

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Pine Shoot Beetle Quarantine

I.D. No. AAM-47-03-00001-E
Filing No. 1235
Filing date: Nov. 5, 2003
Effective date: Nov. 5, 2003

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

Action taken: Amendment of section 131.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: This rule amends the pine shoot beetle quarantine in section 131.1 of 1 NYCRR by extending that quarantine to the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne and Yates. This rule also incorporates by reference, the most recent revisions to federal regulations

at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2003, which set forth requirements and restrictions for the movement of host materials. Finally, this rule deletes spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the United States Department of Agriculture (USDA) has tested and determined that these materials are not a host to the pine shoot beetle. The pine shoot beetle, *Tomicus piniperda*, an insect non-indigenous to the United States, is a destructive wood-boring insect native to Europe. The beetle attacks pine trees by nesting and feeding on new shoots. The resulting damage by the beetle causes shoot and branch mortality which affects the growth and appearance of the tree. Although it is a slow-moving pest, the pine shoot beetle is easily spread through the movement of Christmas trees, nursery stock and pine logs and lumber. The pine shoot beetle was first detected in a Christmas tree farm near Cleveland, Ohio in July of 1992 and subsequently spread to other parts of Ohio as well as to sections of Michigan, Indiana, Illinois, Pennsylvania and New York. On November 19, 1992, the USDA adopted regulations establishing a pine shoot beetle quarantine to help prevent the spread of this pest. On November 25, 1992, the Department, as an emergency measure, adopted section 131.1 of 1 NYCRR, which incorporated by reference that federal quarantine. This emergency measure was ultimately adopted as a permanent rule on March 17, 1993. Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that the failure to immediately incorporate by reference the federal regulations which set forth requirements for the movement of host materials and to extend the quarantine to counties where the beetle has been detected, could result in the spread of the pest beyond those areas. This would not only result in damage to the natural resources of the State, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the Christmas tree, nursery and forest products industries throughout New York State. The consequent loss of business would harm industries which are important to New York State's economy and as such, would harm the general welfare. Given the potential for the spread of the pine shoot beetle beyond the areas currently infested and the detrimental consequences that would have, it appears that this rule should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Pine shoot beetle quarantine.

Purpose: To modify the pine shoot beetle quarantine to prevent the spread of the beetle in the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne and Yates; incorporate by reference, Federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 2003, which set forth requirements for the movement of host materials; and delete spruce, larch and fir from the list of regulated host materials subject to regulation under the pine shoot beetle quarantine.

Text of emergency rule: Section 131.1 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

Pine Christmas trees, pine nursery stock and pine [, spruce, larch and fir] logs and lumber, with bark attached, shall not be shipped, transported or otherwise moved from any point within Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Delaware, Erie, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Oswego, Ontario, Orleans, Otsego, Saratoga, Schoenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Wayne, [and] Wyoming and Yates Counties to any point outside of said counties, except in accordance with 7 CFR sections 301.50 through 301.50-10 [(pages 27 - 34) (revised as of January 1, 1995)] (pages 32 - 40) (revised as of January 1, 2003) which is incorporated by reference herein. Copies of the Code of Federal Regulations may be obtained from the U.S. Government Printing Office, Washington, DC 20402 and the material incorporated by reference herein is available for public inspection and copying at the offices of the Department of Agriculture and Markets, Division of Plant Industry, Capital Plaza, One Winners Circle, Albany, NY 12235.

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 February 2, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Robert Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-2087

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed modification of the quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the pine shoot beetle.

3. Needs and benefits:

The pine shoot beetle, *Tomicus piniperda*, an insect non-indigenous to the United States, is a destructive wood-boring insect native to Europe. The beetle attacks pine trees by nesting and feeding on new shoots. The resulting damage by the beetle causes shoot and branch mortality which affects the growth and appearance of the tree. Although it is a slow-moving pest, the pine shoot beetle is easily spread through the movement of Christmas trees, nursery stock and pine logs and lumber.

The pine shoot beetle was first detected in a Christmas tree farm near Cleveland, Ohio in July of 1992 and subsequently spread to other parts of Ohio as well as to sections of Michigan, Indiana, Illinois, Pennsylvania and New York. On November 19, 1992, the United States Department of Agriculture (USDA) adopted regulations (7 CFR sections 301.50 through 301.50-10), establishing a pine shoot beetle quarantine as well as requirements and restrictions governing the movement of regulated materials from counties where this pest has been detected. On November 25, 1992, the Department, as an emergency measure, adopted section 131.1 of 1 NYCRR, which required that pine Christmas trees, pine nursery stock and pine, spruce, larch and fir logs and lumber, with bark attached, shall not be shipped, transported or otherwise moved from any point within Allegany, Cattaraugus, Erie, Genesee, Livingston, Monroe, Niagara, Oswego, Ontario and Wyoming Counties to any point outside said counties, except in accordance with federal regulations at 7 CFR sections 301.50 through 301.50-10. This emergency measure was ultimately adopted as a permanent rule on March 17, 1993. However, subsequent observations of the

pine shoot beetle in the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Saratoga, Schoenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Wayne and Yates, have resulted in the need to add these counties to the list of quarantined areas in section 131.1. This rule contains the needed additions. This rule also incorporates by reference, the most recent revision of the federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2003, which set forth requirements and restrictions governing the movement of regulated materials from counties where the pine shoot beetle has been detected. Finally, this rule deletes spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the USDA has tested and determined that these materials are not a host to the pine shoot beetle.

The effective control of the pine shoot beetle within the areas of the State where the insect has been found is important to protect New York's Christmas tree, nursery and forest products industries. It is estimated that there are 3,970 nursery dealers, 2,205 nursery growers, 500 forest products companies, 119 arborists and 12 Christmas tree farms in the State which engage in these industries. They employ an estimated 42,000 people and generate 1.51-billion dollars in revenue per year. The failure of states to control insect pests within their borders can lead to federal quarantines as well as quarantines by other states which would affect all areas of those states, rather than just the infested portions. Such widespread quarantines would adversely affect the Christmas tree, nursery and forest products industries throughout New York State.

4. Costs:

(a) Costs to the State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties:

Regulated parties exporting host material from the quarantined area, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year with a total annual cost of less than \$1000.

Most shipments will be made pursuant to compliance agreements for which there is no charge.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None.

(ii) It is anticipated that the Department will be able to administer the quarantine with existing staff.

5. Local government mandates:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of the pine shoot beetle moving from quarantined areas must be accompanied by a state or federal phytosanitary certificate of a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

None. The failure of the State to modify the quarantine to reflect the areas in which the pine shoot beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of pine shoot beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

9. Federal standards:

The rule does not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated persons will be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

This rule amends the pine shoot beetle quarantine in section 131.1 of 1 NYCRR by extending that quarantine to the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery,

Oneida, Onondaga, Otsego, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Wayne and Yates. This rule also incorporates by reference, the most recent revisions to federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2003, which set forth requirements and restrictions for the movement of host materials. Finally, this rule deletes spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the United States Department of Agriculture (USDA) has tested and determined that these materials are not a host to the pine shoot beetle.

It is estimated that there are 1,613 nursery dealers, 1,207 nursery growers, 500 forest products companies, 119 arborists and 10 Christmas tree farms in the 31 counties which have been added to the pine shoot beetle quarantine. Most of these entities are small businesses.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the quarantined areas, in the event that they do, they would be subject to the same requirements and restrictions governing such movement set forth in 7 CFR sections 301.50 through 301.50-10 as are other regulated parties.

2. Compliance requirements:

All regulated parties in the modified quarantined areas will be required to obtain state or federal phytosanitary certificates and limited permits in order to ship regulated articles from quarantined areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services:

In order to comply with the amendments, businesses and local governments shipping regulated articles from the modified quarantined areas will require professional inspection services, which will be provided by the Department and the USDA.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

(b) Annual cost for continuing compliance with the proposed rule: Regulated parties exporting host material from the modified quarantined area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments will be made pursuant to compliance agreements for which there is no charge.

Local governments shipping regulated articles from the modified quarantined areas would incur similar costs.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments by limiting the modified quarantined areas to only those areas where the pine shoot beetle has been detected; by limiting the regulated articles to only those susceptible to infestation by the pine shoot beetle and by limiting the inspection and permit requirements to only those necessary to detect the presence of the pine shoot beetle and prevent its movement in host materials from the quarantined areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has contacted various representatives of nurseries, arborists, the forestry industry, and local government to discuss the quarantine. It has also had extensive consultation with the United States Department of Agriculture.

The Department is involved in a continuing outreach program involving all of the parties affected by the rule. The quarantine has been discussed with the members of the Department's Plant Industry Advisory Committee, which includes representatives of the various types of regulated parties affected by the rule. This outreach program will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the quarantined areas, other than pursuant to a compliance agreement, will require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

This rule amends the pine shoot beetle quarantine in section 131.1 of 1 NYCRR by extending that quarantine to the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Wayne and Yates. This rule also incorporates by reference, the most recent revisions to federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2003, which set forth requirements and restrictions for the movement of host materials. Finally, this rule deletes spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the United States Department of Agriculture (USDA) has tested and determined that these materials are not a host to the pine shoot beetle.

It is estimated that there are 1,613 nursery dealers, 1,207 nursery growers, 500 forest products companies, 119 arborists and 10 Christmas tree farms in the 31 counties which have been added to the pine shoot beetle quarantine. Many of these entities are located in rural areas of the State.

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

All regulated parties in the modified quarantined areas will be required to obtain state or federal phytosanitary certificates and limited permits in order to ship regulated articles from quarantined areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the amendments, entities that ship regulated articles from the modified quarantined areas will require professional inspection services, which will be provided by the Department and the USDA.

3. Costs:

Regulated parties exporting host material from the modified quarantined area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments will be made pursuant to compliance agreements for which there is no charge.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act Section 202-bb(2), the amendments were drafted to minimize reporting and testing requirements for all regulated parties, including those in rural areas. The Department did so by limiting the modified quarantined areas to only those areas where the pine shoot beetle has been detected; by limiting the regulated articles to only those susceptible to infestation by the pine shoot beetle; and by limiting the inspection and permit requirements to only those necessary to detect the presence of the pine shoot beetle and prevent its movement in host materials from the quarantined areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

The Department has contacted various representatives of nurseries, arborists and the forestry industry, including those in rural areas, to discuss the quarantine. It has also had extensive consultation with the United States Department of Agriculture.

