chance to comment.

Economic and Technological Feasibility.

The cost of compliance with the proposed revisions to Subpart 227-2 for local governments and small businesses will likely be less than \$3,000 per ton of NO_x removed for the average-sized unit. Some particular installations may have higher costs based upon site specific concerns. If costs prove excessive, for complete control of a particular unit, then an alternative emission limit may be granted. Commercially available NO_x control systems are on the market and were featured in the reports by EPA and Pechan¹.

¹ EC/R, 2000: Stationary Reciprocating Internal Combustion Engines - Updated Information on NO_x Emissions and Control Techniques -Final Report, prepared for the US Environmental Protection Agency, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Divisions, MD-15, Office of Air Quality Standards, Research Triangle Park, NC August 29, 2000.

E.H. Pechan & Associates: NO_x Emissions Control Costs for Stationary Reciprocating Internal Combustion Engines in the NO_x SIP Call States, prepared for the US Environmental Protection Agency, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, August 11, 2000.

E. H. Pechan & Associates: Ozone Transport Rulemaking Non-Electricity Generating Unit Cost Analysis, prepared for the US Environmental Protection Agency. Unknown date.

EPA, 1993: Alternative Control Techniques Document - NO_x Emissions from Stationary Reciprocating Internal Combustion Engines, US Environmental Protection Agency, Research Triangle Park, NC, July, 1993.

EPA, 1999: Technical Bulletin: Nitrogen Oxides (NO_x) - How and Why They are Controlled, Office of Air Quality Planning and Standards, Research Triangle Park, NC, November, 1999.

Rural Area Flexibility Analysis

The Department of Environmental Conservation (the Department) proposes to revise 6 NYCRR Part 227, Stationary Combustion Installations, by revising the NO_x emission limits for stationary internal combustion engines in Subpart 227-2, Reasonable Available Control Technology (RACT) for Oxides of Nitrogen (NO_x).

Types and estimated numbers of rural areas:

The Department has estimated that nineteen facilities are in counties with less than 200,000 people and up to four facilities are in towns with average population densities less than 150 persons per square mile. This is based upon a query of conditions in Title V permits which would be affected by the changes. No local governments in rural areas will be affected by the proposed changes.

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

Facilities subject to the proposed Subpart 227-2 revisions will be required to resubmit their original NO_x RACT compliance plans with all necessary changes and updates for approval by the Department. These facilities will also be required to submit a permit application to modify their Title V permit. However, these changes can be made at the time of the facility's renewal application for the Title V permit (which is done every five years). If there are no changes caused by the proposed Subpart 227-2 revisions, no permit action is required. Finally, the affected facilities will be required to perform a compliance stack test to determine compliance with the new NO_x emission limits. Test protocols and test reports will need to be submitted to the Department for approval. However, all of the affected facilities are regulated under the Title V program. These facilities are already required to perform a compliance stack test once during the term of their permit (every five years). The compliance test required for the Subpart 227-2 revisions would also meet the existing Title V requirement. If the facility does not have environmental staff that can complete the requirements of the revisions, they will need to utilize consulting services to prepare compliance plans and design any necessary changes to meet the revised emission limits. Compliance stack testing services will also need to be procured in order to write stack test protocols and conduct testing.

Costs:

NO_x control costs for this sector have been changing rapidly with dramatic reductions in recent years. The control costs vary by control technique, fuel type, grade of fuel, size of engine, type of engine, as well as other factors, and have been documented in recent technical reports¹. The technical reports support the conclusion that the proposed emission limitations are both technically feasible and cost effective. A report on alternative control techniques issued by the Emission Standards Division, Office of Air Quality Planning and Standards of the U.S. Environmental Protection Agency (EPA) contains cost algorithms for the pollution prevention techniques and control technology applied to internal reciprocating engines. Costs for NO_x reduction range from \$250 to \$1,700 per ton for engines larger than 1,000 horsepower. For smaller engines, the costs run from \$400 to over \$3,500 per ton.

Minimizing adverse impact:

The proposed changes have been developed to minimize the cost burden to rural areas. First, the changes in emission limits affect only the internal combustion engine sector. Boilers and turbines are not impacted with the proposed changes. Second, various control technologies exist for stationary internal combustion engines. These control technologies include low emission combustion, selective catalytic reduction, and non-selective catalytic reduction. Third, sources also have the option of complying by reducing NO_x emissions by 90 percent from their 1990 baseline emissions. If the source can show that they meet the 90 percent control (which is less stringent than the proposed limits) then the source will be required to only meet the 90 percent control option. Fourth, options such as fuel switching and system wide averaging may also be used to comply with the new RACT limits. Fifth, a facility which can show that the proposed limits are not technically or economically feasible can receive a less stringent case-by-case RACT determination from the Department. Sixth, engine manufacturers in rural areas will receive an exemption from the requirements of Subpart 227-2 for engine test cells.

Rural area participation:

Initially, the Department sent a copy of the proposed revisions to every permittee affected by the proposed changes. The original comments received were mostly requests for clarification. Also, the Department held a public outreach session on January 9, 2003. The attendees received a

working copy of the revised rule and a draft copy of the Regulatory Impact Statement (RIS). The outreach session included a presentation explaining the proposed changes. The Department solicited comments. The Department evaluated and responded to the comments that were received. Small businesses and local governments will be given other opportunities to participate in the rule making. The proposed revisions will undergo a publication of general notice in both the "Environmental Notice Bulletin" and "State Register". Finally, public hearings will be held to allow those facilities affected by the rule another chance to comment.

¹ EC/R, 2000: Stationary Reciprocating Internal Combustion Engines - Updated Information on NO_x Emissions and Control Techniques -Final Report, prepared for the US Environmental Protection Agency, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Divisions, MD-15, Office of Air Quality Standards, Research Triangle Park, NC, August 29, 2000.

E.H. Pechan & Associates: NO_x Emissions Control Costs for Stationary Reciprocating Internal Combustion Engines in the NO_x SIP Call States, prepared for the US Environmental Protection Agency, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, August 11, 2000.

E. H. Pechan & Associates: Ozone Transport Rulemaking Non-Electricity Generating Unit Cost Analysis, prepared for the US Environmental Protection Agency. Unknown date.

EPA, 1993: Alternative Control Techniques Document - NO_x Emissions from Stationary Reciprocating Internal Combustion Engines, US Environmental Protection Agency, Research Triangle Park, NC, July, 1993.

EPA, 1999: Technical Bulletin: Nitrogen Oxides (NO_x) - How and Why They are Controlled, Office of Air Quality Planning and Standards, Research Triangle Park, NC, November, 1999.

Job Impact Statement

1. Nature of impact:

The Department proposes to revise 6 NYCRR Part 227, Stationary Combustion Installations, by revising the NO_x emission limits for stationary internal combustion engines in Subpart 227-2, Reasonable Available Control Technology (RACT) for Oxides of Nitrogen (NO_x). It does not anticipate that the revisions to this rule will have an adverse impact on job and employment opportunities.

The rule will require stationary internal combustion engines to meet lower emission limits of NO_x. The rule contains an option for some units to meet a 90 percent control level. This is based on emissions in the 1990 emissions inventory. If the 90 percent control is less than the proposed limit, then the source would default to the limit. Should the source not be able to achieve the level of NO_x control required based on technical and/or economical feasibility, an alternative emission limit based upon some lower level of control may be granted. Facilities seeking a higher alternative emission limit for a particular combustion unit must consider fuel switching or system-wide averaging when evaluating the economic and technological feasibility of compliance options. The Department also created an exemption from the provisions of Subpart 227-2 for engine test cells at engine manufacturing facilities.

2. Categories and numbers affected:

The proposed cost of NO_x abatement associated with the proposed controls is reasonable and cost effective. The NO_x removal costs will be less than \$5,000 per ton for 90 percent or more of the affected facilities. While the majority (over 50 percent) of affected facilities will have a NO_x reduction cost of less than \$3,500 per ton. As a result, the rule is expected to have little or no adverse affect on jobs or employment opportunities. Affected industries (electrical generation units, pipeline compressor stations, and wastewater treatment facilities) will be able to implement the necessary controls without curtailment of operations or shutdown.

The cost associated with controls has been changing rapidly with dramatic reductions in recent years. Control costs are discussed in the Regulatory Impact Statement and have been shown to vary by control technique, fuel type, grade of fuel, size of engine, type of engine, and other factors. These costs are conservative estimates. Also, the control efficiencies used in the RIS tend to be lower (meaning less efficient) than currently demonstrated control efficiencies.

3. Regions of adverse impact:

There is no anticipated adverse employment opportunity impact attributable to this rule; therefore, no regions are adversely impacted.

4. Minimizing adverse impact:

Adverse impacts have been minimized by continuing to allow the use of an alternative emission limit. Alternative limits may be used if it is proven (through analysis) to be too costly to comply with the revisions in

Subpart 227-2. Impacts were also limited by confining the scope of the proposed revisions to the stationary internal combustion engine sector. Owners or operators of boilers and turbines will not be impacted by the proposed changes.

5. Self-employment opportunities:

The types of facilities affected are larger operations than what would be found in a self-employment situation. There will be an opportunity for self-employed consultants to advise facilities on how best to comply with the revised requirements.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-28-03-00001-E
Filing No. 670
Filing date: June 25, 2003
Effective date: June 25, 2003

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

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

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

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

Specific reasons underlying the finding of necessity: It is estimated that approximately three million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York Program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program’s commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After two complete years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and re-certification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage. Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce cost, lessen complexity, and add a second benefit package.

Substance of emergency rule: The second amendment to regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

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

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

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

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

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

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

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

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

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions as those that do not exceed an average of \$50 per employee per month, and shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-4.1(a) is revised to change the definition of “employed person” to include any person employed and receiving monetary compensation currently or within the past 12 months. The section is further revised to indicate that de-minimus premium contributions shall not prevent small employers from qualifying to purchase coverage through the Healthy NY program.

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

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

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

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

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

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

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

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

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

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

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 September 22, 2003.

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

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations inter-

preting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

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

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce an second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the re-certification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New

York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York.

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

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

6. Paperwork: This amendment will not impose any new reporting requirements.

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

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criterion. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from

participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

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

10. Compliance schedule: No later than 30 days from the effective date of this amendment, HMOs must submit for contract provisions and rating information to adjust their Healthy New York premiums. Such benefit and rate modifications are to be for an effective date of June 1, 2003.

Regulatory Flexibility Analysis

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

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

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

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

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

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

7. Small business and local government participation: This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with the opportunity to participate in the rule-making process.

Rural Area Flexibility Analysis

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

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

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

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

5. Rural area participation: This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with the opportunity to participate in the rule-making process.

Job Impact Statement

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

NOTICE OF ADOPTION

Coverage for Diagnosis and Treatment of Alcoholism in Group Policies

I.D. No. INS-16-03-00004-A

Filing No. 683

Filing date: July 1, 2003

Effective date: July 16, 2003

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

Action taken: Amendment of section 52.24 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 3233, 4224, 4235, 4237, 4303 and art. 43; L. 1992, ch. 501; L. 1997, ch. 661; L. 1999, ch. 558; Public Health Law, section 4406; and Federal Social Security Act, 42 USC section 1395ss

Subject: Coverage for diagnosis and treatment of alcoholism in group policies.

Purpose: To delete obsolete language and update the term "alcoholism" to "chemical dependence" to conform with amended statutory language.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-16-03-00004-P, Issue of April 23, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Video Lottery Gaming

I.D. No. LTR-28-03-00009-P

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

Proposed action: Addition of Part 2836 to Title 21 NYCRR.

Statutory authority: Tax Law, sections 1617-a and 1612

Subject: Video lottery gaming.

Purpose: To allow for the licensed operation of video lottery gaming.

Substance of proposed rule: Chapter 383 of the Laws of 2001 authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks around New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for principles and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations.

The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

Text of proposed rule and any required statements and analyses may be obtained from: Susan E. Beaudoin, Counsel, Division of the Lottery, One Broadway Center, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: sbeaudoin@lottery.state.ny.us

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

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

Additional matter required by statute: A negative declaration has been prepared and is on file for this rule making.

Regulatory Impact Statement

1. Statutory Authority: On October 31, 2001, Governor Pataki signed into law Part C of Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the laws of 2002, as amended by Chapters 62 and 63 of the Laws of 2003, codified as 1617-a and 1612 of the Tax Law, which authorizes the New York State Division of the Lottery ("Lottery") to license the operation of video lottery gaming at racetrack locations around the state. That legislation directs the Lottery to promulgate regulations allowing for the licensed operation of video lottery gaming. These regula-

tions fulfill that mandate, enabling the licensing and operation of video lottery gaming at authorized racetracks.

2. Legislative Objectives: These proposed regulations advance the legislative objective of raising additional revenue for education by establishing video lottery gaming.

3. Needs and Benefits: The regulations satisfy a legislative mandate directing the Lottery to promulgate regulations for the design, licensing and implementation of video lottery gaming. Pursuant to a Memorandum of Understanding between the Lottery and the Racing and Wagering Board, potential duplicative licensing requirements for the racetrack employees have been eliminated.

The regulations set forth the manner in which the regulated community will be licensed to conduct video lottery gaming. Additionally, they describe the game operation, financial operations, terminal design, the manner in which the security systems must operate, and certain requirements for the physical layout of the gaming facilities. These proposed regulations provide the regulated community with the details and guidance to effectively implement video lottery gaming in New York State.

While the Division considers video lottery gaming to be very similar to other lottery games that the Division has successfully conducted for over twenty-five years, some components set it apart from those more traditional games. For example, most of the Lottery's current licensed agents are food and beverage retailers. Video lottery gaming will require the Lottery to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as employees.

In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Lottery has spent a considerable amount of time since the legislation was signed studying video lottery gaming venues in other states, namely, Delaware, Rhode Island, and West Virginia. In some respects, the video lottery gaming design in these regulations is modeled on those states; however, there are significant differences. For example, the video lottery games and the video lottery terminals are designed to meet specific legal requirements unique in this state.

These regulations will assist the regulated parties to fully understand and comply with all the requirements of the operation of video lottery gaming, while generating sales and revenue to aid education in the State of New York.

4. Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgement.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

According to data provided by the racetracks, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will approximate \$240 million if all eligible venues participate. Each racetrack's proposed project differs. The cost for each facility ranges from \$4 million to over \$100 million dollars. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The racetracks will incur certain labor costs associated with operating video lottery gaming. The gaming facilities throughout the state are expected to employ upwards of a total estimated 1900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs that will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Lottery guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. It is anticipated that most of these controls will be established through sufficient experienced racetrack personnel. Additional external auditing costs are expected to average approximately \$65,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a

\$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

Total costs for the State, the tracks and vendors for start up and a full year of operations are estimated to be approximately \$300 million, with total revenue for the project for that time period estimated to be over \$1.2 billion.

5. Local Government Mandates: No local mandates are imposed by rule upon any county, city, village, etc. The legislation permits local communities which have racetracks not expressly identified in the legislation to pass local laws authorizing video lottery gaming at racetracks in their communities, if they so choose.

6. Paperwork: The regulations require that the regulated entities complete a licensing application, including fingerprints, and to update and renew the application periodically. The application will follow a standard multi-state format used by other states that license similar gaming activities. Completion of these applications will be a new responsibility for the video lottery gaming agents, their principals, and key employees. Agents, their principals and key employees will be required to provide more detailed disclosure than they have previously been required to provide for licensure. This level of disclosure is common in other gaming states. Provisional licenses will be granted under certain circumstances, so that the licensing review process is not expected to pose a barrier to immediate entry into the business.

