

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Budget Planners

I.D. No. BNK-41-03-00004-E

Filing No. 1076

Filing date: Sept. 25, 2003

Effective date: Sept. 28, 2003

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

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

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

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

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

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

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

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

Subject: Regulation of budget planning activities.

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

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

PART 402 BUDGET PLANNERS

§ 402.1 Definitions.

For purposes of this Part:

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

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

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

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

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

§ 402.2 Application for a license.

(a) Application form. Application for a license shall be made upon a form provided by the New York State Banking Department ("Banking

Department"). Each application shall be signed by every individual or entity that will be a control party if a license is granted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) A litigation affidavit prepared for each applicant.

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

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

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

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

(ii) the total fees agreed to for such services, including any adjustments for estimated available rebates from creditors, provided that nothing

in this subdivision shall require a licensee to share rebates with its clients;

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

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

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

§ 402.3 Services to be provided by licensee.

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

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

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

§ 402.4 Duration of qualifier experience.

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

§ 402.5 Provision for surety bond.

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

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

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

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

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

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

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

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

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

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

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

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

§ 402.7 Deposit agreement; certificate of licensee.

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

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

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

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

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

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

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

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

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

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

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

§ 402.9 Debtors contact with licensees and Banking Department.

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

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

§ 402.10 Right of debtors to rescind contract.

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

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

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

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

§ 402.11 Term and termination; assignment.

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

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

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

§ 402.12 Unfair or deceptive acts or practices.

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

§ 402.13 Reports to be filed with the superintendent.

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

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

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

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

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

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

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

§ 402.14 Changes to licensee's fee structure.

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

§ 402.15 No commingling of licensee's funds.

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

the debtors, i.e., the records must sufficiently identify the deposit balance of each debtor on any given day.

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

§ 402.16 Licensee's privacy policy.

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

§ 402.17 Office Display.

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

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

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

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

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

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

§ 402.18 Change of location.

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

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

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

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

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

§ 402.19 Reports of arrests, convictions, etc.

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

§ 402.20 Reports of misconduct.

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

§ 402.21 Books and records.

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

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

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

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

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

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

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

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

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

§ 402.22 Licensee's return of unused debtor funds.

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

§ 402.23 Effective date.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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 December 23, 2003.

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

Regulatory Impact Statement

1. Statutory Authority:

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

2. Legislative Objective:

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

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and

utilized by, individuals who, if not for the available credit, would have been unable to engage in the consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

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

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

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

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

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

3. Needs and Benefits:

Proposed New Part 402 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. In response to the recent legislation in this area, the rule facilitates the stricter regulation of budget planning activities to provide more consumer protections for the clients of licensed budget planners. Notably, in this regard, Section 455 of Article 28-B of New York's General Business Law was recently amended to require the licensing of out-of-state entities that enter into budget planning

contracts with New York residents. Since the out-of-state entities that enter into budget planning contracts with New York residents are now subject to the same licensing requirements as the in-state entities that enter into similar contracts, the reporting/disclosure, recordkeeping and compliance requirements that make up New Part 402 will also apply to these entities. Having regulatory standards now applicable to the in-state as well as the out-of-state entities in budget planning contracts with New York residents, will provide the increased consumer protections envisioned by the Legislature otherwise not previously afforded to New York residents, party to budget planning contracts with the out-of-state entities.

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

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

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

4. Costs:

(a) Costs to State Government: None.

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

(b) Costs to Local Government: None.

(c) Costs to Regulated Entities:

Reporting/Disclosure and Recordkeeping

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

Budgeting, Educational and Counseling Services

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

Recent information obtained from the current licensees indicates that all but two of the licensees already provide some educational counseling to consumers. The licensees that do not provide educational counseling indicated that it could cost them up to approximately \$1000 to provide educational pamphlets for clients. It is possible, however, that the current licensees may incur some additional costs to perhaps reorganize or make additional plans to provide the level of budgeting, educational and counseling services required by this rule, in the event that such services currently offered by the licensees do not satisfy the requirement.

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

Establishment of Toll Free Number or "Collect" Calling Number

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

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

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

5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

Under the proposed rule, licensed budget planners will have to comply with existing reporting/disclosure and recordkeeping requirements in addition to newly established reporting/disclosure and recordkeeping requirements. The newly established requirements include providing to the Superintendent the following, as described in the proposed rule: a) a business plan that details the budgeting, educational, counseling services to be offered to clients; b) documentation demonstrating that at a minimum one required individual in the employ of the licensee has at least one year of experience in financial services, or a related field that is applicable to the business of budget planning, and notification of changes with respect to the person meeting such qualifications; c) a copy of the deposit agreement

with respect to assets on deposit in lieu of obtaining a bond; d) notice of changes in by-laws or certificates of incorporation; e) the number of clients nationwide and the number of new clients nationwide, both to be given on an annual basis; f) the highest daily amount of debtor funds held by the licensee for disbursement to creditors for the licensees New York budget planning business, to be given quarterly; g) changes to the licensees fee structure; h) a written report of any arrest or conviction of any individual who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the licensee; and i) a list of states in which they conduct the business of budget planning and the name and address of the applicable regulator for those states.