The Department is involved in a continuing outreach program involving all of the parties affected by the rule. The quarantine has been discussed with the members of the Department's Plant Industry Advisory Committee, which includes representatives of the various types of regulated parties affected by the rule. This outreach program will continue.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The modification of the quarantine area is designed to prevent the spread of the pine shoot beetle to other parts of the State. It is estimated that there are 3,970 nursery dealers, 2,205 nursery growers, 500 forest products companies, 119 arborists and 12 Christmas tree farms in the State which engage in these industries. They employ an estimated 42,000 people and generate 1.51-billion dollars in revenue per year. A spread of the infestation would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the spread of the pine shoot beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's Christmas tree, nursery and forest products industries.

NOTICE OF ADOPTION

Licensing of Farm Products Dealers

I.D. No. AAM-31-03-00003-A

Filing No. 1240

Filing date: Nov. 7, 2003

Effective date: Nov. 26, 2003

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

Action taken: Amendment of section 380.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 18

Subject: Licensing of farm products dealers.

Purpose: To eliminate obsolete language which provides that license fees and agricultural producers security fund fees for renewal of licenses expiring on June 30, 1998 shall be pro-rated.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-31-03-00003-P, Issue of August 6, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Kim Blot, Director, Division of Agricultural Protection and Development Services, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-7076

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Asian Long Horned Beetle Quarantine

I.D. No. AAM-31-03-00004-A

Filing No. 1239

Filing date: Nov. 7, 2003

Effective date: Nov. 26, 2003

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

Action taken: Amendment of Part 139 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Asian long horned beetle quarantine.

Purpose: To modify the quarantine.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-31-03-00004-P, Issue of August 6, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Robert Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-2087

Assessment of Public Comment

The agency received no public comment.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Treatment of Chemical Dependence

I.D. No. ASA-37-03-00002-A

Filing No. 1266

Filing date: Nov. 10, 2003

Effective date: Nov. 26, 2003

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

Action taken: Addition of Part 829 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01, 32.05(b), 32.07(a), 32.09(b); Public Health Law, section 3351(5); 10 NYCRR 80.84; section 3202 of Public Law No. 106-310, div. B., title XXXV @ 3502(a), 114

Subject: Authorization of qualified physicians to use buprenorphine in the treatment of chemical dependence.

Purpose: To set minimum standards and ensure the provision of quality addiction medicine services.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ASA-37-03-00002-EP, Issue of September 17, 2003.

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

Text of rule and any required statements and analyses may be obtained from: David R. Ross, Associate Counsel, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2322, e-mail: davidross@oasas.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Banking Department

NOTICE OF ADOPTION

Principal Office Location; Schedule of Fees

I.D. No. BNK-32-03-00003-A

Filing No. 1238

Filing date: Nov. 7, 2003

Effective date: Nov. 26, 2003

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

Action taken: Amendment of Supervisory Policy G1 of Title 3 NYCRR.

Statutory authority: Banking Law, section 12

Subject: Principal office location and schedule of fees.

Purpose: To reflect the fact that the Albany office of the Banking Department is the principal office and add a schedule of fees to Supervisory Policy G1.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-32-03-00003-P, Issue of August 13, 2003.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF ADOPTION

Special Enrollees Designated for Inclusion in the Income Protection Plan

I.D. No. CVS-27-03-00003-A
Filing No. 1236
Filing date: Nov. 6, 2003
Effective date: Nov. 26, 2003

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

Action taken: Amendment of Appendix 5 of Title 4 NYCRR.

Statutory authority: Civil Service Law, art. 10

Subject: Special enrollees designated for inclusion in the income protection plan.

Purpose: To add a title to and delete a title from the list of special enrollees designated for inclusion in the income protection plan.

Text or summary was published in the notice of proposed rule making, I.D. No. CVS-27-03-00003-P, Issue of July 9, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Department Records

I.D. No. COR-47-03-00005-P

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

Proposed action: This is a consensus rule making to repeal section 5.11, add new section 5.11 and amend section 6.2 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112; and Public Officers Law, sections 87 and 94

Subject: Department records.

Purpose: To name an assistant records access officer and deputy privacy compliance officer, and make minor corrections.

Text of proposed rule: Section 5.11 is hereby repealed and a new section 5.11 is added as follows:

The deputy commissioner for administrative services is the records access officer for the Department of Correctional Services. The director of employee investigations serves as the assistant records access officer. A request by any person wishing to inspect or obtain a copy of a departmental record shall be addressed in writing: Records Access Officer, Department of Correctional Services, Building 2, 1220 Washington Avenue, Albany, N.Y. 12226-2050. The request shall describe, in reasonable detail, the record or records sought. The request may be mailed or delivered in person to the above address on any workday between the hours of 9:00 a.m. and 4:00 p.m.

Subdivision (b) of section 6.2 is amended as follows:

(b) the address and telephone number of the privacy compliance officer is: Department of Correctional Services, Building 2, [State Campus] 1220 Washington Avenue, Albany, NY 12226-2050, telephone (518) 457-8188.

Subdivision (c) of section 6.2 is hereby repealed and a new subdivision (c) added as follows:

(c) The director of employee investigations, Building 2, State Campus, 1220 Washington Avenue, Albany, NY 12226-2050 is hereby designated as the deputy privacy compliance officer.

Text of proposed 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

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written because it merely names an assistant records access officer and deputy privacy compliance officer, and makes minor corrections.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely names an assistant records access officer and deputy privacy compliance officer, and makes minor corrections.

Department of Environmental Conservation

NOTICE OF ADOPTION

Migratory Game Bird Hunting Regulations

I.D. No. ENV-37-03-00003-A
Filing No. 1242
Filing date: Nov. 10, 2003
Effective date: Nov. 26, 2003

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

Action taken: Amendment of section 2.30 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0307, 11-0903, 11-0905, 11-0909 and 11-0917

Subject: Migratory game bird hunting regulations for the 2003-2004 season.

Purpose: To adjust hunting areas, season dates, bag limits and other migratory game bird hunting regulations to conform with Federal regulations and provide recreational opportunities consistent with desires of New York's 30,000+ waterfowl hunters.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ENV-37-03-00003-EP, Issue of September 17, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatche@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Monkeypox

I.D. No. HLT-47-03-00003-P

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

Proposed action: Amendment of sections 2.1 and 2.5 of Title 10 NYCRR.

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

Subject: Monkeypox.

Purpose: To require reporting of suspected cases of monkeypox.

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

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

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

Amebiasis
Anthrax
Babesiosis
Botulism
Brucellosis
Campylobacteriosis
Chancroid
Chlamydia trachomatis infection
Cholera
Cryptosporidiosis
Cyclosporiasis
Diphtheria
E. coli 0157:H7 infections
Ehrlichiosis
Encephalitis
Giardiasis
Glanders
Gonococcal infection
Group A Streptococcal invasive disease
Group B Streptococcal invasive disease
Hantavirus disease
Hemolytic uremic syndrome
Hemophilus influenzae (invasive disease)
Hepatitis (A; B; C)
Hospital-associated infections (as defined in section 2.2 of this Part)
Legionellosis
Listeriosis
Lyme disease
Lymphogranuloma venereum
Malaria
Measles
Melioidosis
Meningitis
Aseptic
Hemophilus
Meningococcal
Other (specify type)
Meningococemia
Monkeypox
Mumps
Pertussis (whooping cough)
Plague
Poliomyelitis
Psittacosis
Q Fever
Rabies
Rocky Mountain spotted fever
Rubella
Congenital rubella syndrome
Salmonellosis
Severe Acute Respiratory Syndrome (SARS)
Shigellosis
Smallpox
Staphylococcal enterotoxin B poisoning
Streptococcus pneumoniae invasive disease

Syphilis, specify stage
Tetanus
Toxic Shock Syndrome
Trichinosis
Tuberculosis, current disease (specify site)
Tularemia
Typhoid
Vaccinia disease (as defined in section 2.2 of this Part)
Viral hemorrhagic fever
Yellow Fever
Yersiniosis

* * *

Section 2.5 of Part 2 is amended as follows:

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

Anthrax
Babesiosis
Botulism
Brucellosis
Campylobacteriosis
Chlamydia trachomatis infection
Cholera
Congenital rubella syndrome
Conjunctivitis, purulent, of the newborn (28 days of age or less)
Cryptosporidiosis
Cyclosporiasis
Diphtheria
E. coli 0157:H7 infections
Ehrlichiosis
Giardiasis
Glanders
Gonococcal infection
Group A Streptococcal invasive disease
Group B Streptococcal invasive disease
Hantavirus disease
Hemophilus influenzae (invasive disease)
Hemolytic uremic syndrome
Legionellosis
Listeriosis
Malaria
Melioidosis
Meningitis
Hemophilus
Meningococcal
Meningococemia
Monkeypox
Plague
Poliomyelitis
Q Fever
Rabies
Rocky Mountain spotted fever
Salmonellosis
Severe Acute Respiratory Syndrome (SARS)
Shigellosis
Smallpox
Staphylococcal enterotoxin B poisoning
Streptococcus pneumoniae invasive
Syphilis
Tuberculosis
Tularemia
Typhoid
Viral hemorrhagic fever
Yellow Fever
Yersiniosis

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

COSTS:

Costs to Regulated Parties:

Since monkeypox is a newly emerging disease, it is not possible to accurately predict the extent of an outbreak or potential costs. In the event of the occurrence of monkeypox cases, however, it is imperative to the

public health that suspect cases be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality and to protect the public health.

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

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

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

Costs to Local and State Governments:

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

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

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

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

Costs to the Department of Health:

The NYSDOH already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of monkeypox to the list of communicable diseases should not lead to substantial additional costs for data entry, particularly as the Department adopts systems for electronic submission of case reports.

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

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

To date, the Wadsworth Center has conducted testing on 2 human specimens and 13 animal specimens, costing several thousand dollars. Should an extensive outbreak occur, costs could be significant.

Paperwork:

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

Local Government Mandates:

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

Duplication:

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

Alternatives:

No other alternatives are available.