The regulated vendors should be familiar with these licensing forms and reporting requirements as they are similar to those required in other states where these vendors currently do business. In fact, gaming vendors routinely have regulatory compliance departments to assist in fulfillment of these requirements.

While there is no requirement for licensure in most situations, vendors supplying goods or services not directly related to gaming must register to do business with the video lottery gaming agents. However, if their contracts exceed certain thresholds outlined in the regulations, they will be required to undergo a full licensing procedure. In particular, non-gaming vendors will be required to submit license applications if any of the following conditions exist:

(a) the non-gaming vendor has a contract with a video lottery gaming agent that exceeds \$100,000.00 in any twelve (12) month period;

(b) the non-gaming vendor has contracts with more than one video lottery gaming agent that combined exceed \$150,000.00 in any twelve (12) month period;

(c) the non-gaming vendor has contract(s) for a portion of a video lottery gaming facility construction project that exceeds \$500,000.00 in any twelve (12) month period;

(d) the non-gaming vendor has combined contracts for a portion of more than one video lottery gaming facility construction project exceeding \$1,000,000.00 within any twelve (12) month period.

Agents will be required to submit business plans that will include floor plans of the gaming areas, staffing plans, internal control procedures, marketing plans, and security plans. These will need to be updated periodically.

In order to ensure the financial integrity and security of video lottery gaming, the video lottery gaming agents will be required to submit financial reports. These financial reports are produced during the regular course of business, and their submission should not prove burdensome. These will need to be updated periodically.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the New York State Racing and Wagering Board must license the operation of pari-mutuel wagering at the racetracks as well as licensing racetrack employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Lottery may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Lottery and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. Alternatives: In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Lottery has spent a considerable amount of time since the legislation was signed studying video lottery gaming venues in other states, namely, Delaware, Rhode Island, and West Virginia. In some respects, the video lottery gaming design in these regulations is modeled on those states; however, there are significant differences. For example, the video lottery games and the video lottery

terminals are designed to meet specific legal requirements unique in this state.

Prior to publication of these regulations, members of the regulated community were contacted and comments to the proposed draft regulations solicited. In response, the Lottery received hundreds of comments that were carefully and thoroughly examined. These comments fell broadly into the following general categories:

(a) That the requirements to become licensed and operate video lottery gaming appeared oftentimes unclear or vague;

(b) That many of the requirements established in the proposed draft regulations were overly burdensome;

(c) That the licensing authority of the Lottery was questionable;

(d) That the regulations imposed excessive costs to satisfy unnecessary regulatory requirements; and

(e) That the regulations contained definitions that were inconsistent, inaccurate or ambiguous.

As a result of this outreach effort, a number of revisions were made to the proposed draft regulations. Many of those comments proved valuable in drafting regulations which both met the needs of the regulated community while maintaining the high standards established by the Lottery to operate and regulate its games. As another alternative, the Division entered into a Memorandum of Understanding with the Racing and Wagering Board to avoid potential duplicative licensing requirements for the racetrack employees.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: The licenses must be issued prior to commencement of video lottery gaming. In many instances, the license applicants will be issued provisional licenses immediately upon filing their application. All requirements concerning the conduct and operation of video lottery gaming must be complied with prior to actual commencement of the games and maintained on-going throughout the operation of the games.

Regulatory Flexibility Analysis

1. Effect of Rule: The Division of the Lottery finds that the rule will not adversely affect local government. The rule will impact a number of different types of businesses:

(a) Licensed racetracks: It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102;

(b) Gaming vendors: Vendors wishing to supply gaming products and services must be licensed. These include the supplier of the central computer system that will support the video lottery games, and the companies supplying the games and terminals. It is anticipated that once video lottery gaming has commenced, these companies will recoup any costs associated with licensing and start-up;

(c) Non-gaming vendors: Vendors supplying goods and services not directly related to gaming will be required to complete a registration process. However, if their contract exceeds a certain value, they will be required to comply with licensing provisions. While it is difficult to estimate all costs associated with doing business with a video lottery gaming agent, the costs of registration will be minimal. The costs of licensing, should that be necessary, will conform to the costs of licensing discussed in paragraph (c) below. However, non-gaming vendors who must undergo a licensing process will not be required to pay a licensing fee other than the costs of fingerprinting.

Participation in video lottery gaming by any of these entities is voluntary and it is expected they will use good business judgment when deciding whether or not to participate in these games. It is expected there will be no adverse economic impact on any of these regulated businesses.

2. Compliance Requirements: These rules will not require small businesses to complete burdensome forms or reports. To the extent that any small business becomes a non-gaming vendor to a video lottery agent, a contract value threshold of \$100,000 applies before licensing is necessary. Completion of the licensing application will be required.

3. Professional Services: It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgement.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in

addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

Based on forecasted estimates provided by the racetracks themselves, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will exceed \$240 million if all eligible venues participate. Each facility's proposed project differs. The cost for each facility ranges from \$4 million to over \$100 million dollars. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The gaming facilities throughout the state are expected to employ upwards of a total estimated 1900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual hourly salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs which will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Lottery guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. The majority of these controls are put in place through adequate experienced personnel and the personnel costs are set forth above. Additional external auditing costs are expected to average approximately \$65,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

5. Economic and Technological Feasibility: The economic and technological impact of these rules on local government is minimal.

There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impact: In the case of smaller, non-gaming vendor contracts, these vendors will not be required to comply with licensing and background checks. Small businesses supplying non-gaming goods and services pursuant to contracts valued at less than \$25,000 annually will be exempt from any registration or licensing requirements, and businesses supplying non-gaming goods and services pursuant to contracts valued at less than \$100,000 will only need to complete a registration process.

7. Small Business and Local Government Participation: During the pre-proposal stage of the regulatory process, members of the regulated community were contacted and given the opportunity to participate in the formation of these regulations. The New York Lottery received numerous comments from members of the community, many of which were incorporated during the final drafting of the proposed regulations.

Rural Area Flexibility Analysis

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County.

However, the Lottery has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Lottery believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

Job Impact Statement

The Lottery has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the agency has determined the rule will have a positive impact on jobs and employment opportunities.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ upwards of 1900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employ-

ees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs at prevailing labor rates. Undoubtedly, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

Office of Mental Health

EMERGENCY RULE MAKING

Operation of Residential Treatment Facilities for Children and Youth

I.D. No. OMH-15-03-00005-E

Filing No. 674

Filing date: June 27, 2003

Effective date: June 27, 2003

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

Action taken: Amendment of section 584.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

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

Specific reasons underlying the finding of necessity: To address the immediate needs of children being served in residential treatment facilities for children and youth (RTF) it is necessary to continue to temporarily expand the capacity of certain RTF's.

Subject: Operation of residential treatment facilities for children and youth.

Purpose: To continue the temporary increase in the capacity of certain RTF's to serve the needs of emotionally disturbed children and youth.

Text of emergency rule: Pursuant to the authority granted the Commissioner in Sections 7.09(b), 31.04(a)(2), and 31.26(b) of the Mental Hygiene Law, Title 14 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows:

Subdivision 584.5(e) of Part 584 of 14 NYCRR is amended to read as follows:

(e) An operating certificate shall be issued for a residential treatment facility for a resident capacity of no less than 14 and no more than 56; provided, however, that for the period commencing April 1, 2000 through [September 30, 2002,] *September 30, 2003*, bed capacity for facilities primarily serving New York City residents may be temporarily increased up to an additional ten beds over the maximum certified capacity with the prior approval of the Commissioner. In order to receive such approval, the residential treatment facility must demonstrate that the additional capacity will be used to serve those children and youth deemed most in need of RTF services by the New York City Preadmission Certification Committee as set forth in Section 583.8.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. OMH-15-03-00005-EP, Issue of April 16, 2003. The emergency rule will expire August 25, 2003.

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

Regulatory Impact Statement

1. Statutory Authority: Sections 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement

matters under his jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing residential treatment facilities for children and youth, respectively.

2. Legislative Objectives: Part 584 sets forth standards for the operation of Residential Treatment Facilities for Children and Youth. This amendment to Part 584 allows for the temporary increase of capacity of certain facilities to allow additional children and youth to be served in the program.

3. Needs and Benefits: The Office of Mental Health had previously determined in 2000 that the existing RTF capacity serving seriously emotionally disturbed children and youth, who are residents of New York City, should be increased. Under the existing regulation, Subdivision 584.5(e) of part 584 of 14 NYCRR, RTF bed capacity serving, primarily New York City residents may be temporarily increased, until September 30, 2002, by up to ten additional beds over the maximum of 56 per facility, otherwise allowed by the regulation. There are a number of initiatives under way that focus on improving the use of the current RTF resources by decreasing the length of stay. These resources include the development of supervised community residences, family based treatment programs, case management and family support to assist the youth discharged from an RTF to successfully reintegrate onto the community.

To expand capacity, a total of 21 temporary beds were added to five existing RTF facilities serving New York City residents. These beds were added on a voluntary basis with the cooperation of the facilities and the support of the New York City Department of Mental Health. Three of the facilities that were not at the 56 bed maximum had their capacity increased administratively by a total of 13, without going over the maximum. One of the facilities, St. Christopher Oillie was at 56 beds and one, Linden Hill, was at 55 beds. St. Christopher Oillie added five beds. Linden Hill added three beds. Therefore seven beds are permitted to be added under existing Subdivision 584.5(e). That permission expires on September 30, 2002. Due to development delays in the implementation of residential alternatives, such as the supervised community residences and the family based treatment beds, the expiration date must be changed to September 30, 2003, in order to permit the continued necessary increase in RTF capacity.

4. Costs:

(a) Costs to private regulated parties: There will be no mandated costs to the regulated parties associated with allowing an increase in capacity to the Residential Treatment Facility program.

(b) Cost to state and local government: The annual state cost for the seven beds is estimated to be \$438,000. These additional funds will be covered by the State share of Medicaid appropriation. There is no local share for the RFT program.

(c) The cost projection was calculated by applying the per bed projected Medicaid rate to the seven additional beds.

5. Local Government Mandates: There will be no additional mandates to local government.

6. Paperwork: There are no new paperwork requirements associated with this amendment.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may effect this rule.

8. Alternatives: The only alternative would be to allow the temporary additional capacity authority to expire, which is not acceptable given the critical need for these services.

9. Federal Standards: The rule does not exceed any Federal standards.

10. Compliance Schedule: Providers will be able to comply with this rule immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules will not impose any adverse economic impact on small businesses, or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules impact only Residential Treatment Facilities serving children who are New York City residents.

Job Impact Statement

Because this amendment will impact only two providers of Residential Treatment Facilities for Children and Youth, and only permits these two providers to continue the temporary operation of a total of seven beds until September 30, 2003, it will not have any impact on jobs and employment activities.

**EMERGENCY
RULE MAKING**

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-28-03-00003-E

Filing No. 673

Filing date: June 27, 2003

Effective date: June 27, 2003

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

Action taken: Amendment of section 588.13(a)-(c) of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: These amendments increase the Medicaid rate schedule associated with outpatient programs consistent with the enacted 2002-2003 State Budget. These changes will avoid a reduction in services that would otherwise take place.

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase the Medicaid rate schedule associated with outpatient programs licensed under art. 31 of the Mental Hygiene Law.

Text of emergency rule: Pursuant to the authority granted the Commissioner in section 7.09(b) and 31.04(a) of the Mental Hygiene Law, Title 14 of the Official Compilation of Codes, Rules and Regulation of the State of New York is amended as follows:

Part 588 of the Regulations of the Commissioner of Mental Health is amended as follows:

Subdivision 588.13(a) is amended to read as follows:

(a) Reimbursement under the medical assistance program for outpatient programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title which serve adults with a diagnosis of mental illness and children with a diagnosis of emotional disturbance shall be in accordance with the following fee schedule. This section shall not apply to programs licensed by both the Office of Mental Health and Department of Health.

(1) Reimbursement under the medical assistance program for clinic treatment programs operated by agencies which received State Aid under Article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

- Regular at least 30 minutes [30.00] \$66.00
- Brief at least 15 minutes [30.00] 33.00
- Group at least 60 minutes [21.00] 23.10
- Collateral at least 30 minutes [60.00] 66.00
- Group Collateral at least 60 minutes [21.00] 23.10
- Crisis at least 30 minutes [60.00] 66.00

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates counties:

- Regular at least 30 minutes [54.00] \$59.40
- Brief at least 15 minutes [27.00] 29.70
- Group at least 60 minutes [18.90] 20.79
- Collateral at least 30 minutes [54.00] 59.40
- Group Collateral at least 60 minutes [18.90] 20.79
- Crisis at least 30 minutes [54.00] 59.40

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

- Regular at least 30 minutes [53.00] \$58.30
- Brief at least 15 minutes [26.50] 29.15
- Group at least 60 minutes [18.55] 20.41
- Collateral at least 30 minutes [53.00] 58.30
- Group Collateral at least 60 minutes [18.55] 20.41
- Crisis at least 30 minutes [53.00] 58.30

(2) Reimbursement under the medical assistance program for clinic treatment programs operated by providers of services which did not receive State aid under Article 41 of the Mental Hygiene Law during fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the Commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Regular at least 30 minutes [53.00] \$58.30
 Brief at least 15 minutes [26.50] 29.15
 Group at least 60 minutes [18.55] 20.41
 Collateral at least 30 minutes [53.00] 58.30
 Group Collateral at least 60 minutes [18.55] 20.41
 Crisis at least 30 minutes [53.00] 58.30

(3) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50 [12] \$13.20 per service hour
 Service hour 51-80 [9.50] \$10.45 per service hour
 Service hour beyond 80 [7.00] \$7.70 per service hour

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50 [10.80] \$11.88 per service hour
 Service hour 51-80 [9.50] \$10.45 per service hour
 Service hour beyond 80 [7.00] \$7.70 per service hour

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schoenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours for any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50 [10.60] \$11.66 per service hour
 Service hour 51-80 [9.50] \$10.45 per service hour
 Service hour beyond 80 [7.00] \$7.70 per service hour

(4) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which received State Aid under Article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [60.00] \$66.00
 Half day at least 3 hours [30.00] 33.00
 Brief day at least 1 hour [20.00] 22.00
 Collateral at least 30 minutes [20.00] 22.00
 Home at least 30 minutes [60.00] 66.00
 Crisis at least 30 minutes [60.00] 66.00

Preadmission - full day at least 5 hours [60.00] 66.00

Preadmission - half day at least 3 hours [30.00] 33.00

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [58.00] \$63.80

Half day at least 3 hours [29.00] 31.90

Brief day at least 1 hour [19.30] 21.23

Collateral at least 30 minutes [19.30] 21.23

Home at least 30 minutes [58.00] 63.80

Crisis at least 30 minutes [58.00] 63.80

Preadmission - full day at least 5 hours [58.00] 63.80

Preadmission - half day at least 3 hours [29.00] 31.90

(5) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which did not receive State Aid under Article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Full day at least 5 hours [58.00] \$63.80

Half day at least 3 hours [29.00] 31.90

Brief day at least 1 hour [19.30] 21.23

Collateral at least 30 minutes [19.30] 21.23

Home at least 30 minutes [58.00] 63.80

Crisis at least 30 minutes [58.00] 63.80

Preadmission - full day at least 5 hours [58.00] 63.80

Preadmission - half day at least 3 hours [29.00] 31.90

(6) Providers whose reimbursement under the medical assistance program for clinic, continuing day treatment, and/or day treatment has been supplemented in accordance with subdivision (g) of this section will have this additional reimbursement limited in total to an amount established by the Commissioner which shall be subject to the availability of appropriations in the Office of Mental Health's budget. Supplemental reimbursement received in excess of this threshold will be recovered in a succeeding year through the medical assistance recovery process authorized pursuant to Section 368-c of the Social Services Law.