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

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

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

7. Duplication:

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

8. Alternatives:

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

The Banking Department recently received comments from Paul Kaplan, counsel to Cambridge/Brighton Budget Planning Corp. ("Cambridge"), which is currently licensed in New York to conduct the business of budget planning. In the context of the way in which Cambridge conducts its business of budget planning, the comments focused on the following: a) the requirement that a licensee include in its contracts with its debtor clients a pro forma statement of the total fees to be charged to the debtor clients, as set forth in Section 584-a of the Banking Law; b) the prohibition against a licensee paying any bonus or other consideration to any person for the referral of a debtor to its business, as mandated in Banking Law Section 584-b; and c) New Part 402's requirement that every contract between a licensee and a debtor client be limited to a payment period not to exceed 60 months. Cambridge has certain concerns regarding its ability to comply with these requirements set forth in the newly enacted law and the proposed rule. Cambridge has asked the Banking Department to consider making changes to rule in order to resolve the issues. The Banking Department is reviewing and considering the comments and suggestions made by Cambridge.

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

(b) Do not propose the rule.

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

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

9. Federal Standards:

None.

10. Compliance Schedule:

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

Based on the aforementioned policy dialogue that the Banking Department has had with the industry representatives during the legislative and proposed rulemaking process, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse economic impact on entities licensed under New York law to conduct the business of budget planning.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. Specifically, the rule contains certain reporting, recordkeeping and compliance requirements currently imposed on licensed budget planners, as well as new reporting, recordkeeping and compliance requirements related to recent legislation in this area enacted in response to the need for increased consumer protection for the clients of licensed budget planners. However, there is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from

complying with the rule based on a particular office location. Therefore, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

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

Job Impact Statement

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

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

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

- 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
- 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

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Severe Acute Respiratory Syndrome (SARS)

I.D. No. HLT-41-03-00005-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 226(1)(d) and (e)

Subject: SARS reporting and laboratory specimen submission.

Purpose: To add Severe Acute Respiratory Syndrome (SARS) to the communicable disease list.

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

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
 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, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsna@health.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority:

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 Severe Acute Respiratory Syndrome (SARS) 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:

SARS is a disease associated with fever and signs and symptoms of pneumonia or other respiratory illness. It is transmitted from person to person predominantly by the direct contact or droplet route.

SARS is believed to have emerged as a human pathogen in China in November 2002. As of May 1, 2003, 5,865 suspected and/or probable cases of SARS were reported to the World Health Organization from countries around the world, including Canada and the United States, with 391 deaths reported.

As of May 1, 2003, 20 suspect or probable cases of SARS were reported in New York City and 22 cases of SARS were reported in New York State outside of New York City. Two cases involving non-New York State residents diagnosed in New York State were reported also. Ontario, Canada has had 265 probable or suspect SARS cases and 19 deaths, as of April 25, 2003. The proximity of Ontario, Canada, which includes Toronto, to the New York State border, has raised additional concerns about travel-related transmission. To date, all SARS cases in New York State have been related to travel to Asia or Toronto.

If SARS spreads in the general population, there could be severe public health consequences. On April 10, 2003, the New York State Commissioner of Health determined that SARS is communicable, rapidly emergent and a significant threat to the public health, and designated SARS as a communicable disease under 10 NYCRR Section 2.1. The Public Health Council confirmed this change at its next scheduled meeting on May 16, 2003, and also at the Public Health Council meeting on June 20, 2003. Adding SARS to the reportable disease list permits the Department of Health 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 SARS is a newly emerging disease, it is not possible to accurately predict the extent of the outbreak or potential costs. In the event of the occurrence of SARS cases, however, it is imperative to the public health that they 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.

SARS testing is currently conducted only at the New York State Department of Health Wadsworth Laboratory and the Centers for Disease Control and Prevention (CDC). These tests are under development and are continually being optimized. Costs to hospitals, practitioners and clinical laboratories relate to the cost of shipping specimens to the Wadsworth Laboratory. Two samples must be shipped per patient to the Wadsworth Laboratory, at an estimated cost of \$80.00 (shipping box \$15.00 plus FedEx \$25.00).

Costs to Local and State Governments:

The additional cost of reporting SARS 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 New York State Department of Health 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 SARS are also significant. Control efforts include each case being isolated for 10 days after resolution of fever. Close contacts are closely monitored with daily follow-up by local health departments for 10 days post-exposure. These intensive efforts are critical to minimize spread.

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

Costs to the Department of Health:

The New York State Department of Health 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 SARS 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, SARS testing is expensive. In New York State, SARS testing is currently only performed by the New York State Department of Health Wadsworth Laboratory. The Wadsworth Laboratory, in turn, sends samples to CDC for additional testing. The cost per patient tested by the Wadsworth Laboratory is approximately \$430.00. The cost for laboratory testing is about \$350.00 per patient, which includes supplies and reagents only, not technician time. Two samples must be shipped per patient to CDC, at an additional cost of \$80.00 (shipping box \$15.00 plus FedEx \$25.00). These samples include diagnostic samples for testing for the presence of the SARS agent and also convalescent sera from the same patient.