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Human and animal monkeypox testing is currently conducted only at the NYSDOH Wadsworth Laboratory and the CDC. Costs to hospitals,

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

Minimizing Adverse Impact:

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

Feasibility Assessment:

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

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

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

Rural Area Input:

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

Job Impact Statement

This regulation adds monkeypox to the list of diseases that health care providers must report to public health authorities and submit laboratory specimens. The staff who are involved in reporting monkeypox at the local and State health departments are the same as those currently involved with reporting, monitoring and investigating other communicable diseases. Similarly, existing staff at the local and State health departments collect and submit monkeypox specimens, and current State laboratory staff test monkeypox specimens. Since monkeypox is a newly emerging disease, it is not possible to accurately predict the extent of any outbreak and the degree of additional demands it will place on existing staff. The NYSDOH has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-46-03-00004-E

Filing No. 1241

Filing date: Nov. 10, 2003

Effective date: Nov. 10, 2003

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

Action taken: Amendment of sections 362-2.3 and 362-4.3 (Regulation 171) 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 3 million New York citizens currently do not have health insurance coverage. The problem of the uninsured in New York has recently been exacerbated by recent events impacting the stability of the state's labor market and access to employer-based health insurance. 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 meeting certain eligibility criteria. The program's target population of currently uninsured workers is difficult to reach without effective marketing and facilitated enrollment strategies. For this reason, it is necessary to develop a standardized application which must be accepted by all health maintenance organizations participating in the program. This standardized application can be widely disseminated for the purpose of reaching those in need of health insurance. With the introduction of a standardized process, channels of distribution for the Healthy New York application may include the Healthy New York website, the Healthy New York hotline, the Healthy New York consumer guide, chambers of commerce and facilitated enrollment strategies. The requirements for demonstrating income eligibility have also been modified in order to eliminate some complexity from the application process. 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 simplify the Healthy NY application process by requiring health maintenance organizations and participating insurers to accept simplified, standardized Healthy NY applications provided by the Insurance Department that will facilitate the appropriate enrollment and ease administrative processes.

Text of emergency rule: Section 362-2.3 is hereby amended to read as follows:

§ 362-2.3 Enrollment.

(a) Applications for qualifying health insurance contracts shall be made directly to health maintenance organizations and participating insurers.

(b) Health maintenance organizations and participating insurers shall provide all necessary information and enrollment forms when requested by applicants.

(c) Health maintenance organizations and participating insurers shall collect the initial eligibility certifications required by section 4326(i) of the Insurance Law and necessary supporting documentation and shall be responsible for examination of such certifications and supporting documentation for verification that applicants meet applicable eligibility requirements. *Health maintenance organizations and participating insurers shall accept any standardized application form that may be prescribed by the superintendent.*

(d) Unless the superintendent suspends enrollment in the Healthy New York program pursuant to section 4327(k) of the Insurance Law or approves a request to suspend qualifying individual enrollment pursuant to subsection (h) of this section, all applicants meeting eligibility criteria shall be accepted and coverage must be issued on the first day of the month next succeeding the date a complete application has been submitted for all

applications submitted on or prior to the 20th day of such month. For applications submitted after the 20th day of a month, coverage shall be issued no later than the first of the month next following. Dependent children up to at least age 19 and full-time students up to at least age 23 shall be considered eligible dependents under qualifying health insurance contracts.

(e) Health maintenance organizations and participating insurers shall provide applicants which have failed to demonstrate eligibility with a written notice of denial which clearly sets forth the basis for the denial.

(f) Health maintenance organizations and participating insurers must submit monthly enrollment reports which detail total enrollment in the Healthy New York program in the format specified by the superintendent. Such reports shall identify the health maintenance organization's or participating insurer's total enrollment in the Healthy New York program as of the first day of the following month and must be submitted to the superintendent no later than the fifteenth day of the following month.

(g) In the event that the enrollment in the small employer or individual Healthy New York program is suspended pursuant to section 4327(k) of the Insurance Law, participating insurers and health maintenance organizations shall:

(1) notify applicants that enrollment has been suspended; and

(2) maintain a waiting list to be filled in the order of receipt in the event that enrollment is reactivated.

(h) Commencing June 1, 2001, if monthly enrollment reports indicate that a given health maintenance organization or participating insurer's total enrollment under qualifying individual health insurance contracts exceeds 50% of that health maintenance organization's or participating insurer's total enrollment in the Healthy New York program, the health maintenance organization or participating insurer may submit a request to the superintendent to suspend the issuance of its qualifying individual health insurance contracts. If approved by the superintendent, the suspension shall take effect on the date specified by superintendent and shall be for the period specified by the superintendent. A participating insurer or health maintenance organization that has received approval to issue such a suspension shall:

(1) notify applicants that enrollment has been suspended;

(2) maintain a waiting list to be filled in the order of receipt in the event that enrollment is reactivated; and

(3) on a quarterly basis, submit reports detailing the claims experience of the Healthy New York product. Such reports shall segregate the claims experience of qualifying individuals from the claims experience of qualifying small employers and individual proprietors.

(i) An enrollment suspension pursuant to section 4327(k) of the Insurance Law or pursuant to subsection (h) of this section shall not preclude the addition of dependents or new employees to existing qualifying health insurance contracts. Additionally, an enrollment suspension shall not prevent the enrollment of persons exercising a statutory right of conversion to a qualifying individual insurance contract.

(j) Nothing herein is intended to preclude, diminish or in any way impair the involvement of chambers of commerce, trade associations and other similar entities in the Healthy New York Program in any manner otherwise permitted by law or regulation.

Section 362-4.3 is hereby amended to read as follows:

§ 362-4.3 Verification of net household income.

(a) To qualify for coverage under the Healthy New York program, individual proprietors and working uninsured individuals must satisfy the household income criteria set forth in Sections 4326(c)(1)(A)(ii) and 4326(c)(3)(A)(iii) of the Insurance Law. *For the purpose of determining household income eligibility, household members shall include the applicant, the applicant's legal spouse if residing in the household and any children eligible for coverage under the policy.* Income received by the applicant[, their] and the applicant's legal spouse [and any other family members] residing in the household shall be counted.

(b) Income shall include, but shall not be limited to, the following:

(1) monetary compensation for services including wages, salary, commissions, overtime compensation, fees or tips;

(2) net income from farm and non-farm self-employment;

(3) Social Security payments or benefits;

(4) dividends, interest on savings or bonds, regular income from estates or trusts, or net rental income;

(5) unemployment compensation;

(6) government, civilian employee or military retirement or pension or veteran's payments;

(7) private pension or annuity;

(8) alimony or child support payments received;

- (9) regular contributions from persons not living in the household;
- (10) net royalties; and
- (11) such other income as determined by the superintendent.

(c) Income shall not include public assistance; SSI; foster care payments; capital gains; any assets drawn down as withdrawals from a bank; receipts from the sale of property; or payments for compensation for injury. Also excluded are non-cash benefits, such as employee fringe benefits, food or housing received in lieu of wages, and receipts from federal non-cash benefit programs.

(d) Health maintenance organizations and participating insurers shall collect such documentation as is necessary and sufficient to initially, and annually thereafter, verify that the household income requirements of the Healthy New York program have been satisfied. Such documentation may include, but not be limited to one or more of the following:

- (1) annual income tax returns and, if not prohibited by federal law for purposes of income verification, the social security account number;
- (2) paycheck stubs;
- (3) written documentation of income from all employers; or other documentation of income (earned or unearned) as determined by the superintendent to be acceptable, provided however, such documentation shall set forth the source of such income.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. INS-46-03-00004-P, Issue of November 19, 2003. The emergency rule will expire February 7, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Terri Marchon, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5262, e-mail: TMarchon@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 interpreting 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 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4327 creates two stop-loss funds from which health maintenance organizations and participating insurers may receive reimbursement for certain claims paid on behalf of members covered under qualifying health insurance contracts and authorizes the superintendent to prescribe regulations to implement the establishment of such funds.

2. Legislative objectives: A significant number of New York residents are currently uninsured. 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. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. The Legislature enacted Chapter 1 of the Laws of 1999 to provide for the Healthy New York Program, which was a new initiative designed to encourage small employers which do not currently provide health insurance coverage to their employees to offer such coverage and also designed to make coverage available to uninsured employees whose employers do not provide group health insurance coverage. As a result of a

tremendous working relationship with the participating insurers, the New York State Insurance Department was able to obtain valuable input in reducing the complexity of the Healthy New York application process. Interested parties recommended that standard application forms be created, one for small employers and another for individuals/sole proprietors. Furthermore, health maintenance organizations sought clarification on who is considered a household member. By creating simplified and standardized Healthy New York applications to be accepted by all health maintenance organizations and participating insurers, the application process will be eased, facilitating the appropriate enrollment of eligible small employers and uninsured employed individuals. With simplified standard applications accepted by all participating providers, the applications will be readily available from a number of sources, reducing the timeframes involved in obtaining and completing an application. As a result, the eligibility and application procedures will be streamlined and will ease administrative processes for both enrollees and providers, encouraging more to purchase health insurance coverage. In addition, clarification on who is a household member eliminates confusion in determining household income, which is necessary in ascertaining eligibility for Healthy New York Program.

3. Needs and benefits: The amendment to Part 362 of 11 NYCRR is necessary to clarify eligibility for the Healthy New York Program and to simplify the application and administrative process for both enrollees and providers. Clarifying which persons are to be considered household members will eliminate the uncertainty involved in determining household income levels. The correct calculation of household income is crucial, as this is a major component in determining eligibility for Healthy New York. Simplified standardized application forms will streamline the eligibility and administrative process facilitating enrollment. These provisions should enhance the implementation and operation of the Healthy New York Program while improving the efficiency that individuals and small employers will have to access comprehensive health insurance, as the standard application forms will be made available from many sources.

4. Costs: The enacting legislation for the Healthy New York Program requires that health maintenance organizations and participating insurers have a system in place to accept applications. This amendment will require that they adjust their procedures in order to allow for the acceptance of a standardized application form. A common request from insurers participating in the Healthy New York Program has been that a small employer standardized application form and an individual/sole proprietor standardized application form be created. We would expect that any costs associated with implementing the simplified application process would be minimal since health maintenance organizations and participating insurers are already required to accept applications for enrollment into Healthy New York. The standardized applications will be shorter and more easily understood by applicants. Since the standardized applications are shorter than those currently used in the marketplace, printing costs will be reduced. Similarly, small business and individuals wishing to participate in the Healthy New York program are currently obligated to complete an initial form certifying their eligibility for the program. This regulation will permit such applicants to satisfy this certification requirement by completing a simplified, standardized application form which will be more readily available. This amendment does not impose any additional costs upon small businesses and individuals applying to the program. There will be no costs to local governments associated with this amendment.