(b) Reimbursement under the medical assistance program for regular, collateral, group collateral, and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be [19.59] \$21.55 for each service hour.

(2) For programs located in New York City, the fee shall be [25.73] \$28.30 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be [21.62] \$23.78 for each service hour.

(4) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be [14.82] \$16.30 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be [18.37] \$20.21 for each service hour.

(c) Reimbursement under the medical assistance program for on-site, and off-site, visits for all intensive psychiatric rehabilitation treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at [21.11] \$23.22 for each service hour.

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 September 24, 2003.

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

Regulatory Impact Statement

1. Statutory authority: Section 7.09(b) of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction.

Section 31.04(a) of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and benefits: These amendments increase the medicaid rates associated with outpatient treatment programs consistent with the enacted 2002-2003 state budget. These changes will support continuation of these services at current levels.

4. Costs:

a) Costs of regulated parties: There are no costs to providers associated with these amendments.

b) Costs to State and Local government and the agency: Implementation of these amendments has been budgeted to cost New York State \$6,200,000 annually, and appropriations were included in the 2002-2003 enacted state budget. Implementation of these amendments is estimated to cost local governments a statewide total of \$5,723,000 annually. This is the estimated cost of the respective state and local share of Medicaid.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative was rejected as inconsistent with statutory requirements of the enacted budget.

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

10. Compliance schedule: These regulatory amendments will be effective upon their adoption, and shall be deemed to have been effective on and after December 1, 2002.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increase associated with this rule is required by state statute, the enacted state budget for state fiscal year 2002-2003.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule impacts outpatient treatment program rates of reimbursement. The impact of the rate change will be to increase the medicaid reimbursement rates associated with outpatient programs in rural and non-rural areas. This will support the continued provision of these vital programs which serve children, adolescents and adults.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

Purpose: To establish a unit of service and method for calculating the price of HCBS waiver hourly respite services provided in free-standing respite centers.

Text of proposed rule: Subdivision 635-10.5(h) is amended to read as follows:

(h) Respite services.

(1) *Notwithstanding any other provision of regulation, hourly respite may be delivered in a free-standing respite center.*

[(1)] (2) Respite service costs are those costs related to the aggregate of all respite services selected and identified in the individualized service plan (ISP) for each person receiving respite services from an approved provider. Total allowable respite service costs shall be determined in accordance with the provisions of section 635-10.4 (g) of this Subpart and Subpart 635-6 of this Part.

[(2)] (3) For the purposes of this subdivision, the term approved provider shall mean any party which has entered into a provider agreement with the Department of [Social Services] Health pursuant to OMRDD approval for the reimbursement of costs incurred in delivering allowable respite services as set forth in section 635-10.4(g) of this Subpart.

[(3)] (4) Prices for the reimbursement of waiver residential respite services shall be determined through a budget review.

(i) In such budget review, OMRDD shall consider the following limitations: provider historical costs for salaries, fringe and administration for such services. If service specific costs are not available, OMRDD shall consider regional salary, fringe and administration costs and the provider's historical costs for salaries, fringe and administration in other comparable OMRDD programs. In addition, OMRDD will consider specific service requirements documented in the ISPs of persons to be served, approved fringe benefit appeals in other OMRDD programs, levels of staff treatment responsibility, the impact of provider agency expansion on agency administration costs, and the allocation of clinical titles required for the service.

(ii) The unit of service for residential respite shall be on a per diem basis for a person requiring an overnight stay for a maximum of 24 hours in an approved respite setting in accordance with section 635-10.4(g)(1)(i) of this Subpart. After a 24-hour period, reimbursement shall accrue at the rate of 1/24th the per diem fee for each subsequent full hour of care, unless the person remains overnight, wherein another per diem's reimbursement may be claimed.

(iii) The unit price for overnight respite shall be determined by dividing the OMRDD approved budgeted costs by the projected days of utilization.

[(4)] (5) Prices for the reimbursement of waiver hourly respite shall be determined through a budget review process.

(i) Prices for hourly respite *other than that delivered at a free-standing respite center* shall be categorized as basic hourly respite and/or skilled hourly respite.

(a) Basic hourly respite refers to services by anyone other than a registered nurse or licensed practical nurse.

(b) Skilled hourly respite refers to services needed because of the person's medical or health care condition, and which are provided by parties holding either a registered nurse or licensed practical nurse credential.

(ii) In such budget review, OMRDD shall consider the following limitations: provider historical costs for salaries, fringe and administration for such services. If service specific costs are not available, OMRDD shall consider regional salary, fringe and administration costs and the provider's historical costs for salaries, fringe and administration in other comparable OMRDD programs. In addition, OMRDD will consider specific service requirements documented in the ISPs of persons to be served, approved fringe benefit appeals in other OMRDD programs, levels of staff treatment responsibility, the impact of provider agency expansion on agency administration costs, and the allocation of clinical titles required for the service.

(iii) The unit[s] of service for hourly respite *other than that for a free-standing respite center* shall be one hour equaling at least 30 minutes but less than 90 minutes of service.

(iv) *The unit of service for hourly respite for a free-standing respite center, other than that for determining the unit capital price for a non-State operated free-standing respite center, shall be one hour equaling 60 minutes and may be claimed in 15 minute increments.*

[(iv)] (v) The unit price for hourly respite *other than that delivered at a non-State operated free-standing respite center* shall be determined by dividing the approved budgeted costs by the corresponding projected hours of utilization.

(vi) *The unit operating price for hourly respite delivered at a non-State operated free-standing respite center shall be determined by dividing*

Office of Mental Retardation and Developmental Disabilities

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

Reimbursement of HCBS Waiver Services

I.D. No. MRD-28-03-00010-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 635-10.5 of Title 14 NYCRR.

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

Subject: Reimbursement of HCBS waiver services.

the approved budgeted operating costs by the corresponding projected hours of utilization.

(vii) *The unit capital price for a non-State operated free-standing respite center shall be determined by dividing the approved annual budgeted capital costs by 12 and shall be paid monthly.*

(5) (6) Reimbursement to an approved provider shall be contingent upon prior OMRDD approval and documentation that respite services, regardless of type, are specified in each person's individualized service plan.

(7) *Reimbursement for respite services delivered at a free-standing respite center to a consumer living in a family care home shall not be billed to Medicaid by the free-standing respite center.*

(6) (8) Total reimbursable costs derived through the application of the above methodology shall be trended on an annual basis utilizing the trend factors identified in subdivision (i) of this section.

(7) (9) The reimbursement price determined in accordance with this subdivision shall not be considered final unless approved by the Director of the State Division of the Budget.

(8) [For respite services' providers authorized to provide such services on or after April 1, 1993, but prior to February 4, 1994, OMRDD will make a one time payment for services actually delivered during this period of time. This payment will be computed by multiplying the price calculated through the application of this subdivision, by the total units of service provided to eligible persons for respite services for the April 1, 1993 to February 4, 1994 time period.]

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

2. Legislative objectives:

These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law by making necessary revisions to the fee-setting methodology for Home and Community-based (HCBS) Waiver services. Specifically, the proposed amendments will ensure the continuation of appropriate funding, under the HCBS waiver, to providers of respite services.

This funding is necessary in order to allow for the provision of HCBS waiver hourly respite services in authorized free-standing respite centers.

3. Needs and benefits:

From the time of their inception and implementation in New York State, OMRDD has provided funding for HCBS waiver services, including respite services. Such funding is necessary to assure the continued delivery of necessary services to persons with developmental disabilities. The proposed amendments will enable the provision of HCBS waiver hourly respite services to be provided in authorized free-standing respite centers to persons with developmental disabilities. The proposed amendments will establish a unit of service and a method for calculating the prices of HCBS waiver hourly respite services provided in authorized free-standing respite centers.

4. Costs:

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

OMRDD has allowed for the provision of respite services in a variety of facilities and sites certified or authorized to provide developmental disabilities services. It has also authorized the operation of free-standing respite centers specifically for the purposes of providing respite services. However, except for overnight respite, such services provided in free-standing respite centers are currently fully paid for by State funds. The proposed amendments will establish that hourly respite can be provided in a free-standing respite center and will establish the method for the calculation of a price for the service. Since hourly respite in free-standing respite centers will now be provided as an HCBS waiver service, there will be a federal share in the cost of providing these services. This will result in savings to the State.

Hourly respite is currently being provided in 40 authorized free-standing respite centers to approximately 2000 consumers in New York State. The estimated total cost for the provision of such services as HCBS waiver services on an annualized basis is approximately \$6.59 million in the aggregate. This represents a State share of approximately \$2.88 million and a federal share of approximately 2.47 million. If these amendments were not promulgated, the total cost would have to be borne by the State.

Pursuant to the Social Services Law, the State generally reimburses local governments for their share of the cost of Medicaid funded programs and services. However, an unreimbursed local government share is involved for some consumers receiving HCBS waiver services. These are consumers who live with their families or on their own and who do not qualify for local share relief under State law. OMRDD estimates that the provision of free-standing hourly respite services to such consumers under the proposed amendments will result in a local government share of approximately \$1.24 million on an annualized aggregate basis. This cost impact will be divided among the counties.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the amendments. As stated, the amendments will reconfigure existing services as HCBS waiver hourly respite services provided in authorized free-standing respite centers already in existence. The change to HCBS waiver services and the reimbursement provisions for such free-standing respite services will not have fiscal impacts for providers of services because the revisions are not expected to change overall amounts of reimbursement to authorized providers.

5. Local government mandates:

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

6. Paperwork:

No additional paperwork will be required by the proposed amendments. The changes to the reimbursement provisions for the reimbursement of respite services in free-standing centers will only change the manner in which the provider submits claims.

7. Duplication:

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

8. Alternatives:

The proposed rule making contains what OMRDD believes to be necessary amendments to reconfigure existing free-standing hourly respite services as HCBS waiver services.

9. Federal standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

OMRDD expects to adopt the proposed amendments as soon as possible within the time frames mandated by the State Administrative Procedure Act. However, these amendments do not impose any significant new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These proposed regulatory amendments will apply to providers which operate authorized free-standing respite centers for the purpose of providing services to persons with developmental disabilities in order to give the primary caregiver temporary relief from the responsibilities of daily caregiving. There are currently 40 such free-standing respite centers authorized by OMRDD to provide respite services to approximately 2000 consumers annually.

The OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the 40 free-standing respite

centers employ fewer than 100 employees at the discrete authorized sites and would be classified as small businesses.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not have any negative effects on small business service providers and that they will continue to provide appropriate funding for respite services. As discussed in the Regulatory Impact Statement, OMRDD has allowed for the provision of respite services in a variety of facilities and sites certified or authorized to provide developmental disabilities services. It has also authorized the operation of free-standing respite centers specifically for the purposes of providing respite services. However, services provided in such free-standing respite centers on an hourly basis are currently paid for fully by State funds. The proposed amendments will establish a unit of service and the method for the calculation of the prices for hourly respite services provided in such free-standing respite centers as a service under the Home and Community-Based Services (HCBS) waiver. This will result in a federal share in the cost of providing these services. The amendments are not, however, expected to affect utilization or the overall levels of funding for these services so that there will be no adverse fiscal impacts on current operators of free-standing respite centers as a result of the proposed amendments. Further, OMRDD expects that the proposed amendments will not impose any additional or increased compliance requirements so that they should have no adverse effects on regulated small businesses.

Pursuant to the Social Services Law, the State generally reimburses local governments for their share of the cost of Medicaid funded programs and services. However, an unreimbursed local government share is involved for some consumers receiving HCBS waiver services. These are consumers who live with their families or on their own and who do not qualify for local share relief under State law. OMRDD estimates that the provision of free-standing hourly respite services to such consumers under the proposed amendments will result in a local government share of approximately \$1.24 million on an annualized aggregate basis. This cost impact will be divided among the counties.

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

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

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

5. Economic and technological feasibility: The proposed amendments are concerned with price-setting and fiscal issues and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: With the exception of the local government cost share addressed above, the amendments will have no adverse economic impacts.

OMRDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. However, since these amendments require no compliance response of regulated parties or local governments, the approaches outlined cannot be effectively applied.

7. Small business and local government participation: OMRDD consulted extensively with representative providers of free-standing respite and/or members of provider organizations regarding the development of these amendments.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these amendments is not being submitted because the amendments 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 amendments only provide necessary revisions to the reimbursement methodology for HCBS waiver services. The amendments establish provisions governing the units of service and prices for HCBS waiver hourly respite delivered in free-standing respite centers, but they do not affect overall funding provided for these services. OMRDD expects that the amendments will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodology

is primarily based upon reported costs of such HCBS waiver services, or of similar services operated by the provider or similar providers in the same area. Thus, the reimbursement methodology has been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have an impact on jobs and/or employment opportunities. This finding is based on the fact that the proposed rule making revises the reimbursement methodology with respect to units of service and prices for HCBS waiver hourly respite services provided in free-standing respite centers. Because these amendments do not change the overall funding provided for such services, and because they do not create any new services, it is reasonable to expect that the rule will not have an adverse impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Calculation of Franchise Fees by Cablevision Systems Southern Westchester, Inc.

I.D. No. PSC-41-02-00015-A
Filing date: June 30, 2003
Effective date: June 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 Jan. 22, 2003, adopted an order in Case 02-V-1005 approving a request by Cablevision of Southern Westchester, Inc. for a waiver of section 595.1(o)(2) pertaining to the calculation of franchise fees.

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of final rule: The Commission granted Cablevision of Southern Westchester, Inc. a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Elmsford, 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-V-1005SA1)

NOTICE OF ADOPTION

Calculation of Franchise Fees by Cablevision Systems Long Island Corp.

I.D. No. PSC-41-02-00016-A
Filing date: June 30, 2003
Effective date: June 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 Jan. 22, 2003, adopted an order in Case 02-V-1006 approving a request by Cablevision Systems Long Island Corporation for a waiver of section 595.1(o)(2) pertaining to the calculation of franchise fees.

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of final rule: The Commission adopted an Order allowing Cablevision Systems Long Island Corporation and the Village of New Hyde Park to exclude the amount of the franchise fee revenues collected from subscribers from inclusion in the company's calculation of gross receipts, 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-V-1006SA1)

NOTICE OF ADOPTION

Minor Gas Rate Increase by Bath Electric, Gas & Water Systems

I.D. No. PSC-53-02-00009-A

Filing date: June 27, 2003

Effective date: June 27, 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 02-G-1562, directing Bath Electric, Gas & Water Systems (Bath) to cancel amendments contained in its tariff schedule, P.S.C. No. 4—Gas.

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

Subject: Tariff filing.

Purpose: To refile tariff amendments for an increase in gas revenues.