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 additional reporting requirements.

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

8. Alternatives: Throughout, input was sought from interested parties including consumer groups; health plan associations; business groups; associations groups; local chambers of commerce and academics. The amendment is primarily designed to provide clarification of eligibility criteria by eliminating uncertainty in determining household income levels. The amendment also eases the application process by simplifying administrative processes for both enrollees and providers. The small employer and individual/sole proprietor standardized applications will streamline the eligibility and enrollment process facilitating the appropriate enrollment of eligible individuals and employees into the Healthy New York program, thus reducing the number of uninsured in the state. A common request from insurers participating in the Healthy New York Program has been that simplified, standardized application forms be created.

9. Federal standards: There are no known federal standards addressing the programs addressed in this amendment.

10. Compliance schedule: These changes were previously effectuated through an emergency filing of this amendment, and the health plans have already been in successful compliance with these changes. As health maintenance organizations and participating insurers already have begun utilizing the State's standardized application forms, compliance should be undemanding.

Regulatory Flexibility Analysis

1. Effect of rule: The Healthy New York Program was designed to provide small employers, including individual proprietors, with an option to purchase comprehensive health insurance at a premium rate which will be favorably impacted by the availability of state funded stop loss relief. The program is available to qualifying small employers that do not currently offer group health insurance coverage if they have fifty or fewer eligible employees and if 30 percent of their eligible workforce earns annual wages of \$30,000 or less. Individual proprietors must meet specified household income requirements. The amendment will affect qualifying small employers, including individual proprietors, by providing them with access to a standardized, streamlined application process for the Healthy New York Program. The amendment will also simplify the income eligibility requirements of the Healthy New York Program for the purpose of further simplifying the application process. The amendment will not affect local governments. The proposed regulation will also 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, because there are none which are both independently owned and have under 100 employees.

2. Compliance requirements: Qualifying small employers and individual proprietors wishing to participate in the Healthy New York Program may utilize the standardized application for the purpose of certifying initial eligibility for the program. Supporting documentation of eligibility may be required, as appropriate.

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. Any costs associated with completing this form should be minimal since the information requested in support of an applicant's eligibility certification should be readily available to the small employer. This regulatory amendment designed to simplify the application process for small employers will not impose any additional costs. 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 merely allows small businesses to utilize a simplified and standardized application form in order to demonstrate eligibility for the Healthy New York Program.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by requiring health maintenance organizations and insurers, which are not small businesses within the definition of Section 102(8) of the State Administrative Procedure Act to accept a simplified standardized application to verify a small employer's eligibility for participation in the Healthy New York Program.

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 purchasing coverage on the direct payment market 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: Health maintenance organizations are currently re-

quired to collect and examine Healthy New York Program applications in order to verify that applicants for the Healthy New York Program meet all applicable eligibility requirements. Insurers that voluntarily choose to participate in this market must do so under the same terms and conditions as health maintenance organizations. This amendment will require Health Maintenance Organizations and Participating Insurers to accept a simplified standardized application for the Healthy New York Program. Health Maintenance Organizations and Participating Insurers will have to adjust their Healthy New York application screening processes and procedures to accommodate the introduction of this standardized form. Small businesses and individuals wishing to participate in the Healthy New York Program will now be permitted to utilize the standardized form in order to meet the requirement imposed by the enacting legislation that they provide an initial certification as to their eligibility for the program. However, because these requirements apply to both rural and non-rural entities, this regulation does not impose any requirement that would be unique to rural areas.

3. Costs: The enacting legislation for the Healthy New York Program requires that Health Maintenance Organizations and Participating Insurers have a system in place to accept applications. This amendment will require that they adjust their procedures in order to allow for the acceptance of a standardized application form. We would expect that any costs associated with implementing this simplified application process would be minimal, since the affected organizations are already required to process Healthy New York applications. Similarly, small business and individuals wishing to participate in the Healthy New York Program are currently obligated to complete an initial form certifying their eligibility for the program. This amendment will permit such applicants to satisfy this certification requirement by completing a standardized application form. This amendment does not impose any additional costs upon small businesses and individuals applying to the program. Since these requirements apply to both rural and non-rural entities, the amendment does not impose any 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 impact of the amendment should ultimately be a favorable one, since it simplifies and shortens the application process.

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 impact 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 through the simplification of the Healthy New York application process and clarification of household income determinations.

EMERGENCY RULE MAKING

Physicians and Surgeons Professional Insurance Merit Rating Plans

I.D. No. INS-47-03-00004-E

Filing No. 1237

Filing date: Nov. 7, 2003

Effective date: Nov. 7, 2003

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

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

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

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

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

these courses. However, on May 29, 2002, section 16 of part J of Chapter 82 of the Laws of 2002 was enacted and the effective date was amended to July 1, 2002.

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

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

Subject: Physicians and surgeons professional insurance merit rating plans.

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

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

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

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

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

Section 152.8 is renumbered to be Section 152.11 and a new Section 152.8 is added to provide the standards for proactive risk management programs which are provided for insureds who wish to qualify for the excess medical malpractice insurance programs established by the Legislature.

A new Section 152.9 is added to provide coordination of the excess medical malpractice risk management courses with risk management courses that are offered for the purpose of providing premium credits.

A new Section 152.10 is added to provide guidelines for insurers in implementing risk management programs administered for insureds who wish to qualify for participation in the excess medical malpractice insurance program established by the Legislature.

Section 152.11 is amended to provide requirements for insurers conducting audits of insureds or for insureds to conduct self-review surveys. A new provision is added requiring insurers to report, by territory and medical specialty, the number of insureds participating in risk management programs who qualify for the excess medical malpractice insurance program.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire February 4, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Patricia Mann, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: pmann@ins.state.ny.us

Regulatory Impact Statement

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

2. Legislative objectives: The objective of Section 2343(d) was the establishment, by the Superintendent, by regulation, of a merit rating plan for physicians professional liability insurance that was reasonable and not unfairly discriminatory, inequitable, violative of public policy or contrary

to the best interests of the people of New York. The regulation was to include reasonable standards to be applied to merit rating plans submitted by insurers for approval by the Superintendent. Those standards are to be used to arrive at premium rates, surcharges and discounts based on an evaluation of the insured, geographical areas, specialties of practice, past and prospective loss and expense experience for medical malpractice insurance and any other factors deemed relevant in a system of merit rating.

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

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

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

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

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

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

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

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

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

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

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

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

In order to satisfy the statutory requirement that these courses be proactive, insurers will also be required to conduct risk management audits

annually, either by the insurer or by a self-review survey completed by the insured. There will be costs associated with developing the audit procedure, training people to conduct the audits, visiting insureds' practice settings to do the audit and implementing any necessary follow-up procedures after the results of the audit are analyzed.

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

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

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

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

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

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

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

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

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

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

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

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

taken any quizzes and completed the required project. In addition, insureds will be given an individual password to use and the length of time spent on the Internet taking the course can be tracked by the insurer.

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Private Passenger and Commercial Automobile Statistical Plans

I.D. No. INS-47-03-00006-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 140, 141, 142, 143 and 144 (Regulation 32-A) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2304, 2315, 2331, 2332, 2333 and 2334

Subject: Private passenger and commercial automobile statistical plans.

Purpose: To update and simplify requirements for the submission of statistical plans and modifications of statistical plans for private passenger and commercial automobile and with respect to the reporting of statistical data to the department or to officially designated statistical agents of the department.

Text of proposed rule: The Title of Part 140 of Title 11 is repealed and a new title is added to read as follows:

PRIVATE PASSENGER AUTOMOBILE AND COMMERCIAL AUTOMOBILE STATISTICAL PLANS

Sections 140.1, 140.2, 140.3, 140.4, 140.5, 140.7, and 140.9 through 140.38 are repealed.

Part 140 is amended by adding new Sections 140.1 and 140.2, to read as follows:

§ 140.1 Purpose and applicability.

The purpose of this Part is to establish procedures for statistical plans for the reporting of private passenger automobile and commercial automobile statistical experience in order that this experience may be available to the New York Insurance Department or to officially designated statistical agents of the department. This Part is applicable to insurers that write direct private passenger automobile and commercial automobile insurance business in the State of New York and to officially designated statistical agents of the department.

§ 140.2 General requirements.

All private passenger automobile and commercial automobile insurance statistical plans subject to this Part must be filed and approved by the Superintendent of Insurance prior to implementation.

Section 140.6 is renumbered to be Section 140.3 and is amended to read as follows:

[§ 140.6] § 140.3 Calls for statistical experience.

[(a) Liability coverages.] Annual calls for detailed classification and territorial experience for the private passenger automobile and commercial automobile liability, no-fault, uninsured/underinsured motorist, medical payments and physical damage coverages will be distributed to the [carriers on or before March 1 of each year] insurers. Such calls for experience will require reports of experience to be made to the department or its officially designated statistical agent [not earlier than June 15 of that year] in accordance with the time frames specified in the call.

[(b) Physical damage coverages. Calls for detailed classification and territorial experience for the automobile physical damage coverages will be made at least annually for the combined experience of one or more calendar quarters. Such calls for experience will require reports of experience to be made to the department not earlier than 45 days after the close of the last calendar quarter for which experience is to be reported.

(c) All coverages. Calls for experience will require the reporting of experience in no greater detail than is made available through compliance with the instructions contained in this plan and the use of the classification and coding procedure set forth in this plan.]

Section 140.8 is renumbered to be Section 140.4 and is amended to read as follows:

[§ 140.8] § 140.4 Reinsurance.

Calls for experience will [require that on] relate to experience for direct business only. Therefore, the reports of experience shall not include premiums received from or losses paid to other carriers on account of reinsurance assumed by the reporting carrier nor shall any deductions be

made by the reporting carrier for premiums ceded to or for losses recovered from other carriers on account of reinsurance ceded.

Parts 141, 142, 143, and 144 of Title 11 are repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Benita Hirsch, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5595, e-mail: bhirsch@ins.state.ny.us

Data, views or arguments may be submitted to: Anthony Yoder, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5500, e-mail: ayoder@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 2304, 2315, 2331, 2332, 2333, and 2334 of the Insurance Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2304 provides that insurers may rely on statistical data in support of a filing. Section 2315 gives the Superintendent the authority to prescribe, by regulation, the format of statistical plans in accordance with established classifications. Section 2331 provides that insurers may rely on statistical data in the development of motor vehicle comprehensive insurance rates. Sections 2332, 2333, and 2334 provide that insurers may rely on statistical data in the development of non-commercial private passenger automobile insurance rates.

2. Legislative objectives: Pursuant to Section 2315 of the Insurance Law, the Superintendent has the authority to prescribe the format of statistical plans in accordance with established classifications. Based on Sections 2331, 2332, 2333, and 2334 it is clear that statistical data is important for both regulators and insurers. Such data is important for regulators to monitor the experience of the automobile markets in general and of individual classifications in particular. For insurers that do not have sufficient independent experience it is important for them to use statistical data to base their loss costs. This regulation removes obsolete references and provides a simplified framework for approval and implementation of revisions to statistical plans as market conditions warrant.

3. Needs and benefits: Parts 140, 141, 142, 143, and 144 (Regulation No. 32-A of Title 11 NYCRR). Many of the existing provisions are outdated and do not accurately reflect the current statistical plans in effect for private passenger automobile and commercial automobile insurance. Furthermore, the cumbersome nature of the existing provisions lends itself to confusion on the part of insurers and officially designated statistical agents of the Department. Therefore, it is necessary for the regulation to be updated and simplified to avoid inconsistency and confusion and to reflect the procedures that are currently being followed by the Department and the industry. By eliminating the specific statistical codes from the regulation and by clarifying that the Insurance Department must approve all statistical plans, the industry will benefit by having the flexibility to appropriately modify the plans as market conditions warrant while being in conformity with the revised wording of the regulation.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department.

There should be no compliance costs for implementation of this amendment since the insurers and the statistical agents are already complying with the proposed provisions.

5. Local government mandates: This rule does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: There is no additional paperwork required as a result of this amendment.

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

8. Alternatives: The principal alternative was to not change the regulation. However, this would have continued the confusion caused by the existence of obsolete provisions contained in the regulation. Another alternative was to repeal the regulation, but the Department concluded that this was undesirable because the regulation is essential and only needed to be simplified and made more flexible.

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

10. Compliance schedule: No compliance schedule is necessary because the amendments to these Parts do not add any new requirements for regulated parties.

Regulatory Flexibility Analysis

The Insurance Department finds that this amendment would not impose reporting, recordkeeping or other requirements on small businesses since the provisions of this Part only apply to property/casualty insurers that write direct private passenger automobile and commercial automobile insurance business in the State of New York and to officially designated statistical agents of the Insurance Department. The Insurance Department has reviewed the filed Reports on Examination and Annual Statements of property/casualty insurers as well as the financial statements of the statistical agents subject to this amendment. Based on this review, the Department believes that none of them come within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act because there are none which are both independently owned and have under 100 employees.

This rule will also have no adverse economic impact on local governments and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies and statistical agents, which are not local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This amendment applies to property/casualty insurers licensed to do business in New York State and to designated statistical agents of the Insurance Department. The insurers do business in every county in this state and the statistical agents provide services for these insurers in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: There is no additional paperwork required as a result of this amendment.

3. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department.

There should be no compliance costs to regulated parties for implementation of this amendment since regulated parties are already in compliance. The amendment merely updates and simplifies Regulation 32-A with respect to the requirements for the submission and modification of statistical plans for private passenger and commercial automobile as well as the reporting of statistical data to the Insurance Department or to officially designated statistical agents of the Insurance Department.

4. Minimizing adverse impact: This amendment applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. This amendment does not impose any additional burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas. In fact, this amendment should benefit insurers throughout New York State by removing obsolete references and by simplifying the regulation, thus avoiding confusion.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's January 2003 Regulatory Agenda.

Job Impact Statement

The proposed amendment should have no negative impact on jobs or economic opportunities in New York State. The amendment merely updates and simplifies the regulation to reflect the existing requirements with respect to private passenger and commercial automobile statistical plans and does not add any new requirements for regulated parties.

Division of the Lottery

EMERGENCY RULE MAKING

Video Lottery Gaming

I.D. No. LTR-47-03-00007-E

Filing No. 1244

Filing date: Nov. 10, 2003

Effective date: Nov. 10, 2003

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

Action taken: Amendment of Part 2836 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1617-a

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

Specific reasons underlying the finding of necessity: (1) The nature and location of the general welfare need:

The New York Lottery operates lottery games to fund education in New York State. The current financial situation in New York State is such that funds are urgently needed to meet revenue shortfalls, particularly after the September 11th disaster and the general economic downturn that followed. It is projected that the operation of video lottery gaming in New York State may generate over \$1 Billion for education annually when fully implemented. Any game delay that jeopardizes start up of video lottery gaming this fiscal year could result in a loss of approximately \$1 to 4 Million weekly in aid to education.

Since passage of the legislation in October 2001 authorizing the Division to license the operation of video lottery gaming at racetracks around New York State, the Division has worked diligently with contractors and racetrack owners to develop the game and the gaming facilities. With commencement of gaming anticipated sometime around the end of this year, the Division continues to finalize the gaming product and to work with the racetracks to design their business operations. These regulations are a result of that product development, and have only now been completed. Consequently, this is the earliest the regulations could have been drafted, leaving inadequate time prior to the anticipated start date to comply with the normal rulemaking procedure set forth in the State Administrative Procedure Act Section 202(1).

(2) Description of the cause, consequences, and expected duration of the need to file emergency rules:

The cause of the need is set forth in paragraph #1 above. The consequence of filing this emergency rulemaking is that the Division will begin to generate needed aid to education through the operation of video lottery gaming. In July 2003, the first draft of these regulations was published. The Division received a number of comments during the public comment period. Revisions to the proposed regulations based on comments received from the public and arising from internal product development are included in these emergency regulations. The Division intends to file shortly a Notice of Revised Rulemaking pursuant the State Administrative Procedure Act Section 202(4-a) to continue the normal rulemaking procedures relative to these regulations.

(3) Compliance with the requirements of § 202(1) of the State Administrative Procedure Act would be contrary to the public interest because it would delay implementation of the game and deprive the state of needed revenue to education. The approximately \$1 to 4 Million in weekly aid to education lost this fiscal year by this delay would need to be taken from other revenue sources.

(4) Circumstances necessitate that the public and interested parties be given less than the minimum period of 30 days for notice and comment because any game delay would result in a loss of approximately \$1 to 4 Million weekly this fiscal year in aid to education. As mentioned above, the Division continues to finalize the gaming product and to work with the racetracks to design their business operations. These regulations are a result of that product development, and have only now been completed. Consequently, this is the earliest the regulations could have been finalized, leaving inadequate time prior to the anticipated start date to comply with the normal rulemaking procedure set forth in the State Administrative Procedure Act Section 202(1). Delaying the commencement of gaming for the time needed to utilize the normal rulemaking process would mean a loss in aid to education of approximately \$1 to 4 Million per week which would have to be made up from other state revenues.

Subject: Video lottery gaming.

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

Substance of emergency rule: Chapter 383 of the Laws of 2001 as amended by Chapter 85 of the Laws of 2002, as amended by Chapter 62 of the Laws of 2003, codified as § 1617-a of the New York State Tax Law, 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 legis-

lation 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.

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 February 7, 2004.

Text of emergency 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

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 New York State Tax Law, which authorizes the New York State Division of the Lottery ("Division") to license the operation of video lottery gaming at racetrack locations around the state. That legislation directs the Division to promulgate regulations allowing for the licensed operation of video lottery gaming. These regulations 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 Division to promulgate regulations for the design, licensing and implementation of video lottery gaming. Pursuant to a Memorandum of Understanding between the Division 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 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 Division's current licensed agents are food and beverage retailers. Video lottery gaming will require the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key employees, and employees.

In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Division 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 after 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.

A Notice of Proposed Rulemaking was published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Because of this, and based on comments received during the public comment period, it was necessary to revise the proposed regulations. These emergency regulations include the revisions. By way of example, sections were added authorizing the issuance of badges for tem-

porary employees, expressly setting forth a procedure to request exemption from the regulations, and authorizing the video lottery gaming agents to use Division logos and other copyrighted material to advertise and promote video lottery gaming at the licensed facilities.

In response to comments received from prospective licensees, the video lottery gaming agents were given increased latitude in managing their business operations. For example, rather than adhering to internal controls procedures prescribed by the Division, each agent will design their own in compliance with guidelines established by the Division. License applications with minor deficiencies can be resubmitted without the need to wait a lengthy resubmission time. If temporary employees are needed intermittently, they may utilize a badging system instead of undergoing a lengthy licensing process. Gaming agents will be able to utilize a Division logo in their advertising program, and will be able to sell all lottery products. Grammatical and formatting changes were made for clarity and ease of use.

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 judgment.

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 regulations require video lottery gaming agents housing over 2500 terminals to equip the facility with an alternate emergency power source. It is estimated that this could cost those agents an additional \$250-\$300 per video lottery terminal. 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, electrical 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 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 ranging from \$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 Division 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.

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 develop internal control procedures, to undergo an auditing process and 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 Division may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Division 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 Division 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 the first proposed regulations, members of the regulated community were contacted and comments to the proposed draft regulations solicited. In response, the Division 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 Division 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 and included in the first proposed regulations published in July 2003. The public comment period which followed elicited a number of comments primarily from prospective licensees. Many of those comments proved valuable in drafting these emergency regulations which both meet the needs of the regulated community while maintaining the high standards established by the Division to operate and regulate its games. All comments received are available for public review by contacting Susan E. Beaudoin, Esq., Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, New York 12301 or by calling 518-388-3408 or e-mailing to sbeaudoin@lottery.state.ny.us.

While the majority of requests for revision were accommodated whenever feasible, the Division did not accept any requests for change that in its estimation would undermine the security and integrity of the game. For example, when asked to make changes which would reduce the costs of developing or operating their businesses, the Division generally accommodated those requests when possible. Conversely, though comments were received that the stringent licensing application process was overly burdensome, the Division did not lessen these requirements.

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, the companies supplying the games and terminals, management companies and certain leaders. 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: Most 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. Certain small vendors may not even be required to register.

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 judgment.

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 regulations require video lottery gaming agents housing over 2,500 terminals to equip the facility with an alternate emergency power source. It is estimated that this will cost those agents an additional \$250-\$300 per installed video lottery terminal. 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. After publication of the Notice of Proposed Rulemaking on July 16, 2003, the Lottery received numerous comments mostly from prospective licensees, during the public comment period. These emergency regulations include revisions made to the regulations as a result of that comment period.