Substance of final rule: The Commission directed Bath Electric, Gas and Water Systems to cancel tariff amendments in its filing dated November 27, 2002 and to refile amendments to produce an increase in revenues of \$226,332, 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-G-1562SA1)

NOTICE OF ADOPTION

Standby Electric Service by Niagara Mohawk Power Corporation

I.D. No. PSC-09-03-00008-A

Filing date: July 1, 2003

Effective date: July 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 01-E-1847, denying Niagara Mohawk Power Corporation's (Niagara Mohawk) petition regarding standby service rates.

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

Subject: Standby electric service.

Purpose: To request that Niagara Mohawk enter into flexible standby rate contracts with customers.

Substance of final rule: The Commission denied Niagara Mohawk Power Corporation's petition for rehearing and directed the company to enter into flexible standby rate contracts with customers that would otherwise isolate from the utility grid by installing back-up to their on-site

generation, and to modify its flexible standby rate tariff to effectuate this policy, 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.

(01-E-1847SA3)

NOTICE OF ADOPTION

Full Service Option to Energy Service Companies by Rochester Gas and Electric Corporation

I.D. No. PSC-16-03-00035-A

Filing date: June 30, 2003

Effective date: June 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 June 18, 2003, approved a request by Rochester Gas and Electric Corporation (RG&E) to continue its full service option to energy companies.

Statutory authority: Public Service Law, sections 2(12), (13), 64, 65, 66 and 72

Subject: Full service option to energy companies.

Purpose: To extend availability of RG&E's full requirement option.

Substance of final rule: The Commission approved a request by Rochester Gas and Electric Corporation for the extension of its full requirements option to energy service companies through October 31, 2003, 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-0198SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Real-Time Pricing by Orange and Rockland Utilities

I.D. No. PSC-28-03-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its electric tariff schedule, P.S.C. No. 2—Electricity, to become effective Sept. 22, 2003.

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

Subject: Real-time pricing.

Purpose: To eliminate the termination dates for enrollment in and participation under rider M—real-time pricing.

Substance of proposed rule: On June 20, 2003, Orange and Rockland Utilities, Inc. (the company) filed proposed tariff modifications to P.S.C. No. 2 - Electricity to become effective September 22, 2003. The company proposes to eliminate the termination dates for enrollment in and participation under Rider M - Real-Time Pricing.

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 argument may be submitted to: Janet H. Deixler, 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. (00-E-2054SA28)

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

Voluntary Real-Time Pricing by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-28-03-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify 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 electric tariff schedule, P.S.C. No. 9—Electricity, to become effective Sept. 22, 2003.

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

Subject: Voluntary real-time pricing.

Purpose: To eliminate the termination dates for enrollment in and participation under rider M—voluntary real-time pricing.

Substance of proposed rule: On June 20, 2003, Consolidated Edison Company of New York, Inc. (the company) filed proposed tariff modifications to P.S.C. No. 9 - Electricity to become effective September 22, 2003. The company proposes to eliminate the termination dates for enrollment in and participation under Rider M - Voluntary Real-Time Pricing.

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 argument may be submitted to: Janet H. Deixler, 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. (00-E-2054SA29)

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

Electronic Meters by Invensys Metering Systems

I.D. No. PSC-28-03-00013-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 request filed by Invensys Metering Systems for the approval of the iCon iSO1, iSA1, iNO1, iNA1 series of electronic meters.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of electricity meters, transformers, and auxiliary devices.

Purpose: To permit electric utilities and other entities in New York State to use the Invensys Metering Systems iCon series of electronic meters.

Substance of proposed rule: The Commission will consider a request from Invensys Metering Systems for the approval and use of the first generation of iCon Electronic Meters types iSO1, iSA1, iNO1 and iNA1 in New York State. The Invensys iCon electronic meters are high accuracy revenue grade electricity metering devices that are competitively priced for the residential and small commercial markets.

The iCon electronic meters are designed for billing accuracy, easily upgradeable for AMR monitoring, and compatible existing electromechanical meters they are meant to replace. The first generation iCon meters are available in ANSI Form designations 2S and 12S with or without AMR capabilities.

The iCon electronic meter design conforms to the latest applicable ANSI C12 standards; its performance conforms to the accuracy requirements set forth in ANSI C12.1 - Code for Electricity Metering.

In accordance with 16 NYCRR Part 93, Invensys Metering Systems has indicated that Niagara Mohawk has submitted a letter of intent to use the iCon Family Electronic Meters in its residential and small commercial revenue grade metering applications.

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 argument may be submitted to: Janet H. Deixler, 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-E-0414SA1)

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

Submetering of Electricity by 1400 5th LLC

I.D. No. PSC-28-03-00014-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 request filed by 1400 5th LLC to submeter electricity at 1400 5th Ave., New York, NY.

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

Subject: Case 26988—submetering of electricity for new or renovated residential condominiums where all tenants are shareholders.

Purpose: To permit electric submetering at 1400 5th Ave., New York, NY.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new or renovated residential condominium complexes where all tenants are shareholders. The owners, 1400 5th LLC, have submitted a proposal to master meter and submeter this new residential condominium complex. The total building electric usage for this complex will be master metered and each unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, dispute resolution, economic benefits, grievance procedures and metering systems. The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at 1400 5th Avenue, New York, New York.

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 argument may be submitted to: Janet H. Deixler, 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-E-0884SA1)

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

Commodity Adjustment Clause Reconciliation Mechanism by Niagara Mohawk Power Corporation

I.D. No. PSC-28-03-00015-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, a petition of Niagara Mohawk Power Corporation (Niagara Mohawk) for authorization to make audit adjustments to the commodity adjustment clause.

Statutory authority: Public Service Law, section 66

Subject: Commodity adjustment clause (CAC) reconciliation mechanism.

Purpose: To permit Niagara Mohawk to recoup from customers net underrecoveries of commodity charges in the amount of \$14,149,428, which includes \$2,333,954 for interest, for the time period Sept. 1, 2001 through April 30, 2003.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition of Niagara Mohawk Power Corporation (Niagara Mohawk) for "Authorization to Make Audit Adjustments to the Commodity Adjustment Clause," filed June 11, 2003. The petition proposes to record and recover from customers, through Niagara Mohawk's Commodity Adjustment Clause (CAC) provisions set forth in Rule 29 of Niagara Mohawk's Tariff PSC Nos. 207 and 214, approximately \$14.1 million covering the time period September 1, 2001 through April 30, 2003. Niagara Mohawk states in its petition that incorrect values were used in its CAC computations, resulting in a net underrecovery of \$11.8 million. Additionally, Niagara Mohawk requests recovery of interest charges of \$2.3 million on the underrecovered commodity costs.

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 argument may be submitted to: Janet H. Deixler, 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-E-0886SA1)

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

Submetering of Electricity by Queens Fresh Meadows, LLC

I.D. No. PSC-28-03-00016-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 request filed by Queens Fresh Meadows, LLC (Fresh Meadows Complex) to submeter electricity at 188-02 64th Ave., Flushing, NY.

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

Subject: Case 26988—submetering of electricity for master metered residential rental units owned or operated by private or government entities.

Purpose: To permit electric submetering at 188-02 64th Ave., Flushing, NY.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of master metered residential rental properties owned or operated by private or government entities. The Fresh Meadows Complex has submitted a proposal to master meter and submeter this new residential rental complex. The total building electric usage for this complex will be master metered and each unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, dispute resolution, economic benefits, grievance procedures and metering systems. The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at 188-02 64th Avenue, Flushing, New York.

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 argument may be submitted to: Janet H. Deixler, 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-E-0889SA1)

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

Support Services by Jefferson Wells International for KeySpan Corporation

I.D. No. PSC-28-03-00017-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the application of Jefferson Wells International, for authority pursuant to article I, paragraph B(4) of the "contract for consultant to be retained pursuant to commission orders of August 2, 2002 and December 18, 2002, Case 02-M-0953" to allow it to provide support services for KeySpan Corporation's internal control policies.

Statutory authority: Public Service Law, sections 4(1) and 66(19)

Subject: Authorize Jefferson Wells International to perform services for KeySpan Corporation.

Purpose: To grant permission to perform services for KeySpan Corporation that would not conflict with the services performed for the commission pursuant to this contract.

Substance of proposed rule: By "Order Approving Selection of Consultants to Perform Evaluations of Utility Cyber and Physical Security Systems", issued December 18, 2002, the Commission approved the selection of Jefferson Wells International as the Consultant to evaluate utility physical security systems and adopted contract provisions that *inter alia*, prohibited Jefferson Wells International from performing services for the utility or its affiliates for a period of at least two (2) years after the obligations under the contract are fulfilled. The Commission may approve or reject, in whole or in part, or modify the request of Jefferson Wells International for permission to perform services for KeySpan.

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 argument may be submitted to: Janet H. Deixler, 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.

(02-M-0953SA1)

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

Calculation of Franchise Fees by Cablevision Systems Long Island Corp.

I.D. No. PSC-28-03-00018-P

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

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

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To allow Cablevision Systems Long Island Corp. and the Village of Valley Stream to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Systems Long Island Corp. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Valley Stream (Nassau County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission ... pursuant to 9 NYCRR Part 599". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

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 argument may be submitted to: Janet H. Deixler, 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. (97-V-0391SA1)

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

Calculation of Franchise Fees by Cablevision Systems Westchester Corp.

I.D. No. PSC-28-03-00019-P

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

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

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To allow Cablevision Systems Westchester Corp. and the Town of Lewisboro to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Systems Westchester Corp. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Lewisboro (Westchester County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission... pursuant to 9 NYCRR Part 599". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues.

Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

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 argument may be submitted to: Janet H. Deixler, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (01-V-1299SA1)

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

Manner of Calculation of Franchise Fees by Cablevision Systems Westchester Corp.

I.D. No. PSC-28-03-00020-P

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

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

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To allow Cablevision Systems Westchester Corp. and the Town of Mount Kisco to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Systems Westchester Corp. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Mount Kisco (Westchester County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission... pursuant to 9 NYCRR Part 599". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

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 argument may be submitted to: Janet H. Deixler, 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. (02-V-1066SA1)

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

Issuance of Debt by Birch Hill Water Supply Corporation

I.D. No. PSC-28-03-00021-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Birch Hill Water Supply Corporation for the authority to issue debt in order to construct a water filtration system.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of debt.

Purpose: To approve the issuance of debt in order to construct a water filtration system.

Substance of proposed rule: On June 19, 2003, Birch Hill Water Supply Corporation filed a petition requesting Public Service Commission approval to issue debt of approximately \$452,000 to construct a water filtration system. The company provides water service to 69 customers located in Birch Hill Manor, Town of Beekman, Dutchess County. The Commission may approve or reject, in whole or in part, or modify the company's petition.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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-W-0907SA1)

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

Special Annual Assessment by Birch Hill Water Supply Corporation

I.D. No. PSC-28-03-00022-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by Birch Hill Water Supply Corporation for a special annual assessment of \$42,000 to support a Drinking Water State Revolving Fund loan.

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

Subject: Request for a special annual assessment of \$42,000.

Purpose: To support an annual debt service on a \$452,000 financing from the Drinking Water State Revolving Fund.

Substance of proposed rule: On June 19, 2003, Birch Hill Water Supply Corporation filed Drinking Water State Revolving Fund (DWSRF) Capital Improvement Surcharge Statement No. 1 to P.S.C. No. 3 - Water, effective October 1, 2003, containing a special annual assessment of \$42,000 to support an annual debt service on a \$452,000 financing from the DWSRF. The loan will be used to construct a water filtration system. The amount will be adjusted annually to reflect the actual debt service and will be rendered as a percentage of a customer's bill. The company provides water service to 69 customers located in Birch Hill Manor, Town of Beekman, Dutchess County, New York. The Commission may approve or reject, in whole or in part, or modify, the company's request.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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-W-0938SA1)

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

Water Rates and Charges by Reagans Mill Water Company

I.D. No. PSC-28-03-00023-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by Reagans Mill Water Company, to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. —Water, to become effective July 19, 2003.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about \$259,173 or 198 percent.

Substance of proposed rule: On June 17, 2003, Reagans Mill Water Company (the company) filed to become effective July 19, 2003, Second Revised Leaf No. 8 and First Revised Leaf No. 9 to its tariff schedule P.S.C. No. 1 - Water. The company currently provides water service to 324 residential customers and one commercial customer, in portions of the Town of Dover, Dutchess County, New York. The proposed filing would increase the rates by 198% and annual revenues by \$259,173. The Commission may approve or reject, in whole or in part, or modify, the company's request.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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-W-0952SA1)

Department of State

**EMERGENCY
RULE MAKING**

Filing of Secured Interests

I.D. No. DOS-28-03-00002-E

Filing No. 672

Filing date: June 26, 2003

Effective date: June 26, 2003

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

Action taken: Repeal Part 143 of Title 19 NYCRR adopted on May 22, 1964 and Part 144 of Title 19 NYCRR adopted on September 24, 1986; add a new Part 143 to Title 19 NYCRR.

Statutory authority: Uniform Commercial Code, section 9-526(a); and Executive Law, section 96-a

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

Specific reasons underlying the finding of necessity: This rule is being adopted on an emergency basis to preserve the general welfare. Article 9 of the Uniform Commercial Code plays an important role in the economy of the State of New York. Accordingly, the volume and value of international, interstate and intrastate secured transactions filed in the State of New York requires that electronic filing be permitted and encouraged, and that revised article 9 of the Uniform Commercial Code be otherwise implemented and continued without interruption. Uniform Commercial

Code section 9-526 directs the Secretary of State to adopt rules necessary to carry out the provisions of the revised article 9. This rule is adopted on an emergency basis because, in the department's opinion, compliance with the requirements of section 202(1) of the State Administrative Procedure Act would be contrary to the public interest that will be served by permitting and encouraging electronic filing of financing statements and amendments under the Uniform Commercial Code and by otherwise ensuring that the revised article 9 is effectively administered on a continuing basis, thus avoiding potential disruption and uncertainty relating to the creation, filing and perfection of security interests in the State of New York.

Subject: Filing of secured interests pursuant to article 9 of the Uniform Commercial Code.

Purpose: To implement the provisions of article 9 of the Uniform Commercial Code, as revised by Chapter 84 of the Laws of 2001.

Substance of emergency rule: Chapter 84 of the Laws of 2001 substantially revised Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC). This emergency rule has been adopted to implement the provisions of the Revised Article 9. The emergency rule adopts standard forms and procedures for filing UCC documents with the Department of State and other filing offices. The rule prescribes procedures for the delivery and filing of UCC documents. Specific forms are designated as approved UCC forms. Standard formats are prescribed for names entered on UCC forms. Procedures for correcting errors are established. Procedures are also established for submitting and responding to search requests. Fees are established for all UCC services.

Revisions and additions in other recent emergency adoptions include (1) the addition of provisions permitting submission of UCC financing statements and amendments to the Secretary of State's office by XML transmission, and by such other electronic delivery methods as the Department of State may hereafter make available, and (2) an increase in the fees for services under Revised Article 9 of the UCC and Article 10-A of the Lien Law, effective April 1, 2003, (3) the addition or revision of several official forms, (4) the addition of a provision permitting submission of UCC documents by facsimile transmission, (5) the addition of a provision permitting payment of certain fees by approved credit card or by prepaid account, and (6) the revision of the search logic rules (the revised search logic rules reflect the searching capabilities of the new computer system recently implemented at the Department of State; this new computer system enables off-site searching of UCC records by the public via the internet).