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 Division 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 Division 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 Division 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 employees 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. Undoubtedly, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

Public Service Commission

EMERGENCY RULE MAKING

Agreement for Debtor in Possession Financing

I.D. No. PSC-47-03-00002-EA
Filing date: Nov. 6, 2003
Effective date: Nov. 6, 2003

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

Action taken: The commission, on Nov. 6, 2003, adopted an order in Case 03-M-1551, approving the financing arrangement for Mirant Bowl-ine, L.L.C., Mirant Lovett, L.L.C. and Mirant NY-Gen, L.L.C.

Statutory authority: Public Service Law, section 69

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

Specific reasons underlying the finding of necessity: Immediate approval of the financing is necessary to operate and maintain the generating facilities and provide safe and reliable service.

Subject: Agreement for debtor in possession financing.

Purpose: To secure funding for the maintenance and operation of generating facilities.

Substance of emergency rule: The Commission adopted as an emergency/permanent rule, a financing agreement sought by Mirant New York, Inc., Mirant Bowl-ine, L.L.C., Mirant Lovett, L.L.C. and Mirant NY-Gen, L.L.C. for the maintenance and operation of their generating facilities, subject to the terms and conditions set forth in the Order.

The agency adopted the provisions of this emergency rule as a permanent rule, pursuant to section 202(6)(c) of the State Administrative Procedure Act because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

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

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-M-1551SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of Networks between Verizon New York Inc. and USA Easy Pay Phone

I.D. No. PSC-47-03-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and USA Easy Pay Phone for approval of an interconnection agreement executed on June 5, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and USA Easy Pay Phone have reached a negotiated agreement whereby Verizon New York Inc. and USA Easy Pay Phone will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

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

(03-C-1540SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Prepaytel, Inc.

I.D. No. PSC-47-03-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Prepaytel, Inc. for approval of an interconnection agreement executed on Sept. 30, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Prepaytel, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Prepaytel, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 26, 2005, or as extended.

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

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

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

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

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

(03-C-1541SA1)

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

Interconnection Agreement between Verizon New York Inc. and Westelcom Network, Inc.

I.D. No. PSC-47-03-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Westelcom Network, Inc. for approval of an interconnection agreement executed on Sept. 30, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Westelcom Network, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Westelcom Network, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-C-1542SA1)

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

Interconnection Agreement between Verizon New York Inc. and WorldxChange Corporation

I.D. No. PSC-47-03-00011-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, a proposal filed by Verizon New York Inc. and WorldxChange Corporation for approval of an interconnection agreement executed on Sept. 26, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and WorldxChange Corporation have reached a negotiated agreement whereby Verizon New York Inc. and WorldxChange Corporation will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 1, 2004, or as extended.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-C1543SA1)

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

Interconnection Agreement between Verizon New York Inc. and Norvergence, Inc.

I.D. No. PSC-47-03-00012-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, a proposal filed by Verizon New York Inc. and Norvergence, Inc. for approval of an interconnection agreement executed on Oct. 6, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Norvergence, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Norvergence, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until Dec. 24, 2004, or as extended.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-C-1544SA1)

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

Interconnection Agreement between Verizon New York Inc. and Now Acquisition Corporation

I.D. No. PSC-47-03-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Now Acquisition Corporation for approval of an interconnection agreement executed on Sept. 30, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Now Acquisition Corporation have reached a negotiated agreement whereby Verizon New York Inc. and Now Acquisition Corporation will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions

under which the parties will interconnect their networks lasting until April 14, 2005, or as extended.

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

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

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

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

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

(03-C-1545SA1)

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

Interconnection Agreement between Verizon New York Inc. and PNG Telecommunications, Inc.

I.D. No. PSC-47-03-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and PNG Telecommunications, Inc. for approval of an interconnection agreement executed on Oct. 1, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and PNG Telecommunications, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and PNG Telecommunications, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

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

(03-C-1546SA1)

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

Interconnection Agreement between Verizon New York Inc. and Focal Communications Corporation of New York

I.D. No. PSC-47-03-00015-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 proposal filed by Verizon New York Inc. and Focal Communications Corporation of New York for approval of an interconnection agreement executed on July 14, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Focal Communications Corporation of New York have reached a negotiated agreement whereby Verizon New York Inc. and Focal Communications Corporation of New York will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

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

(03-C-1547SA1)

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

Interconnection Agreement between Verizon New York Inc. and KMC Data, LLC

I.D. No. PSC-47-03-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and KMC Data, LLC for approval of an interconnection agreement executed on Feb. 19, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and KMC Data, LLC have reached a negotiated agreement whereby Verizon New York Inc. and KMC Data, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

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

(03-C-1548SA1)

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

Interconnection Agreement between Verizon New York Inc. and KMC Telecom V, Inc.

I.D. No. PSC-47-03-00017-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, a proposal filed by Verizon New York Inc. and KMC Telecom V, Inc. for approval of an interconnection agreement executed on Feb. 19, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and KMC Telecom V, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and KMC Telecom V, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

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

(03-C-1549SA1)

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

Interconnection Agreement between Verizon New York Inc. and Digizip.com Inc.

I.D. No. PSC-47-03-00018-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 proposal filed by Verizon New York Inc. and Digizip.com Inc. for approval of an interconnection agreement executed on Oct. 13, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Digizip.com Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Digizip.com Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

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

(03-C-1550SA1)

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

Interconnection Agreement between Signatory Independent Local Exchange Carrier and Southwestern Bell Mobile Systems LLC d/b/a Cingular Wireless

I.D. No. PSC-47-03-00019-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 proposal filed by the Signatory Independent Local Exchange Carrier Operating in the State of New York and Southwestern Bell Mobile Systems LLC d/b/a Cingular Wireless for approval of an Interconnection Agreement executed on Oct. 29, 2003.

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

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

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

Substance of proposed rule: The Signatory Independent Local Exchange Carrier Operating in the State of New York and southwestern Bell Mobile Systems LLC d/b/a Cingular Wireless have reached a negotiated agreement whereby the Signatory Independent Local Exchange Carrier Operating in the State of New York and Southwestern Bell Mobile Systems LLC d/b/a Cingular Wireless will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until Oct. 29, 2004, or as extended.

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

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

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

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

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

(03-C-1579SA1)

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

Standby Service by Rochester Gas and Electric Corporation

I.D. No. PSC-47-03-00020-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, or modify, a proposal filed by Rochester Gas and Electric Corporation to make a change in the rates, charges, rules, and regulations contained in its tariff schedules, P.S.C. Nos. 19 and 20—Electricity to become effective Feb. 1, 2004.

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

Subject: Standby service.

Purpose: To revise rates, terms and conditions for the provisions of standby service.

Substance of proposed rule: On November 3, 2003, Rochester Gas and Electric Corporation (RGE) filed proposed tariff revisions to Schedules P.S.C. Nos. 19 and 20 - Electricity to become effective February 1, 2004. RGE proposes to revise the rates, terms and conditions for the provisions of standby service pursuant to Clause 5 of Commission order issued July 29, 2003 in Case 02-E-0551.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(02-E-0551SA3)

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

**Standby Service by New York State Electric and Gas Corporation
I.D. No. PSC-47-03-00021-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 proposal filed by New York State Electric and Gas Corporation to make a change in the rates, charges, rules, and regulations contained in its tariff schedule, P.S.C. No. 115 - Electricity to become effective Feb. 1, 2004.

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

Subject: Standby service.

Purpose: To revise rates, terms and conditions for the provisions of standby service.

Substance of proposed rule: On October 31, 2003, New York State Electric and Gas Corporation (NYSEG) filed proposed tariff revisions to Schedule P.S.C. No. 115 - Electricity to become effective February 1, 2004. NYSEG proposes to revise the rates, terms and conditions for the provisions of standby service pursuant to Clause 5 of Commission order issued July 30, 2003 in Case 02-E-0779.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(02-E-0779SA2)

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

Standby Service by Orange and Rockland Utilities, Inc.

I.D. No. PSC-47-03-00022-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 proposal filed by Orange and Rockland Utilities, Inc. to make a change in the rates, charges, rules and regulation contained in its tariff schedule, P.S.C. No. 2 - Electricity to become effective Feb. 1, 2004.

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

Subject: Standby service.

Purpose: To revise rates, terms and conditions for the provisions of standby service.

Substance of proposed rule: On November 3, 2003, Orange and Rockland Utilities, Inc. (O&R) filed proposed tariff revisions to Schedule P.S.C. No. 2 - Electricity to become effective February 1, 2004. O&R proposes to revise the rates, terms and conditions for the provisions of standby service pursuant to Clause 5 of Commission order issued July 29, 2003 in Case 02-E-0780.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(02-E-0780SA3)

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

Standby Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-47-03-00023-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 proposal filed by Consolidated Edison Company of New York, Inc. to make a change in the rates, charges, rules, and regulations contained in its tariff schedules, P.S.C. No. 9—Electricity, P.S.C. No. 2—Retail Access, PASNY No. 4 and EDDS No. 2 to become effective Feb. 1, 2004.

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

Subject: Standby service.

Purpose: To revise rates, terms and conditions for the provisions of standby service.

Substance of proposed rule: On October 31, 2003, Consolidated Edison Company of New York, Inc. (Con Edison) filed proposed tariff revisions to Schedules P.S.C. No. 9 - Electricity, P.S.C. No. 2 - Retail Access, PASNY No. 4 and EDDS No. 2 to become effective February 1, 2004. Con Edison proposes to revise the rates, terms and conditions for the provisions of standby service pursuant to Clause 5 of Commission order issued July 29, 2003 in Case 02-E-0781.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(02-E-0781SA4)

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

Lightened Regulation and Financing Approval by Medford Energy, LLC

I.D. No. PSC-47-03-00024-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject or modify requests of Medford Energy, LLC (Medford Energy) for an order providing for lightened regulation and approving financing.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110.

Subject: Medford Energy's requests for lightened regulation of its electric corporation and for financing approval up to \$110 million.

Purpose: To consider the requests.

Substance of proposed rule: By petition filed November 5, 2003, Medford Energy seeks and order granting a Certificate of Public Convenience and Necessity to allow it to construct and operate an electric generating facility located in the Hamlet of Medford, Suffolk County, New York, providing for lightened regulation of it as an electric corporation, and granting financing approval of up to \$110 million. The request for a Certificate of Public Convenience and Necessity seeks a license, so it is not the subject of this notice.

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

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

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

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

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

(03-E-1587SA1)

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

Transfer and Lease Back of Certain Building Facilities and Associated Realty by Niagara Mohawk Power Corporation

I.D. No. PSC-47-03-00025-P

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

Proposed action: The Public Service Commission is considering whether to accept or reject, in whole or in part, the Oct. 31, 2003 petition filed by Niagara Mohawk Power Corporation seeking authorization, pursuant to Public Service Law sections 69 and 70, to transfer certain building facilities and the associated realty to, and the lease back of a portion of the facilities from, Iskalo Development Corp.

Statutory authority: Public Service Law, sections 69 and 70.

Subject: Transfer and lease back of certain building facilities and associated realty.

Purpose: To transfer certain building facilities and associated realty to, and lease back a portion of the facilities from, Iskalo Development Corp.

Substance of proposed rule: On October 31, 2003, Niagara Mohawk Power Corporation (the company) filed a petition pursuant to Public Service Law Sections 69 and 70 requesting authorization to transfer certain building facilities and associated realty to, and to lease back a portion of the facilities from, Iskalo Development Corp. The property being transferred consists of the Buffalo Electric Building located at 20 East Huron Street and 535 Washington Street in the City of Buffalo, and a nearby parking lot located at 25 East Huron Street. The Buffalo Electric Building has approximately 148,000 square feet of usable and rentable space, and the company proposes to lease back approximately 40,000 square feet. The property is being transferred for the sum of \$2.85 Million, and the lease would cost the company \$457,648 per year. The present net book value of the property is \$10.52 Million as of October 31, 2003. Due to the estimated net loss arising from the sale of the O'Neil Building, the Commission will also address the appropriate ratemaking treatment.

The PSC is considering whether to grant or to reject, in whole or in part, 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 arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-M-1572SA1)

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

Initial Electronic Tariff Schedule by James V. Lettiere, Jr. d/b/a Lettiere Water Systems

I.D. No. PSC-47-03-00026-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, James V. Lettiere, Jr. d/b/a Lettiere Water System's initial electronic tariff schedule, P.S.C. No. 1—Water, to become effective Feb. 1, 2004.

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

Subject: Initial electronic tariff schedule, escrow account and surcharge statement.

Purpose: To approve an initial electronic tariff schedule, escrow account and surcharge statement no. 1, to become effective Feb. 1, 2004.

Substance of proposed rule: On October 10, 2003, James V. Lettiere, Jr. d/b/a Lettiere Water System, filed an Initial Electric Tariff Schedule, P.S.C. No. 1 - Water, which sets forth the rates, charges, rules and regulations under which the company will operate. The company was recently transferred to the present owner and Commission regulations require the new owner to file an initial tariff in its name. The initial tariff has the same base rates as the previous company's tariff and no rate increase will result from this filing.

On October 10, 2003, the company also filed Escrow Account Statement No. 1 and Surcharge Statement No. 1, to become effective February 1, 2004. The Escrow Account Statement No. 1 would allow the company to charge each customer \$15 per quarter for four quarters and establish a \$5,520 replenishable escrow account, to cover the costs of future capital improvements and extraordinary repairs. The company is also requesting that it be allowed to charge each customer \$21.25 per quarter for two quarters to recover the cost of a hydrant installation totaling \$3,915, through the Surcharge Statement No. 1.

The company's electronic tariff schedule will be available for the public on the Commission's website at www.dps.state.ny.us, located under "Electronic Tariff System". The company provides metered water service to 92 residential customers in a real estate subdivision know as Lettiere Development in the Town of Watertown, Jefferson County. No fire protection service is provided. The Commission may approve, modify or reject, in whole or in part, 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 arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-W-1470SA1)

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

Issuance of Debt by Emerald Green Lake Louise Marie Water Company

I.D. No. PSC-47-03-00027-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, the petition of Emerald Green Lake Louise Marie Water Company for the approval to enter into a loan agreement with the Community Bank of Sullivan County.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of debt.

Purpose: To enter into a loan agreement.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the petition of Emerald Green Lake Louise Marie Water Company to enter into a loan agreement with the Community Bank of Sullivan County. The proceeds of the loan will be used to purchase the assets of the now defunct Lake Louise Marie Water Company by paying past due property taxes to Sullivan County, to refinance a loan on a filtration plant and to reimburse the Emerald Green Property Owners Association for legal expenses.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-W-1570SA1)

Department of Taxation and Finance

EMERGENCY RULE MAKING

Estimated Tax Payments on Sales or Transfers of Real Property by Nonresident Taxpayers

I.D. No. TAF-47-03-00028-E
Filing No. 1267
Filing date: Nov. 12, 2003
Effective date: Nov. 12, 2003

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

Action taken: Addition of Part 163 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 663; and 697(a)

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

Specific reasons underlying the finding of necessity: Section 663 of the Tax Law requires nonresident taxpayers to estimate and pay the personal income tax liability on the gain, if any, on sales or transfers of real property within New York State. Section 663 was added by Part V3 of Chapter 62 of the Laws of 2003, and subsequently amended by Chapter 686 of the Laws of 2003. Chapter 686 became law on October 21, 2003 and Part P of such Chapter, which contains the amendments to section 663, applies to sales or transfers of real property on or after September 1, 2003. The Commissioner of Taxation and Finance is required by section 663 to promulgate regulation implementing the section. Since the law is already in effect, an emergency action is necessary so that the Commissioner can put regulatory amendments in place immediately. There is insufficient time to comply with the requirements of the State Administrative Procedure Act for proposal and adoption.

Subject: Estimated tax payments on sales or transfers of real property by nonresident taxpayers.

Purpose: To implement the estimated tax on sales or transfers of real property by nonresident taxpayers as required by new section 663 of the Tax Law.

Text of emergency rule: Section 1. A new Part 163 is added to such regulations to read as follows:

PART 163

ESTIMATED PERSONAL INCOME TAX DUE UPON THE SALE OR TRANSFER OF REAL PROPERTY BY A NONRESIDENT TAXPAYER

Section 163.1

General and definitions.

(a) Section 663 of the Tax Law requires that a nonresident taxpayer must estimate and pay the personal income tax liability on the gain, if any, upon the sale or transfer of real property within New York State. For purposes of section 663, the following rules and definitions apply:

(1) "Date of sale or transfer" is the date the deed effecting the conveyance is delivered by the seller or transferor to the transferee.

(2) "Nonresident taxpayer." (i) A nonresident taxpayer is an individual who qualifies as a nonresident individual under section 605(b)(2) of the Tax Law, or an estate or trust that qualifies as a nonresident estate or trust under section 605(b)(4) of the Tax Law, on the date of sale or transfer of real property.

(ii) An individual who is not domiciled in New York State but who may be considered a resident of New York State for tax purposes under section 605(b)(1)(B) of the Tax Law at the end of a taxable year, by virtue of maintaining a permanent place of abode in New York State for substantially all of the taxable year and by spending in aggregate more than one hundred eighty-three days of the taxable year in New York State, is a nonresident for purposes of this requirement unless the individual has already qualified as a resident on the date of sale or transfer of real property. (See section 105.20 of this Title concerning qualifying as a resident under section 605(b)(1)(B).)

(3) "Gain" on the sale or transfer has the same meaning as used in section 1001 of the Internal Revenue Code as that section applies to the sale or transfer of real property.

(4) "Sale or transfer of real property" means the change of ownership of a fee simple interest in real property by any method.

(5) "Seller or transferor" means the individual, estate, or trust making the sale or transfer of a fee simple interest in real property.

(6) "Recording officer" means the county clerk of the county, except in a county having a register, where it means the register of the county, or in the city of New York where it means the city register and any other employee of the Department of Finance, as appropriate.

Section 163.2 Estimation of tax due.

(a) A nonresident taxpayer must estimate the personal income tax due on a form prescribed by the commissioner, using an estimated tax rate that equals the highest rate of tax for the taxable year provided in section 601 of the Tax Law. The estimated tax due will equal the gain, if any, multiplied by that rate. The amount of the gain used in the computation is equal to the amount reportable for federal income tax purposes for the taxable year.

(b) If the real property being sold or transferred is located partly within and partly without New York State, then the nonresident taxpayer must estimate the tax due using only the portion of the gain reasonably attributable to the portion of the real property located within New York State.

(c) If the nonresident taxpayer is an estate or trust, it must estimate the tax due based on the gain, if any, computed without reduction for any distribution of income to the beneficiaries during the tax year of the sale or transfer.

Section 163.3 Filing and payment.

(a) A nonresident taxpayer must file the estimated tax form with the recording officer, along with payment of any estimated tax due, at the time a deed is recorded or accepted for recording. The taxpayer must make a payment payable to the Department of Taxation and Finance for the estimated tax that is separate from any other payment made to the recording officer at this time. (For an alternate payment and certification procedure which is available for sales with a date of sale or transfer on or before December 31, 2003, see Part 163 of Title 20 NYCRR (adopted on August 26, 2003) and section 663 of the Tax Law enacted by Chapter 62, Laws of 2003. The payment and certification procedure set forth in the August 26, 2003 regulation is in lieu of the procedure set forth herein.) Except for a nonresident taxpayer who meets one of the exemptions from the requirements described in section 163.4 of this Part, all nonresident taxpayers who are sellers or transferors of real property within New York State must file the estimated tax form whether or not they have a gain.

Section 163.4 Exemption from requirements.

(a) Section 663(d) of the Tax Law provides that the requirements of section 663 do not apply where:

(1) the real property being sold or transferred is the principal residence of the seller or transferor within the meaning of section 121 of the Internal Revenue Code (see subdivision (b) of this section);

(2) the seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration (see definition of "consideration" in section 575.1(d) of this Title); or

(3) the seller or transferor, or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

(b) The principal residence exemption set forth in paragraph (a)(1) of this section applies only where the property being sold or transferred qualifies in total as the principal residence of the seller or transferor. If the property being sold or transferred includes both the principal residence and other property, then the taxpayer must file and pay any estimated tax due based on the gain from the other property.

Section 163.5 Requirements for recording of deed.