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 September 23, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 473-2278, e-mail: jball@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Chapter 84 of the Laws of 2001 substantially revised Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC). Section 9-526 of Revised Article 9 provides that the Secretary of State shall adopt rules to implement Revised Article 9. Subparts 143-1, 143-2, 143-3, and 143-4 consist of implementing rules relating to general instructions, promulgation of approved UCC forms, rules for delivery of UCC forms to filing offices, rules for the filing and indexing of UCC forms, rules for submission of electronic UCC forms, and rules governing search requests.

Section 9-525 of Revised Article 9 provides that fees shall be determined in accordance with Executive Law § 96-a. Executive Law § 96-a provides that the Secretary of State shall determine the fees for services provided by filing offices pursuant to the provisions of the UCC and Lien Law Article 10-A. Executive Law § 96-a further provides that such fees shall be subject to the approval of the Division of Budget. Subpart 143-5 sets forth fees that have been approved by the Division of Budget.

2. Legislative objectives:

UCC Article 9, as revised by Chapter 84 of the Laws of 2001, is based, in substantial part, on the revised Article 9 proposed and recommended by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. Similar legislation has been enacted across the nation by other states. The intent of the Legislature in adopting Chapter 84 of the Laws of 2001 was to ensure that New York's UCC Article 9 is substantially similar to Article 9 in other states. These rules accord with the Legislature's intent by providing and implementing rules by which filers prepare and file UCC forms, rules by which filing offices file and index UCC forms, rules by which the Secretary of State receives and responds to

UCC search requests, and rules establishing the fees for filing and search services.

3. Needs and benefits:

These rules are necessary to implement UCC Article 9, as revised by Chapter 84 of the Laws of 2001. By providing rules for filing and indexing, a filer will know what forms to use, as well as how to complete and file those forms. Having those rules, filers can avoid mistakes which could cause expense, delay or jeopardize the perfection and priority of a filer's security interest. By providing rules under which a filing office receives and responds to search requests, a lender or other interested party will be better able to prepare a search request and to evaluate the search results. Having these rules will help a lender to avoid mistakes which could cause expense, delay or jeopardize the perfection or priority of security interests. The fees are required by revised UCC § 9-525 and, as user fees, will defray the cost of administering Revised Article 9.

4. Costs:

a. Costs to regulated parties:

Persons who file UCC forms or request UCC information elect to purchase and use the new approved forms, which are prescribed in § 143-1.3 of the rules. The cost of a form is not known, but the cost per form is expected to be minimal. In addition, the forms are available free on several web-sites, including the Department of State's web site at www.dos.state.ny.us.

In addition, persons who file UCC forms, request UCC searches, or request copies of filed UCC documents, will have to pay the fees for the services set forth in Subpart 143-5 of these rules. These fees first became effective (by prior rule) on April 1, 2003, and are higher than the fees that were in effect prior to that date. However, the rules now permit filing of electronic UCC financing statements and amendments at a cost (\$20) that is half the new cost of filing paper-based documents (\$40). This fee structure should encourage use of electronic filing. Further, the Department of State has developed and implemented a new computer system that permits interested parties to conduct UCC searches at no cost via the internet. The new computer system also permits interested parties to print their own copies of documents returned by the internet search; again, there is no charge for such copies. It is anticipated that many parties will rely, in whole or in part, on the free internet searches, and it is further anticipated that for some filers, the total cost of a transaction under the new fee structure will be lower under than the total cost of a similar transaction under former Article 9.

b. Costs to the Department of State:

The Department of State will not incur any significant new costs for implementing or continuing administration of these rules. The costs of administering UCC Article 9 are largely attributed to the statute and not significantly to the implementing rules.

The search logic provisions contained in these rules reflect the search capabilities of the new computer system recently installed at the Department of State. This new system permits off-site searching of UCC records by the public via the internet. It is anticipated that the availability of free internet UCC searches will reduce the demand for searches prepared by the Department of State. The Department of State should realize a reduction in the costs associated with performing UCC searches. Revenue derived by the Department of State from fees for performing searches will also be reduced.

c. Costs to other State agencies:

These rules do not impose any costs on other State agencies. (Note however, that with respect to those State agencies that might file UCC documents or request UCC information, to the extent that any such State agency may be required to pay the generally applicable fees for such UCC services, such State agency will be required to pay the new fees specified in Subpart 143-5.)

d. Cost to local governments:

Under Revised Article 9 of the UCC, the Secretary of State's office is the central filing office and the New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and the County Clerk's offices in the other 58 counties, are local-filing offices. Revised Article 9 imposes certain duties on all filing offices, including the County Clerks' offices and the New York City Register's offices, with regard to UCC filings and requests for UCC information. The County Clerks and the New York City Register should not incur any significant new costs for implementing or continuing administration of these rules. The costs of administering UCC Article 9 are largely attributed to the statute and not significantly to the implementing rules.

5. Local government mandates:

Under the former UCC Article 9, the New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and the County Clerk's offices in the other 58 counties were designated as local-filing offices and, thus, were responsible for filing and indexing UCC forms and for responding to information requests. Those duties remain substantially the same under Revised Article 9 and these rules do not impose any substantial new duties.

6. Paperwork:

The rules designate approved UCC forms, which are national forms that will be used in other states. Those forms are described in § 143-1.3 of the rules. The newly revised forms are, in many respects, similar to the old forms. Completion of the new forms should not impose any new burdens on any person who files a form or requests information on a new form.

A person performing an off-site search of UCC records via the internet will be able simply to type the required information in spaces provided on the web page. Internet searching will not involve completion and submission of the usual Information Request form.

7. Duplication:

The rules do not duplicate, overlap or conflict with any other relevant rules or legal requirements of state or federal governments.

8. Alternatives:

Revised Article 9 requires the Department of State to promulgate implementing regulations and, in doing so, to consider the corresponding regulations adopted by other states. Some other states that have adopted RA9 regulations have adopted versions of the "model rule" promulgated by the International Association of Commercial Administrators (the "IACA Model Rule"). A copy of the IACA Model Rules can be found at following page on the IACA web site: <http://www.iaca.org/sts/modrulfu.doc>.

In preparing this rule, the Department of State considered the IACA Model Rule. Certain portions of this rule reflect concepts covered by the IACA Model Rule and use language that is substantially similar to that found in the IACA Model Rule. Other portions of this rule reflect concepts covered by the IACA Model Rule but use language that has been revised in a manner believed to be better suited to use in this State. In other portions of this rule (e.g., the fee provisions), the language used is substantially similar to the language used in the rules previously adopted under Former Article 9, in order to provide for as much continuity in interpretation as possible. This rule does not address certain matters covered by the IACA Model Rule (e.g., specifying the precise hours of operation of the UCC filing office), because the Department of State believes such matters are not appropriate for a rule of this type.

9. Federal standards:

There are no federal standards relating to State and local filings pursuant to the UCC.

10. Compliance schedule:

This rule can be complied with immediately. The new forms and the substance of the revised Article 9 have been discussed nationally and state-wide for several years. Revised Article 9 has been effective in this State and in most other states since July 1, 2001. Lenders and other persons who do significant UCC business are prepared to comply immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

The rules affect any business or person who files a UCC form with, or requests information from, the Department of State or any of the local-filing offices. Some of the businesses affected will be small businesses. However, the Department of State is unable to determine how many small businesses might be affected.

The rules will have some affect on the New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and on the County Clerks' offices in the other 58 Counties, all of which are designated by UCC Revised Article 9 as local-filing offices.

2. Compliance requirements:

Small businesses, like all other businesses, must use the approved UCC forms when filing UCC related documents. The approved forms are designated in § 143-1.3 of the rules. In addition, small businesses, like all other businesses, must pay the fees for services prescribed in Subpart 143-5 of these rules.

The fees set forth in Subpart 143-5 first became effective (pursuant to a prior rule) on April 1, 2003, and are higher than those applicable prior to that date. However, the search logic rules contained in this rule reflects the searching capabilities of the new computer system recently installed at the Department of State. This new computer system permits off-site searching of UCC records by the public via the internet. The Department of State charges no fee for such internet searches. The public is permitted to print

copies of UCC documents retrieved by the internet search system; again, the Department of State charges no fee for such copies. Further, this rule permit UCC documents to be transmitted to the Department of State's office by facsimile transmission and by XML transmission. These delivery methods should simplify filing, particularly where parties located some distance from Albany wish to file quickly. These advantages will be available to all businesses, including small businesses.

The fee applicable to electronic filings under these rules, coupled with the ability to perform free searches via the internet, and to print free copies of the documents found by such internet searches, may result in the overall cost of a UCC transaction being lower under the new rules than it was under the rules implementing former Article 9. For example, under former Article 9, a filer may have ordered at least one official UCC search prior to closing (fee: \$7.00 per search), ordered copies of filed documents revealed by that search (fee: \$1.50 per page), filed a paper UCC document (fee: \$7 for a one-page filing or \$12 for a multiple-page filing), ordered a post-closing official search (fee: \$7.00), and ordered a copy of the filed UCC document (fee: \$1.50 per page). The total fees charged by the Department of State for such a transaction would be at least \$21.00 plus the cost of any copies (at \$1.50 per page). Under the fee structure that became effective on April 1, 2003 (which fee schedule is continued by this rule), a filer who takes advantage of the electronic filing option may opt to perform his or her own internet search prior to closing (fee: \$0), print copies of documents revealed by that search (fee: \$0), file electronically (fee: \$20.00), perform an internet search following the closing (fee: \$0), and print a copy of the filed (fee: \$0). The total fee charged by the Department of State for such a transaction would be \$20.00. These potential cost savings should be available to all businesses, including small businesses, involved in UCC transactions.

The New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and the County Clerks' offices in the other 58 Counties, must file and index UCC forms in accordance with Subparts 143-1 and 143-2, and accept the fees prescribed in Subpart 143-5 of these rules.

3. Professional services:

Small businesses will not require any professional services to complete or file the approved UCC forms.

4. Compliance costs:

Under the former UCC Article 9, large and small businesses completed and filed UCC forms with the Department of State and with the County Clerks and the New York City Register's offices. Under Revised Article 9, businesses will follow a similar procedure using similar forms. Accordingly, with the exception of the higher filing fees specified in these rules, the Department of State does not anticipate that these rules will impose any new costs on businesses. In addition, the costs associated with compliance with the revised Article 9 and these rules are attributable to the statutory mandates rather than attributable to these implementing rules.

County Clerks and the New York City Register's offices were filing offices under the former Article 9 and their duties under Revised Article 9 are not significantly different. Accordingly, the Department of State does not anticipate these rules will impose any new costs on the counties.

5. Economic and technological feasibility:

The procedures and forms prescribed by UCC Revised Article 9 and these rules are substantially similar to the procedures and forms prescribed by the former UCC Article 9 and the former rules. Compliance with the former rules was economically and technologically feasible for small businesses. Accordingly, the Department of State believes that it will be economically and technologically feasible for small businesses to comply with these rules.

These rules permit, but do not mandate, filing by XML transmission. The Department of State anticipates that bulk filers and service companies will be able to develop the technologies necessary to file via XML transmission, and that filing via XML transmission will be economically and technologically feasible for bulk filers and for service companies and their customers. Again, filers who opt not to file via XML transmission will still be able to file paper-based UCC documents.

The new computer system recently installed at the Department of State permits off-site searching of UCC records by the public via the internet. Small businesses with internet access can use this feature without cost. The Department of State will continue to perform searches for those who request such service. Therefore, small businesses without internet access will continue to be able to obtain UCC searches in the same manner such searches are now obtained. The Department of State will continue to charge the applicable fee for performing such searches. This fee was

increased from \$7 to \$25 on April 1, 2003; this rule continues this fee at \$25.

6. Minimizing adverse impact:

Revised Article 9 of the UCC, like its predecessor, is intended to provide uniform rules and procedures for the creation, perfection, amendment and termination of security interests. Accordingly, these rules do not make special provisions for small businesses.

The County Clerks and the New York City Register's offices served as local-filing offices under the former UCC Article 9 and the former rules. Accordingly, their designation as filing local-offices under Revised Article 9 and their compliance with these rules implementing Revised Article 9 should impose no adverse economic impact.

7. Small business and local government participation:

The Department of State previously solicited comments from County Clerks, and intends to solicit further comments. Representatives of the New York State Association of Counties reacted positively to the new fee schedule which first became effective (pursuant to prior rule) on April 1, 2003, and which is continued in this rule. Based on input from representatives of the New York State Association of Counties, the extra 50 cent fee applicable to certain UCC records indexed against real estate (which had been included in regulations implementing Former Article 9 and in earlier versions of regulations implementing Revised Article 9) was eliminated, and the extra block and lot fees applicable to filings in the counties in New York City and in Nassau County were continued.

The Department of State previously solicited comments from the business community, and intends to solicit further comments. For example, before it implemented the internet search system and the electronic filing systems that are now available, the Department of State solicited participation by service companies and other high-volume filers in intensive stress-testing of the systems. Further, this rule continues the new fee schedule that first became effective (pursuant to a prior rule) on April 1, 2003; before it implemented the new fee schedule, the Department of State sent approximately 10,000 notices to recent UCC filers, service companies, and other potentially affected parties. The Department of State has received numerous telephone calls, e-mails and letters from the business community. For the most part, comments regarding the internet search system, the electronic filing systems and fax filing system have been very positive; comments regarding the recently introduced systems that permit payment of certain fees by credit card and drawdown account have been positive (some complaints regarding the new payment options have been received; most such complaints involve the inability to use a particular payment option to pay for a particular service, such as the inability to use a drawdown account to pay for filings submitted by the recently introduced UCC e-file system); and comments regarding the new fee schedule have been negative. Most of the negative comments regarding the fee schedule were received within the first few weeks after its adoption on April 1, 2003; the number and the frequency of negative comments have since tapered off considerably. The Department of State believes that negative comments regarding the new fee schedule will continue to taper off as more and more UCC filers become aware of the free internet searching, free internet copying, fax filing capability, new payment options, and electronic filing options that are now available.

Further, the Department of State will continue to review its new UCC e-file system to determine if it can be modified in a manner that will permit the use of drawdown accounts to pay the processing fees applicable to documents submitted by that system.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Revised Article 9 applies uniformly throughout the State. Similarly, these rules will apply uniformly throughout the State, including rural areas of the State. (Note that these rules include provisions for additional filing fees to be charged by filing offices in New York City and Nassau County; such provisions are similar to those found in prior rules implementing UCC Article 9).

2. Reporting, recordkeeping and other compliance requirements:

These rules do not impose any reporting or record keeping requirements. The paper work requirements are described in paragraph 6 of the regulatory impact statement.

3. Costs:

The Department of State does not anticipate that persons who file UCC forms or request UCC information under this rule will be required to incur any significant initial capital cost. Persons who wish to file UCC documents electronically, or to perform UCC searches via the internet, will need appropriate computer equipment and software and internet access; however, this rule does not require electronic filing, and a person who does

not wish to perform a UCC search via the internet will still be permitted to order a search from the filing office.

A person filing a UCC document or requesting UCC information under this rule will be required to fill in an approved form and pay the applicable fee; the annual cost to any such person will depend on the number of filings and information requests such person makes each year. The approved forms are prescribed in § 143-1.3 of this rule. The cost of a form is expected to be minimal. In addition, the forms are available free on several web-sites, including the Department of State's web site at www.dos.state.ny.us. The fees are set forth in Subpart 143-5 of this rule. These fees are uniformly applied to all filers, so there should be no variation in such costs for different types of public and private entities in rural areas.