(a) No deed shall be recorded or accepted for recording by any recording officer unless the recording officer has received with respect to every seller or transferor who is an individual, estate or trust: (1) a form prescribed by the commissioner, along with payment in full of the estimated tax due, if any, or, (2) a form prescribed by the commissioner containing a certification by the individual, estate or trust that section 663 is inapplicable to the sale or transfer. The method for taxpayers to make the certification is prescribed in forms and instructions.

Section 163.6 Designation of and duties of agents.

The recording officers in New York State shall act as the agents of the commissioner to collect the estimated tax due, if any, shown to be payable on the form prescribed by the commissioner. The recording officer must collect the estimated tax at the time that a deed is recorded or accepted for recording and must collect a payment payable to the Department of Taxation and Finance for the estimated tax that is separate from any other payment made to the recording officer at this time. Every recording officer must remit to the commissioner any funds collected and returns filed with such recording officer in a timely manner, not to exceed three business days after receipt of the funds and returns.

Section 163.7 Liability of recording officer.

A recording officer is not liable for any inaccuracy in any statement on the form prescribed by the commissioner or in the amount of estimated tax collected so long as he or she collects the estimated tax shown as payable on the form.

Section 163.8 Validity of record of deed.

When a deed is recorded notwithstanding an omission or inaccuracy in the form prescribed by the commissioner or in any certification by the transferor on such form or a deficiency in the payment of estimated tax, the record of such deed is not invalidated by reason of such omission, inaccuracy, erroneous certification or deficiency and the title founded on such deed is not impaired thereby.

Section 2. These amendments shall take effect on the day such amendments are filed with the Department of State, and shall apply to all sales or transfers of real property within New York State by taxpayers subject to Article 22 of the Tax Law on or after September 1, 2003.

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 February 9, 2004.

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 663 of the Tax Law which was added by Part V3 of Chapter 62 of the Laws of 2003 and amended by Part P of Chapter 686 of such Laws, provides that the Commissioner shall promulgate rules and regulations implementing the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers; and section 697(a) provides the authority for the Commissioner to make such rules and regulations that are necessary to enforce the personal income tax.

2. Legislative objectives: The purpose of these amendments is to implement the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers, contained in section 663 of the Tax Law. Section 663 was added by Part V3 of Chapter 62 of the Laws of 2003, and amended by Part P of Chapter 686 of such Laws.

3. Needs and benefits: New section 663(h) of the Tax Law provides that the Commissioner shall promulgate rules and regulations implementing the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers. The adoption of this regulation will satisfy that requirement. The rule will benefit taxpayers by providing

guidance about the new statutory requirements by clarifying (1) who the new law applies to, (2) what sales or transfers are covered by the law, and (3) how the exceptions to the requirements apply to taxpayers.

Section 663(e) of the Tax Law provides that every recording officer in New York State shall act as an agent of the Commissioner for purposes of collecting the estimated personal income tax, if any, shown to be payable upon the form prescribed pursuant to section 663(b). The section also provides that the Commissioner, by regulation, shall prescribe one or more methods for the recording officer's collection of such estimated tax and the due dates for the recording officer's remittance to the Commissioner of any funds collected and any returns filed with such recording officer. To meet the statutory directives, the proposal requires that the recording officer must collect a payment which is separate from any other payments made at the time the deed is recorded or accepted for recording, and must remit any funds collected and returns filed within three business days after receipt of the funds and returns.

The requirement for the separate payment will benefit any taxpayers subject to paying the estimated tax by ensuring that their estimated tax payments are properly recorded and credited to their estimated personal income tax account. The requirement that the funds and returns be sent by the recording officer to the Department within three business days will benefit taxpayers by ensuring that the money is properly credited to their accounts on a timely basis so that it may be matched to their personal income tax return at year end. If the money is not properly credited on a timely basis, the processing of the taxpayer's return will be delayed. The proposed regulatory requirements will help prevent any unnecessary delays or backlogs in processing.

4. Costs: There are no fiscal or nonfiscal costs related to the promulgation of the regulation to the State, to this agency, to local governments, or to regulated parties beyond those imposed by the statute. This analysis is based on a review of the statutory provisions and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Bureau of Fiscal Management, and Planning and Management Analysis Bureau.

5. Local government mandates: The requirements imposed on local recording officers to act as agents of the Commissioner and collect and remit estimated tax forms and payments are imposed by section 663 of the Tax Law rather than by this regulation. The regulation provides the separate payment method for collection of tax and the due date of three business days, discussed above.

6. Paperwork: Since the requirements for nonresident taxpayers to estimate the tax upon the sale or transfer of real property within New York State were established by new section 663 of the Tax Law, any paperwork required is attributable to the statute and not the regulation.

7. Duplication: There are no relevant rules which are duplicated, overlapped, or in conflict with the regulation.

8. Alternatives: Because the regulation is specifically required by sections 663(e) and 663(h) of the Tax Law, no significant alternative to promulgating the regulation was considered.

Alternative ways to meet the statutory directives regarding the method of collection and due dates were considered. The separate payment method and the due date of three business days were discussed with the County Clerks' Association, and were determined to be the best policies to satisfy the needs of the recording officers, taxpayers, and the Department in response to section 663 of the Tax Law.

To allow for a transition period for the procedure provided by Chapter 686, the Department's policy and this emergency action provide that the prior procedure can be used for sales with a date of sale or transfer on or before December 31, 2003.

9. Federal standards: The rule does not exceed any federal minimum standard for the same or similar subject area.

10. Compliance schedule: Section 663 of the Tax Law, which imposes new requirements on nonresident taxpayers and local recording officers, applies to sales or transfers of real property within New York State on or after September 1, 2003. This effective date was set by Part V3 of Chapter 62 of the Laws of 2003. Section 663 was amended by Part P of Chapter 686 of the Laws of 2003. The September 1, 2003 effective date was retained in this amendment. The schedule for parties to comply with the regulation is affected by the fact that Chapter 686 became law after September 1, 2003 and changed the procedure for taxpayers. Under Chapter 62, taxpayers were required to file the estimated tax form and pay any tax due directly to the Department. A regulation was adopted as an emergency measure on August 26, 2003 reflecting section 663 as in Chapter 62. Chapter 686 changed the requirement so that taxpayers are now required to file and pay any tax due with the recording officer at the time the deed is recorded or

accepted for recording. Because the original effective date was retained by the later amendments, a transitional provision is included in this emergency action to allow taxpayers to continue to use the prior procedure as an alternative for sales of real estate with a date of sale or transfer on or before December 31, 2003. To provide the recording officers adequate time to prepare, a meeting was held with the County Clerks' Association to discuss the new procedures and to receive their input regarding the proposed requirements. Advance copies of forms and instructions were provided to the recording officers so they could prepare for the change in procedure. A technical memorandum has also been issued to notify taxpayers and real estate professionals about the changes.

Regulatory Flexibility Analysis

1. Effect of rule: Section 663 of the Tax Law provides that every recording officer in New York State shall act as an agent of the Commissioner of Taxation and Finance for purposes of collecting the estimated personal income tax. The section also provides that the Commissioner, by regulation, shall prescribe one or more methods for the recording officer's collection of such estimated tax and the due dates for the recording officer's remittance of funds collected and returns filed. The effect on local governments is the addition of responsibilities placed on local recording officers, which is primarily due to the statute. The rule has a small effect because it provides the collection method and due date for remitting funds collected and returns filed.

It is anticipated that the rule will have little or no effect on small businesses.

2. Compliance requirements: Local recording officers are required by the statute to act as agents of the Commissioner and collect and remit tax payments and returns. The recording officers must build this new process into their office procedures. The rule provides the method for the collection of the estimated tax and that the recording officer must remit to the Department any funds collected and returns filed in a timely manner, not to exceed three business days after receipt of the funds and returns.

3. Professional services: No professional services are necessary in order to comply with the rule. Some taxpayers may choose to utilize professional services in order to comply with the rule, and because the requirements involve the sale of real property, it is likely that the taxpayers affected already utilize professionals to perform these types of services.

4. Compliance costs: Because the requirements on the recording officers are primarily imposed by section 663 of the Tax Law rather than the regulation, there are no compliance costs to local governments as a result of the rule. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

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

6. Minimizing adverse impact: In order to minimize any adverse impact on the local recording officers, the Department met with the County Clerks' Association to discuss the new procedures and to receive their input regarding the proposed requirements. Advance copies of estimated tax forms and instructions were provided to the recording officers so they could prepare for the change in procedure.

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 the rule's development: the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors; the Small Business Council of the New York State Business Council; and the Retail Council of New York State.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Section 663 of the Tax Law provides that all recording officers in New York State, including those in rural areas, shall act as agents of the Commissioner of Taxation and Finance for purposes of collecting the estimated personal income tax. 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: The requirement imposed on local recording officers to collect the estimated tax forms and payments are imposed by section 663 of the Tax Law rather than by this regulation. This regulation, as

required by section 663, requires that the recording officer collect a payment which is separate from any other payments made at the time the deed is recorded or accepted for recording, and that the recording officer must remit any funds and returns within three business days after receipt of the funds and returns.

The reporting, recordkeeping and other compliance requirements imposed on taxpayers and recording officers are attributable to the statute and not the regulation. This regulation will not encourage or discourage the use of any professional services regardless of the taxpayer's geographical location.

3. Costs: There are no fiscal or nonfiscal costs related to the promulgation of the regulation to local governments or to regulated parties located in rural areas beyond those imposed by the statute. This analysis is based on a review of the statutory provisions and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Bureau of Fiscal Management, and Planning and Management Analysis Bureau.

4. Minimizing adverse impact: In order to minimize any adverse impact on the local recording officers, the Department met with the County Clerks' Association to discuss the new procedures and to receive their input regarding the proposed requirements. The separate payment method and the due date of three business days were discussed with the County Clerks' Association, and were determined to be the best policies to satisfy the needs of the recording officers, taxpayers, and the Department in response to section 663 of the Tax Law. Advance copies of estimated tax forms and instructions were provided to the recording officers so they could prepare for the change in procedure. A technical memorandum has been issued to explain the new requirements to taxpayers and tax professionals.

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 anticipated that the rule will have no adverse impact on jobs and employment opportunities. The purpose of these amendments is to implement the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers, as required by section 663 of the Tax Law. Section 663 was added to the Tax Law by Part V3 of Chapter 62 of the Laws of 2003, and amended by Part P of Chapter 686 of the Laws of 2003. Neither section 663 nor the rule imposes any additional tax liability.