4. Minimizing adverse impact:

The Department of State is not aware of any information suggesting that these rules may impose any adverse impact on rural areas. Fees for services rendered under Revised Article 9 of the UCC and Article 10-A of the Lien Law are increased; however, the fees apply uniformly throughout the State (subject to the provisions, similar to those found in prior rules implementing UCC Article 9, for additional filing fees to be charged by filing offices in New York City and Nassau County). Further, internet searching of the department of State's UCC records is now available, and these rules permit submission of documents by electronic means (XML transmission) and by facsimile. These innovations permit easier searching and filing by all, particularly by those located in areas more distant from Albany.

5. Rural area participation:

The Department of State previously solicited comments from County Clerks, and intends to solicit further comments. Representatives of the New York State Association of Counties reacted positively to the new fee schedule which first became effective (pursuant to prior rule) on April 1, 2003, and which is continued in this rule. Based on input from representatives of the New York State Association of Counties, the extra 50 cent fee applicable to certain UCC records indexed against real estate (which had been included in regulations implementing Former Article 9 and in earlier versions of regulations implementing Revised Article 9) was eliminated, and the extra block and lot fees applicable to filings in the counties in New York City and in Nassau County were continued.

The Department of State previously solicited comments from the business community, and intends to solicit further comments. For example, before it implemented the internet search system and the electronic filing systems that are now available, the Department of State solicited participation by service companies and other high-volume filers in intensive stress-testing of the systems. Further, this rule continues the new fee schedule that first became effective (pursuant to a prior rule) on April 1, 2003; before it implemented the new fee schedule, the Department of State sent approximately 10,000 notices to recent UCC filers, service companies, and other potentially affected parties. The Department of State has received numerous telephone calls, e-mails and letters from the business community. For the most part, comments regarding the internet search system, the electronic filing systems and fax filing system have been very positive; comments regarding the recently introduced systems that permit payment of certain fees by credit card and drawdown account have been positive (some complaints regarding the new payment options have been received; most such complaints involve the inability to use a particular payment option to pay for a particular service, such as the inability to use a drawdown account to pay for filings submitted by the recently introduced UCC e-file system); and comments regarding the new fee schedule have been negative. Most of the negative comments regarding the fee schedule were received within the first few weeks after its adoption on April 1, 2003; the number and the frequency of negative comments have since tapered off considerably. The Department of State believes that negative comments regarding the new fee schedule will continue to taper off as more and more UCC filers become aware of the free internet searching, free internet copying, fax filing capability, new payment options, and electronic filing options that are now available.

Further, the Department of State will continue to review its new UCC e-file system to determine if it can be modified in a manner that will permit the use of drawdown accounts to pay the processing fees applicable to documents submitted by that system.

Job Impact Statement

This rule will not have any substantial impact on jobs or employment opportunities. The procedures for filing, indexing and requesting information under Revised Article 9 of the Uniform Commercial Code (UCC) and this rule are similar to the procedures under the former Article 9 and the

former implementing rules. Accordingly, UCC Revised Article 9 and this rule should have not have a substantial impact on jobs or employment opportunities.

The search logic provisions contained in this rule reflect the new searching capabilities of the new computer system recently installed at the Department of State. This new computer system permits off-site searching of UCC records by the public via the internet. The Department of State anticipates that private businesses, including small businesses, will offer UCC searching services to lenders and others with a need for such services. This should create some new private sector jobs and employment opportunities.

EMERGENCY RULE MAKING

Cease and Desist Zone for Real Estate Brokers and Salespersons

I.D. No. DOS-28-03-00004-E

Filing No. 675

Filing date: June 27, 2003

Effective date: June 27, 2003

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

Action taken: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h(3)(a) and (c)

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

Specific reasons underlying the finding of necessity: Based on testimony received at a public hearing, the Secretary of State has determined that some owners of residential property in the Brooklyn community of Canarsie are subject to intense and repeated solicitation by real estate brokers and real estate salespersons and that such solicitations seek to have the owners place their home for sale with the real estate brokers and real estate salespersons. The Secretary of State has further determined that the homeowners have no practical means of stopping the unwanted and intrusive solicitations and that those homeowners need immediate relief. Therefore, compliance with section 201(1) of the State Administrative Procedure Act would be contrary to the public interest of providing for the general welfare of those homeowners who seek immediate relief from the continuation of the unwanted and unwelcomed solicitations by real estate brokers and salespersons.

Subject: Cease and desist zone for real estate brokers and salespersons.

Purpose: To establish a cease and desist zone in the Brooklyn community of Canarsie.

Text of emergency rule: Paragraph (c)(2) of section 175.17 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to add the following designated cease and desist zone:

Cease and Desist Zone (Canarsie)

<i>Zone</i>	<i>Expiration Date</i>
<i>County of Kings (Brooklyn)</i>	<i>November 30, 2007</i>

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection to Stanley Street and East 108 Street; thence southeasterly along East 108 Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Short (Belt) Parkway; thence southwesterly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

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 September 24, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Bruce Stuart, Division of Licensing Services, Department of State, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

Regulatory Impact Statement

1. Statutory authority:

Section 442-h(3) (a) of the Real Property Law ("RPL") provides that the Secretary of State may adopt a rule establishing a cease-and-desist zone if the Secretary determines that some homeowners within a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to list their homes for sale. Upon the establishment of such a zone, a homeowner may file with the Secretary a statement of desire not to be solicited. Thereafter, the Secretary will publish a list of the names and addresses of the persons who have filed the statement, and brokers and salespersons are then prohibited from soliciting persons on that list. That list is commonly referred to as a "cease-and-desist list".

Section 442-h(3)(a) of the RPL provides that no rule establishing a cease and desist zone shall be effective for more than five years; provided, however, that the Department of State may re-adopt the rule to continue a cease and desist zone for additional periods not to exceed five years.

Based testimony received at a public hearing on December 14, 2000, the Secretary of State has determined that some homeowners within the Brooklyn community of Canarsie are subject to intense and repeated solicitations from real estate brokers and salespersons. As a result, the Secretary has express statutory authority to propose and adopt a cease-and-desist zone for that community.

2. Legislative objectives:

According to the Statement of Legislative Findings for section 442-h of the Real Property Law, the Legislature has found that, from time to time, homeowners in some neighborhoods have been subject to intense and repeated solicitation by real estate brokers and salespersons to place their homes for sale, with the implication that property values would be decreasing because persons of different ethnic, social or religious backgrounds were moving into the neighborhood in greater numbers. The Statement of Legislative Findings also concluded that this type of solicitation technique constitutes a churning of the market and generated panic selling in the neighborhood. By enacting § 442-h, the Legislature sought to provide a means by homeowners could effectively express their wish not to be solicited by real estate brokers or salespersons. The Secretary has found that some homeowners in the Brooklyn community of Canarsie are subject to intense and repeated solicitations to list their homes for sale. Therefore, this rule accords with the public policy objectives which the Legislature sought to advance by enacting § 442-h of the Real Property Law.

3. Needs and benefits:

A public hearing was held in the Brooklyn Community of Canarsie on December 14, 2000. At the public hearing testimony was given by community leaders who spoke on behalf of their constituents. Speakers included two State Senators, a Member of the Assembly, the Deputy Borough President, members of Community Board 18, representatives of homeowners associations and representatives of civic associations. Each of the speakers spoke in support of the proposed cease-and-desist zone citing the need to curb the aggressive solicitation practices of real estate agents in the Canarsie community. The speakers cited frequent telephone calls, unwanted mail and flyers, as well as door-to-door solicitations, as intrusive and unwanted solicitation practices by real estate brokers and salespersons. Accordingly, the Secretary of State has determined that homeowners in the Brooklyn community of Canarsie have no practical means of stopping the unwanted and intrusive solicitations and that the homeowners need immediate relief. This rule will provide those homeowners who do not wish to be solicited with an effective and practical means of so notifying real estate brokers and salespersons. One thousand sixty-eight homeowner's statements were filed for the previous cease-and-desist list, which expired on February 27, 2001.

On June 29, 2001, the United States District Court for the Eastern District of New York issued a decision and judgement in the matter of *Anderson, et al. v. Treadwell, as Secretary of State of the State of New York* declaring the cease-and-desist rules of the Department of State to be invalid as an unconstitutional restriction of free speech. That decision was appealed by the Department of State, and on June 25, 2002, the United States Court of Appeals for the Second Circuit issued a decision reversing the District Court's decision and judgement, and ordering the District Court to enter judgement in favor of the Secretary of State. See *Anderson et al. v. Treadwell*, 294 F. 3rd 453 (2d Circuit 2002). On October 8, 2002, the District Court entered judgement in favor of the Secretary of State. The entry of judgement by the District Court effectively reinstated the cease-

and-desist rule, which had been invalidated by the District Court’s previous decision and judgement.

4. Costs:

a. Costs to regulated parties:

Regulated parties include licensed real estate brokers and salespersons who do residential sales in the Brooklyn community of Canarsie. There are approximately 1,200 real estate brokers and approximately 1,800 real estate salespersons with offices in Brooklyn.

The Department of State will have the cease-and-desist list available, at no cost, on its web site, www.dos.state.ny.us. The cease-and-desist list will also be sold to the public, including real estate brokers and salespersons, for \$10 per copy, in accordance with existing 19 NYCRR Section 175.17 (c) (5). Copies will also be made available for inspection and copying at Department of State offices.

We expect that most licensees who do business in Canarsie will access the list, at no cost, on the Department’s web site. We expect that some licensees will purchase one or more copies. Some will share the expense by sharing a copy. Others will not access or purchase a copy because they do not solicit residential listings in Canarsie.

In addition, some real estate brokers may use commercial mailing lists to solicit. For those brokers, the cease-and-desist list may increase the cost of using a commercial mailing list. The list will have to be checked against the addresses in the cease-and-desist list, and the broker will have to delete the addresses that appear in the homeowner list. The Department of State is not able to estimate the cost to those brokers because the cost will depend on a number of factors, such as the number of names on the mailing list, the number of addresses in the cease-and-desist list, the technology to the licensee, and the licensee’s cost for technology and labor. On the other hand, there may be some reductions in the total cost of the mailing when the “unproductive addresses” are eliminated from the list.

Also, if a licensee uses the telephone, delivery services and personal contact to solicit residential listings, the licensee may have to spend time checking the cease-and-desist list to avoid contact with any person at an address listed. There is, of course, an expense associated with that expenditure of time. On the other hand, there may be savings associated with elimination of unproductive calls or deliveries. Whether there is a net cost or savings will depend on the circumstances and practices of each licensee. Therefore, the Department of State is not able to estimate those costs.

b. Costs to the Department of State:

The estimated costs for preparing the cease-and-desist list are as follows:

Printing owners statements	\$2,200
Mailing owners statements	640
Processing statements:	
Staff: SG-14 @ \$29,110	
10 weeks	5,600
Data entry	
Staff: SG-6 (NYC) @ \$23,385	
10 days	900
Fringe benefits @36.5%	2,372
Total:	\$11,712

The costs for printing and mailing are unknown. The Department anticipates that most licensees will access the list, at no cost, on the Department’s website. For those few who want to purchase a paper copy, the Department will likely print a copy, on an order-by-order basis, on existing equipment. The mailing costs will be dependent on the number of copies that are ordered. However, the Department expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

The Department of State expects that revenues from the sale of the list will be incidental to the costs of preparing, printing and mailing.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

Homeowners who do not want to be solicited will have to file an “owner’s statement” with the Department of State. The owner’s statement will indicate the owner’s desire not to be solicited and will set forth the owner’s name and the address of the property within the cease-and-desist zone. The Department of State will provide homeowners with a standard form although use of the form is not mandatory. Owner’s statements will be provided to community leaders for distribution to their constituents. In addition, owner’s statements will be available from the Department of

State on request, as well as available on the Department’s web site. The Department of State will prepare a cease-and-desist list containing the names and addresses of all of the homeowners who filed an owner’s statement. The list will be available, at no cost, on the Department’s website. The publication will also be sold to the public, including real estate brokers and salespersons. The price will be \$10 per copy. Except for orders submitted by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to § 442-h(2) of the Real Property Law. However, the Department concluded that a cease-and-desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, the Secretary of State decided to adopt the cease-and-desist order rather than a non-solicitation order.

The Department of State did not consider any other alternatives.

9. Federal standards:

There are no federal standards regulating the frequency or intensity of solicitations by real estate brokers or salespersons. Consequently, this rule does not exceed any existing federal standard.

10. Compliance schedule:

Real estate brokers and salespersons can comply with the cease-and-desist order immediately upon publication of the list.

Regulatory Flexibility Analysis

1. Effect of rule:

This cease-and-desist rule applies to an area generally known as Canarsie in the Borough of Brooklyn. There are approximately 1,170 real estate brokers and approximately 1,852 real estate salespersons in the Brooklyn. Most of those licensees are small businesses, or they work for a small business. This rule will apply to most of the licensees. The exceptions will be those who do not deal in residential properties, and those who do not deal in properties located within the cease-and-desist zone.

The cease-and-desist rule will also apply to licensed real estate brokers and salespersons who are located outside of the Brooklyn but who solicit residential properties within the designated area. The Department of State does not have a practical way of estimating how many brokers and salespersons fall within this category.

The rule does not apply to local governments.

2. Compliance requirements:

The rule does not impose any reporting or record keeping requirements on the licensees. The rule does prohibit each licensee from soliciting the sale, rental or listing from any homeowner whose name appears of a cease-and-desist list published by the Department of State.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

A licensee will not need professional services in order to comply with the rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The cost of compliance and the variations in the costs of compliance are detailed in section 4(c) of the Regulatory Impact Statement.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the names and addresses of the homeowners who do not want to be solicited will be published by the Department of State and since the cost of the publication is \$10 per copy or free if accessed on the Department’s website, it will be economically and technologically feasible for real estate brokers and salespersons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to § 442-h(2) of the Real Property Law. However, the Department concluded that a cease-and-desist order could provide home-

owners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, the Secretary of State decided to adopt the cease-and-desist order rather than a non-solicitation order.

To provide homeowners in the designated area with relief from intense and repeated solicitations from real estate brokers and salespersons, the rule must apply equally to all licensees regardless of the size of their business or the size of their employer's business. Consequently, the rule does not make special accommodations for different classes of licensees.

7. Small business participation:

The Department of State conducted an open public hearing on December 14, 2000, at School 211, Avenue J, Brooklyn, New York. The time, date and place of the public hearing was well advertised within the Canarsie community. Testifying at the hearing on behalf of their constituents in Canarsie were two State Senators, a Member of the Assembly, the Deputy President of the Borough of Brooklyn, members of Community Board 18, representatives of homeowners associations and representatives of civic associations.

There were no real estate brokers or real estate salespersons who identified themselves at the public hearing, and no real estate broker or salesperson spoke at the hearing. In addition, no real estate broker or salesperson submitted any written testimony regarding the proposed re-adoption of the cease-and-desist zone.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

This rule establishes a cease-and-desist zone in the Brooklyn community of Canarsie, and this rule only affects those real estate brokers and salespersons who do business in that community.

Canarsie is not a rural area and, therefore, a rural flexibility analysis is not required for this rule.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for real estate brokers or real estate salespersons.

The rule provides a means by which homeowners in the designated community can notify real estate brokers and real estate salespersons that the homeowners do not want to be solicited for the purchase, sale or rental of their homes.

Since the homeowners who file a homeowner's statement with the Department of State are not interested in receiving solicitations from real estate brokers or real estate salespersons, publication of names and addresses of those homeowners and the resulting notification to real estate brokers and salespersons will not have any substantial impact on jobs or employment opportunities for real estate brokers or salespersons.

EMERGENCY RULE MAKING

Inspection of College Buildings for Fire Safety Compliance

I.D. No. DOS-28-03-00005-E

Filing No. 678

Filing date: June 30, 2003

Effective date: June 30, 2003

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

Action taken: Addition of Part 500 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 91, 156 and 156-e; and Education Law, section 807-b

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

Specific reasons underlying the finding of necessity: The legislation and these implementing regulations are essential to the protection of college students and staff from injury or death through a program of inspection and enforcement of the Uniform Fire Prevention and Building Code.

Subject: Inspection of college buildings for fire safety compliance with the Uniform Fire Prevention and Building Code.

Purpose: To protect college students and staff from injury or death because of fires.

Substance of emergency rule: By passage of Chapter 81 (Part A) of the Laws of 2002, the Department of State, Office of Fire Prevention and Control (OFPC), under the direction of the State Fire Administrator, was granted authority to inspect the majority of public and independent college facilities in the state for compliance with the Uniform Fire Prevention and Building Code of New York State (UFPBC) and other applicable fire safety standards, prepare inspection reports, issue citations and corrective orders for violations, take appropriate actions to ensure compliance with its orders, and do all things necessary and appropriate to effectuate the law. It is the purpose of this Part to establish procedural and substantive requirements to implement and apply Section 156-e of the Executive Law and Section 807-b of the Education Law. This part is inapplicable to the City of New York, which shall continue to conduct inspections of public and independent colleges under its jurisdiction.

Part 500 provides for the inspection and re-inspection of college or university buildings, issuance of the Report of Inspection/Notice of Violation, issuance of Report of Re-inspection/Order to Comply, penalties; methods of abatement, Certificates of Conformance issuance and revocation and delegation of inspection authority to local governments.

OFPC may order the closing of a building, buildings or parts thereof whenever a severe or serious violation exists; or whenever justified by the cumulative effect of numerous significant violations, which constitute conditions that are considered an imminent threat to public health or safety. Fines may also be imposed by OFPC for the failure to remedy violations of the UFPBC and other applicable fire safety standards. The authority to close buildings and impose fines will be retained by OFPC alone, and will not be delegated.

The laws which created this inspection program and these regulations result from the work of the Governor's Task Force on Campus Fire Safety. Members of the Task Force included representatives from independent and public colleges, the fire services, and college students.

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 September 27, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: John F. Mueller, Department of State, Office of Fire Prevention and Control, 41 State St., 12th Fl., Albany, NY 12231, (518) 474-6746

Regulatory Impact Statement

1. Statutory Authority

Chapter 81 of the Laws of 2002 amended section 807-b of the Education Law and added a new section 156-e to the Executive Law. These direct the Department of State Office of Fire Prevention and Control to conduct fire inspections at least annually of all public and independent college buildings outside of the City of New York, to ensure compliance with the provisions of the State Uniform Fire Prevention and Building Code (UFPBC) and other applicable fire safety standards. Subdivision 2 of 807-b and Executive Law 156-e authorizes the OFPC to adopt rules and regulations establishing minimum standards for the content and frequency of such inspections. The statute also authorizes OFPC to take appropriate actions to ensure noted violations are promptly remedied.

2. Legislative Objectives

With the passage of this legislation, the Governor and NYS legislature have expressed a commitment to afford as much protection as reasonably possible to all college students & staff from the perils of fire. The laws adopted clearly indicate that compliance with the UFPBC and applicable fire safety standards is viewed as a critical component in providing this protection. With passage of these statutes, OFPC has been entrusted with inspection responsibility to assure compliance in all public and independent colleges. Because of the importance of student safety from the hazards of fire, the statute explicitly provides for the imposition of penalties for those colleges who fail to comply with the UFPBC.

3. Needs and Benefits

Following a dormitory fire at Seton Hall University in New Jersey, in which several students lost their lives, the threat fire poses to students attending schools away from home became apparent. Fire dangers were also perceived to be a problem which should be addressed by inspecting not only dormitories, but all other campus buildings as well. Therefore, the Governor established a Task Force on Campus Fire Safety. Members of the Task Force, which included representatives of public and independent colleges, students and fire services, all agreed that there was need to designate a single entity to inspect all college and university buildings (except in the City of New York) for compliance with the UFPBC and other applicable fire safety standards. The Task Force Report recom-

mended that this entity be OFPC, and that OFPC should be granted enforcement powers to ensure that colleges and universities comply with the UFPBC (copies of the report are available from OFPC). The Governor accepted these recommendations, and what became Chapter 81 of the Laws of 2002 was proposed and adopted as a Governor's Article VII Bill. The expected benefits are discovery and abatement of hazardous fire conditions in order to make students and staff safer from injury from fire, and to protect facilities from damage or destruction by fire.

The purpose of this rule is to clarify the procedures and steps that will allow colleges to comply with Chapter 81 of the Laws of 2002. Establishment of uniform procedures will enhance compliance with the UFPBC by providing colleges with the framework that will be utilized by OFPC during the process; and will provide for the necessary enforcement steps, including the imposition of fines and ordering that buildings be closed. Currently, no regulations exist that detail the procedural steps necessary to comply with the law. These regulations will benefit both OFPC and the regulated parties by clearly outlining the expectations and responsibilities of each.

4. Costs

Currently, regulated parties are required to comply with the provisions of the UFPBC. This rule will not increase this requirement, but rather provide a mechanism to assure compliance. Therefore, colleges will incur no additional costs. If regulated parties are in compliance, there will be no fiscal impact. In addition, some colleges and universities hired knowledgeable contractors to conduct the inspections, and had to pay for these services. With either OFPC or a local government to which authority has been delegated conducting inspections at no cost, the colleges and universities will be relieved of this expense.

If regulated parties are found to be in violation of the UFPBC, then financial penalties may be assessed against the most recalcitrant. The rule minimizes impacts in two ways. First, it provides a reasonable time frame between discovery of the violation and assessment of the penalty to allow the college to address the noncompliant items, thereby avoiding penalties. Secondly, the rule considers fire probability and severity of the violation in determining the amount of a given penalty. This consideration reduces the fiscal impact of less severe violations and assesses a realistic penalty based on the hazard.

The statutes adopted have fiscal impacts on the DOS OFPC as resources are required to conduct the inspections and take action to remedy violations. These costs have been anticipated and the necessary funding has been included within the 2002-2003 State budget.

There is no fiscal impact on local government unless they voluntarily choose to participate. The statute allows for the OFPC to delegate certain duties relating to the inspections to local governments. However, such delegation would only occur upon request of the local government.

5. Local Government Mandates

No mandate is placed upon local governments as a result of this rule. The assumption of inspection responsibility through the delegation process is initiated only upon the local government's request.

6. Paperwork

The bulk of the paperwork requirements will be fulfilled by OFPC, which will produce an inspection report for each building, issue Orders and complete the paperwork necessary to obtain compliance with the UFPBC. Reporting requirements for regulated parties are minimal. Paperwork consists primarily of documentation of actions taken to abate fire safety violations. In any event, before Education Law Section 807-b was amended colleges and universities were required to file annual fire inspection reports with the Commissioner of Education.

Any paperwork requirements for local governments will arise only if responsibility for inspections is voluntarily requested by the local governing body.

7. Duplication

There will be no duplication. Only OFPC or a delegated local government may conduct inspections required under Education Law Section 807-b. Only OFPC will have the authority to take steps necessary to compel colleges and universities to abate violations of the UFPBC.

8. Alternatives

There are no viable alternatives to this rule. Compliance with Section 807-b and Executive Law 159-e requires the establishment of these rules.

9. Federal Standards

There are no applicable federal standards related to this rule.

10. Compliance Schedule

The regulations will become effective on January 1, 2003. Compliance will only be required following the inspection of buildings by OFPC, at which point the time frames provided in the regulations will be applicable.

These are long enough to abate most of the violations. Where a violation causes conditions extremely hazardous to life, health, and safety, compliance times will be shorter by necessity. This is consistent with the legislative intent that students and staff be afforded as much protection from fire as is reasonably possible.

Regulatory Flexibility Analysis

1. Effect of Rule

The only businesses affected by this rule will be the colleges and universities outside of the City of New York. According to information provided by the State Education Department, there only 15 colleges which employ fewer than 101 people and qualify as small businesses under SAPA. This rule will not affect them, except as noted below, because under prior law, they were required to have annual inspections for compliance with the UFPBC and file the resulting inspection reports with the Commissioner of Education. They were then required by the UFPBC to correct any violations.

This rule will not impact local governments because a request for statutory delegation of authority to conduct inspections is entirely voluntary. No requirements are otherwise imposed upon local governments.

2. Compliance Requirements

Affected colleges and universities will be required to correct violations noted as a result of the inspection, as was true under prior law. In order to allow compliance with the UFPBC to be undertaken in a reasonable manner, OFPC may allow colleges to develop compliance plans to address each violation. These are expected to be under exceptional circumstances.

3. Professional Services

In some instances, colleges and universities may need to utilize the services of a professional engineer or licensed architect in the development of compliance plans. It is anticipated that this activity will be infrequent due to the focus of the inspection relating to behavioral aspect or maintenance rather than structural or design features.

4. Compliance Costs

Compliance costs associated with the rule will vary based on the following: level of compliance currently found at each college; nature and severity of the noncompliant items; length of time the noncompliant condition continues to exist. Again, this is no different as was the case under prior law, as compliance with the UFPBC has always been required and violations would have to be addressed. The statute and rule will actually reduce costs to small business as OFPC will be providing the inspections at no cost, whereas previously, the colleges bore the inspection cost themselves.

Part 500 provides for the establishment of a reasonable time frame to allow correction of noncompliant items before the penalty portion of the rule becomes effective. If the correction is not completed within the original abatement date, a second date is established. It is this second date by which the penalty assessments are based.

5. Economic and Technological Feasibility

Economic impact on colleges will solely be driven by the level of current compliance with the UFPBC and related standards. Again, nothing in this rule increases the current requirements placed on colleges, but rather, the rule is designed to assure compliance. Colleges which address noncompliant conditions in a reasonable time frame will not incur any additional economic impacts than they would have under prior law.

The allowance of a compliance plan as outlined in Part 500 permits the college to incorporate technological changes and advancements when addressing noncompliant items.

6. Minimizing Adverse Impact

Deferring the penalty assessment portion of the rule to the second abatement date allows a period of time for the college to correct the violation without fear of penalty. This greatly reduces any negative economic impact the rule may have in terms of the assessment of fines.

7. Small Business and Local Government Participation

Representatives of the Commission on Independent Colleges and Universities were members of the Governor's Task Force on Campus Fire Safety, which actually recommended to the Governor that OFPC be given the statutory authority which the rule implements. In addition, the proposed rule will be available for public comment for a period of at least 45 days.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

Approximately 167 colleges and universities will be inspected under Section 807-b of the Education Law and Section 156-e of the Executive Law. While many of this number are in rural areas, the regulations will not negatively impact rural areas. Inspection of colleges and universities was a

legislative mandate under prior law, and continues to be so under the new statutes. The only differences is that OFPC will conduct the inspections.

Rural areas will actually benefit from the new inspection program. In many instances code enforcement personnel in rural areas conducted the inspections required by Education law 807-b prior to the change in statute. The laws requiring the state to conduct inspections shifts responsibility to the OFPC relieving the local official of an unfunded mandate while not negatively impacting their employment status.

In addition, any impacts on rural areas at all are the result of a legislative mandate, and not these regulations.

2. Reporting, recordkeeping and other compliance requirements

Reporting and record keeping requirements of colleges is minimal and consists primarily of describing the mechanism for compliance of identified violations if they are not quickly abated. There may be a need for architectural or engineering professional services to develop compliance plans. It is anticipated that this will not be a frequent occurrence. There are no additional reporting or record keeping requirements for regulated parties within rural areas. Local governments within rural areas have no reporting/record keeping requirements unless they voluntarily choose to conduct required inspections under the delegation portion of the rule.

3. Costs

No adverse changes in costs are expected. Compliance with the UFPBC and other fire safety standards, and annual fire inspections of colleges were mandated by statute before Chapter 81 of the Laws of 2002 was adopted. This remains unchanged, except that the state will now conduct the inspections. For those colleges and universities who paid a contractor to conduct annual fire inspections, this cost will now be eliminated.

4. Minimizing adverse impact

Statute directs OFPC to assure compliance and empowers OFPC to assess fines for non-compliance. This rule establishes time periods between the initial inspection and the first re-inspection whereby colleges can correct the violation without fear of penalty. College facilities within rural areas that comply with the applicable fire safety standards should translate into a reduction in the fire protection demands within the rural area. Properly designed and maintained buildings will reduce the potential for a fire to occur.

5. Rural area participation

Proposed rule will be available for public comment for a period of at least 45 days.

Job Impact Statement

As provided in SAPA section 201-a(2)(a), it is apparent from the nature and purpose of this rule that it will not have a substantial adverse impact on jobs or employment opportunities. Instead, DOS has determined that the rule will have a positive impact on jobs and employment opportunities.

The inspection function performed by OFPC has already created over twenty state positions necessary to accomplish legislative objectives. Many of these positions will be regionally based throughout the state, and have already presented job opportunities for localized individuals who are qualified to perform OFPC's statutory duties, and have been presented with state employment which would not otherwise have been available.

OFPC staff members are well qualified in familiarity with the requirements of the UFPBC, and the majority have experience in code enforcement and fire fighting. With the implementation of this comprehensive fire safety inspection program, annual inspections by qualified individuals will first ensure that inspections are made; and second allow comprehensive enforcement activity to take place to correct violations. Before inspection and enforcement authority was conferred upon OFPC, there existed no efficient mechanism to make certain that annual inspections occurred or that violations be corrected.

Many violations of the UFPBC will require employment of qualified individuals to correct violations detected. It is expected that under some circumstances correction of violations will require the expertise of trained individuals, including electricians, contractors, engineers and design professionals.

In many instances, Local Code Officials conducted the inspections pursuant to Education Law 807-b prior to the change in statute. The statute change shifts this responsibility to the OFPC relieving the local government of an unfunded mandate, while not negatively impacting the employment status of local inspectors. They will still be required to perform all of the other duties they are responsible for under the UFPBC. In a few cases, private contractors were employed by the colleges to conduct inspections. While the change in statute may have a minimal impact on this specific group, the Legislature and Governor removed them as eligible inspectors

in the new law. Therefore, it is not these regulations which may have an effect on them.

The statutory scheme which created the inspection program will positively impact both state and local employment opportunities.

Department of Taxation and Finance

EMERGENCY RULE MAKING

City of New York Withholding Tables

I.D. No. TAF-28-03-00007-E

Filing No. 682

Filing date: July 1, 2003

Effective date: July 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 291.1(b); repeal of Appendix 10-C and addition of new Appendix 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 671(a)(1); 697(a); 1309; and 1312(a); Administrative Code of the City of New York, sections 11-1771(a); 11-1797(a); 11-1909; and 11-1943

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

Specific reasons underlying the finding of necessity: The Commissioner of Taxation and Finance is required by L. 2003, ch. 63 to adjust the New York City withholding tables and other methods by July 1, 2003. This chapter became law on May 19, 2003. Chapter 63 also authorizes New York City to adopt a local law to impose the new tax rates set forth in the chapter. The commissioner is required to act by July 1, 2003 but after the enactment of the local law. An emergency action is the only way for the commissioner to adopt regulatory amendments to make these adjustments and comply with both the above requirements and the requirements of the State Administrative Procedure Act.

Subject: City of New York withholding tables and other methods.

Purpose: To reflect the revision of certain tax rates and the new tax table benefit recapture, for wages and compensation paid on or after July 1, 2003.

Substance of emergency rule: Section 1309 of the Tax Law and section 11-1771(a) of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of New York personal income tax on residents reasonably estimated to be due for the taxable year.

This rule repeals Appendix 10-C of Title 20 NYCRR and enacts a new Appendix 10-C of such Title to provide new City of New York withholding tables and other methods applicable to wages and other compensation paid on or after July 1, 2003. The new tables and other methods reflect the revision of the City of New York tax tables and the new tax table benefit recapture which were enacted in Chapter 63 of the Laws of 2003. This rule also reflects the increase in the City of New York supplemental withholding tax rate to be applied to supplemental wage payments.

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 September 28, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and

regulations that are necessary to enforce the personal income tax; section 1309 (not subdivided) provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Tax Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by tax regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York; section 11-1909 (not subdivided) and section 11-1943 (not subdivided) provide that after January 1, 1976 the laws found in Parts V and VI of Article 22 of the Tax Law, which contain sections 671 through 699 of the Tax Law and which pertain to the withholding of tax and the procedural and administrative aspects of the state tax law, shall have the same force and effect as if they were incorporated into the Administrative Code of the City of New York, except where noted.

2. Legislative objectives: New Appendix 10-C of Title 20 NYCRR contains the revised City of New York withholding tables and other methods applicable to wages and other compensation paid on or after July 1, 2003. The amendments reflect the revision of the tax tables and the newly added tax table benefit recapture in Chapter 63 of the Laws of 2003, and the requirement in the new law that the withholding rates for the remainder of tax year 2003 reflect the full amount of tax liability for tax year 2003 as accurately as practicable. The revised tax tables include two new brackets for taxpayers at the highest levels of taxable income and an increase in the tax rates for taxpayers whose taxable income reaches these levels. The rule also reflects the increase, to 5.60 percent, of the City of New York supplemental withholding tax rate to be applied to supplemental wage payments.

3. Needs and benefits: This rule sets forth City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after July 1, 2003, reflecting the revision of the City of New York tax tables and the newly added City tax table benefit recapture contained in Chapter 63 of the Laws of 2003. This rule benefits taxpayers by providing City of New York withholding rates that more accurately reflect the current income tax rates. If this rule was not promulgated, the use of the existing withholding tables would cause some under withholding for some taxpayers.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of City of New York personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendix 10-C of Title 20 NYCRR to the rates of the City of New York personal income tax on residents, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to revise the City of New York personal income tax on residents withholding tables and other methods arises due to the statutory change in the rates of City of New York personal income tax on residents, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Management Services Bureau, Operations Support Bureau and Bureau of Fiscal Management.

5. Local government mandates: Any local governments, as employers, maintaining an office or transacting business within New York City, who have a City of New York resident as an employee, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be sent copies of the new tables and other methods as part of the employer's guide which is routinely revised.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables

and other methods be promulgated, there are no viable alternatives to providing such tables and other methods. The only alternative to promulgating this rule would be to allow the existing tables to remain in effect. That alternative, however, would require that employers continue to withhold at rates that no longer reflect the personal income tax rates of the City of New York which will be in effect for the 2003 tax year.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: Affected employers will be receiving the required information in sufficient time to implement the revised City of New York withholding tables and other methods for wages and other compensation paid on or after July 1, 2003.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, which are currently subject to the City of New York withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised City of New York withholding tables and other methods. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms or other paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any of such services.

4. Compliance costs: Small businesses and local governments are already subject to the City of New York withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

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

6. Minimizing adverse impact: Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(13) of the State Administrative Procedure Act, who is currently subject to the City of New York withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The number of employers that are also public or private interests in rural areas cannot be determined with any degree of certainty. According to information supplied by the former New York State Office of Rural Affairs, there are 44 counties throughout New York State that are rural areas (having a population of less than 200,000)

and 71 towns in the remaining 18 counties of New York State that are rural areas (with population densities of 150 people or less per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised City of New York withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms or other paperwork.

Further, many employers currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the City of New York withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York and City of Yonkers purposes. As such, these City of New York changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the withholding requirements.

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

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. These amendments provide new City of New York withholding tables and other methods, applicable for compensation paid on or after July 1, 2003, which reflects the revision of the tax tables and the addition of the tax table benefit recapture enacted in Chapter 63 of the Laws of 2003. The rule also reflects the increase of the City of New York supplemental withholding tax rate applied to supplemental wage payments.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Eligibility of Refugees, Asylees and Aliens for Public Assistance

I.D. No. TDA-28-03-00008-P

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

Proposed action: Amendment of sections 349.3 and 352.33(a) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 122, 131(1) and 355(3)

Subject: Eligibility of refugees, asylees and aliens for public assistance.

Purpose: To implement changes to the public assistance eligibility requirements.

Text of proposed rule: Subparagraphs (iv) and (vii) of paragraph (1) of subdivision (a) of section 349.3 are amended to read as follows:

(iv) a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980), *including all Cuban or Haitian parolees*;

(vii) a person paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for a period of at least one year, *except Cuban or Haitian parolees*;

Paragraph (2) of subdivision (a) of section 349.3 is amended to read as follows:

(2) A "specially qualified alien" is:

(i) a refugee admitted under section 207 of the Immigration and Nationality Act, for a period of [five] *seven* years from the date the person was admitted into the United States as a refugee;

(ii) an asylee granted status under section 208 of the Immigration and Nationality Act, for a period of [five] *seven* years from the date that the asylee was granted status;

(iii) a person for whom deportation was withheld under section 241(b) or 243(h) of the Immigration and Nationality Act, for a period of [five] *seven* years from the date that the deportation was withheld;

(iv) a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980) for a period of [five] *seven* years from the date such status was granted;

(v) an alien admitted into the United States as an Amerasian immigrant as described in section 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612[a][2][A]) for a period of [five] *seven* years from the date the person was admitted into the United States;

(vi) a person lawfully admitted for permanent residence into the United States who has worked for *or can be credited with 40 qualifying* quarters as defined under Title II of the Federal Social Security Act, or can be credited with such qualifying quarters exclusive of any quarter after December 31, 1996, in which such person *or such person's parent or spouse* received any Federal means tested assistance, whose entry into the United States was at least five years earlier or who entered the United States prior to August 22, 1996;

(vii) any qualified alien who is on active duty, other than *active* duty for training, in the United States Armed Forces or who has received a discharge characterized as honorable and not on account of alienage, or the spouse, *unremarried surviving spouse* or unmarried dependent child of any such alien [who] *if such alien, spouse or dependent child* is also a qualified alien.

Subdivision (b) of section 349.3 is amended to read as follows:

(b) Eligibility requirements.

(1) No person except a citizen or a specially qualified alien is eligible for [the Federal Food Stamp Program,] family assistance [,] *or* safety net assistance [,] or services funded under title XX of the Federal Social Security Act] except as follows:

(i) A qualified alien who is not a specially qualified alien, who [was a lawful resident of] *entered* the United States before August 22, 1996, [or who was a lawful resident of the United States on or after August 22, 1996 for five or more years] *and continuously resided in the United States until attaining qualified status* is, if otherwise eligible, eligible for family assistance[, and safety net assistance [,] services pursuant to title XX of the Federal Social Security Act but is ineligible for the Federal Food Stamp Program].

(ii) *A qualified alien who has resided in the United States for five or more years but whose entry into the United States was on or after August 22, 1996, is, if otherwise eligible, eligible for family assistance and safety net assistance.*

[(ii)] (iii) A qualified alien, who is not a specially qualified alien, who [entered] *has resided in the United States for less than five years and whose entry into the United States occurred on or after August 22, 1996, [but who was a legal resident of the United States for less than five years]* is, if otherwise eligible, eligible for safety net assistance but is ineligible for family assistance [and the Federal Food Stamp Program].

[(iii)] (iv) An alien whose status is not within the meaning of the term qualified alien but who is otherwise permanently residing in the United States under color of law; as such term was used on August 21, 1996, by the Federal Administration for Children and Families is, if otherwise eligible, eligible for safety net assistance.

[(iv)] (v) A person paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for a period of less than one year is, if otherwise eligible, eligible to receive any State or local non-federal assistance provided under this section on the same terms as such programs are available to persons who are qualified aliens.

[(v)] (vi) Nothing herein precludes the receipt by an alien of community based noncash assistance in accordance with the directions of the United States Attorney General.

(2) *Eligibility for services.*

(i) *Qualified aliens, if otherwise eligible and except as otherwise provided by Federal law shall be eligible for services funded under title XX of the Federal Social Security Act.*

[(vi)] (ii) Any alien, including an alien who is not a qualified alien, is eligible for adult protective services and services and assistance relating to child protection to the extent that such person is otherwise eligible pursuant to the regulations of the Office of Temporary and Disability Assistance and the Office of Children and Family Services of the department.

[(2)] (3) An alien is eligible for additional State payments for aged, blind and disabled persons under the Social Services Law only to the extent that such person is not ineligible for Federal SSI benefits due to alien status.

[(3)] (c) *Referral and reporting of aliens unlawfully residing in the United States.*

[(i)] (1) *Referral.* Any applicant or recipient who has been determined to be ineligible for family assistance, or safety net assistance because he or she is an alien unlawfully residing in the United States or because he or she failed to furnish evidence that he or she is lawfully residing in the United States must be immediately provided a referral to the United States Immigration and Naturalization Service, or the nearest consulate of the country of the applicant or the recipient for such service or consulate to take appropriate action or furnish assistance.

[(ii)] (2) *Reporting.* Each social services district must report to the Office of Temporary and Disability Assistance, the name and address and other identifying information known to it with respect to any alien known to be unlawfully in the United States in the manner prescribed by such office. *A determination that an individual is not lawfully present in the United States can be made only about someone who is applying for benefits. Such a determination cannot be made about an individual who is only submitting an application for benefits on behalf of other family members. A determination by a social services district that an applicant is not lawfully present in the United States can only be a result of a finding of fact or conclusion of law that is made as part of a formal determination subject to administrative review and supported by a determination by the Immigration and Naturalization Service or the Executive Office of Immigration Review, such as a final order of removal. A response to the social services district through the Systematic Alien Verification for Entitlements System (SAVE) that shows no service record exists for the individual or indicates that the individual has an immigration status rendering him or her ineligible for benefits does not support a finding of unlawful presence in the United States.*

The unnumbered paragraph of subdivision (a) of section 352.33 is amended to read as follows:

(a) Except as provided in subdivisions (b) and (c) of this section, all the income and resources of a sponsor of an alien who has signed an affidavit of support pursuant to section 213a of the Immigration and Nationality Act, and all the income and resources of such sponsor's spouse is deemed available to such alien for purposes of determining the eligibility of such alien for family assistance and federally funded safety net assistance. A sponsor's income and resources will no longer be deemed available to the alien when the alien is:

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

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:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). Chapter 436 transferred the functions of the former Department of Social Services concerning financial support services to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of

Chapter 436 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 122 of the SSL, as amended by Chapter 214 of the Laws of 1998, contains the public assistance eligibility requirements for certain refugees, asylees and aliens.

Section 131(1) of the SSL provides that social services officials shall, insofar as funds are available, provide adequately for those unable to maintain themselves.

Section 355(3) of the SSL requires OTDA to promulgate regulations for the implementation of the Family Assistance program.

Section 1612(a)(2) of 8 USCA provides that certain aliens who are admitted or residing in the United States are eligible for federal program benefits for a seven year period, after which the aliens are no longer eligible for those benefits.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policy so that adequate provision is made for those persons unable to provide for themselves so that, whenever possible, such persons can be restored to a condition of self-support and self-care.

3. Needs and Benefits:

The changes to 18 NYCRR 349.3 relating to citizenship and alien status, and 18 NYCRR 352.33 relating to deeming of a sponsor's income and resources, are required in order to implement provisions in Chapter 214 of the Laws of 1998. That Chapter contains technical corrections to the Welfare Reform Act of 1997. The changes incorporate federal clarification of: (i) the definition of Cuban and Haitian parolees; (ii) qualifying quarters of work to enable an alien to receive certain forms of assistance; (iii) veteran status; (iv) residency and time requirements for "qualified aliens"; and (v) the meaning of the term "unlawfully present" with respect to reporting aliens to the Immigration and Naturalization Service (INS). The proposed amendments also increase from five years to seven years the period that certain "special qualified aliens" are entitled to public assistance. The proposed amendments also delete provisions that bar certain aliens and refugees from receiving food stamps.

The proposed regulations also are consistent with federal policy clarifications concerning eligibility of aliens for public assistance, food stamp program rules and the resource policy changes that were made necessary as a result of the Welfare Reform Act of 1997.

4. Cost:

The proposed amendments will have no fiscal impact upon the State or social services districts since the amendments are purely technical and implement existing policies and procedures.

5. Local Government Mandates:

Social services districts will have to comply with the proposed regulations when determining eligibility for public assistance. Since the social services districts have already been informed of the provisions of Chapter 214 of the Laws of 1998, there will be no new mandates imposed upon the districts.

6. Paperwork:

There will be no new forms or new reporting requirements due to these changes.

7. Duplication: This proposed amendments do not duplicate, overlap or conflict with any existing State or federal regulations.

8. Alternatives:

One alternative would have been not to develop the amendments as proposed. However, State and federal law require that the proposed amendments be implemented. Therefore, the alternative was rejected.

9. Federal Standards:

This amendment does not conflict with any federal requirement or standard.

10. Compliance Schedule:

Social services districts will be able to comply with the proposed amendments when they become effective.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments will have no effect on small businesses. However, the proposed amendments will affect local governments in so far as they will be required to train and direct social services workers to apply the policies contained in the proposed amendments.

2. Compliance Requirements:

The proposed amendments will affect local governments since the amendments will have to be implemented by the social services districts. The proposed amendments implement provisions of Chapter 214 of the

Laws of 1998. The districts have been informed of these provisions and are implementing them.

3. Professional Services:

The proposed amendments will not require local governments to hire additional professional staff.

4. Compliance Costs:

The proposed amendment will not impose any compliance costs on local governments.

5. Economic and Technological Feasibility:

All local governments have the economic and technological ability to comply with the proposed amendments.

6. Minimizing Adverse Impact:

The proposed amendments will not impose any adverse impact on local governments.

7. Small Business and Local Government Participation:

All social services districts have been informed of the provisions of Chapter 214 of the Laws of 1998. Since the proposed amendments only implement that Chapter, the districts should have no objections to the amendments.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed amendments will affect the 44 rural social services districts in the State.

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

The proposed regulations would require social services districts in rural areas to determine the eligibility of certain refugees, asylees and aliens for public assistance using the eligibility requirements contained in the proposed amendments. No new professional services would be required to implement the proposed amendments.

3. Costs:

The proposed amendments would result in no new costs for social services districts in rural areas.

4. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

The proposed amendments implement provisions of Chapter 214 of the Laws of 1998. The social services districts in rural areas have been informed of these provisions and they are not expected to object to the proposed amendments since they only implement provisions of Chapter 214.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.