There are additional costs associated with ongoing SARS enhanced surveillance; amounts cannot yet be predicted. New York State Department of Health staff and local health department staff have been aggressively monitoring and investigating reports of SARS in New York State. Due to the SARS activity in Toronto and its proximity to New York State, and at the recommendation of the New York State Association of County Health Officers (NYSACHO) Executive Committee, the New York State Department of Health is requesting that local health departments reinstitute 7 day a week emergency department surveillance for SARS. The Department will assist counties in the investigation of SARS, as it does in the investigation of other communicable diseases.

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 SARS, 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 SARS 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 SARS. On April 4, 2003, President George W. Bush issued an Executive Order adding SARS to the list of communicable diseases for which patients can be quarantined under federal authority and which are specified pursuant to Public Health Service Act Section 361(b).

Compliance Schedule:

Reporting of SARS 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 the SARS outbreak. There are approximately 6 hospitals, 15 nursing homes and 1,000 clinical laboratories that employ less 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 Department of Health 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 SARS and to ship samples to the Wadsworth Laboratory for testing.

Compliance Costs:

No initial capital costs of compliance are anticipated. Annual compliance costs will depend upon the number of SARS cases. The reporting of SARS 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 SARS cases in New York State.

SARS testing is currently conducted only at the New York State Department of Health Wadsworth Laboratory and the CDC. Costs to hospitals, practitioners and clinical laboratories relate to the cost of shipping two specimens per patient to the Wadsworth Laboratory. Shipping costs are estimated at \$80.00 per patient (shipping box \$15.00 plus FedEx \$25.00). Once SARS 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 SARS 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 Department of Health reporting forms that will be revised to include SARS. 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, including representatives of small counties, has been informed about this change and support the need for it.

Job Impact Statement

This regulation adds Severe Acute Respiratory Syndrome (SARS) 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 SARS 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 SARS specimens, and current State laboratory staff test SARS specimens. Since SARS is a newly emerging disease, it is not possible to accurately predict the extent of the outbreak and the degree of additional demands it will place on existing staff. The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

Office of Mental Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-41-03-00003-EP

Filing No. 1074

Filing date: Sept. 24, 2003

Effective date: Sept. 24, 2003

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

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

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

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

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase the Medicaid rate schedule.

Text of emergency/proposed rule: Part 588 of the Regulations of the Commissioner of Mental Health is amended as follows:

Subdivisions (a), (b), and (c) of Section 588.13 are amended to read as follows:

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

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

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

Regular at least 30 minutes [\$60.00] \$66.00

Brief at least 15 minutes [30.00] 33.00

Group at least 60 minutes [21.00] 23.10

Collateral at least 30 minutes [60.00] 66.00

Group Collateral at least 60 minutes [21.00] 23.10

Crisis at least 30 minutes [60.00] 66.00

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

Regular at least 30 minutes [\$54.00] \$59.40

Brief at least 15 minutes [27.00] 29.70

Group at least 60 minutes [18.90] 20.79

Collateral at least 30 minutes [54.00] 59.40

Group Collateral at least 60 minutes [18.90] 20.79

Crisis at least 30 minutes [54.00] 59.40

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

Regular at least 30 minutes [\$53.00] \$58.30

Brief at least 15 minutes [26.50] 29.15

Group at least 60 minutes [18.55] 20.41

Collateral at least 30 minutes [53.00] 58.30

Group Collateral at least 60 minutes [18.55] 20.41

Crisis at least 30 minutes [53.00] 58.30

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

Regular at least 30 minutes [\$53.00] \$58.30

Brief at least 15 minutes [26.50] 29.15

Group at least 60 minutes [18.55] 20.41

Collateral at least 30 minutes [53.00] 58.30

Group Collateral at least 60 minutes [18.55] 20.41

Crisis at least 30 minutes [53.00] 58.30

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

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

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

Service hour 1-50 [\$12] \$13.20 per service hour

Service hour 51-80 [\$9.50] \$10.45 per service hour

Service hour beyond 80 [\$7.00] \$7.70 per service hour

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

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

Service hour 1-50 [\$10.80] \$11.88 per service hour

Service hour 51-80 [\$9.50] \$10.45 per service hour

Service hour beyond 80 [\$7.00] \$7.70 per service hour

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

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

Service hour 1-50 [\$10.60] \$11.66 per service hour

Service hour 51-80 [\$9.50] \$10.45 per service hour

Service hour beyond 80 [\$7.00] \$7.70 per service hour

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

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

Full day at least 5 hours [\$60.00] \$66.00

Half day at least 3 hours [30.00] 33.00

Brief day at least 1 hour [20.00] 22.00

Collateral at least 30 minutes [20.00] 22.00

Home at least 30 minutes [60.00] 66.00

Crisis at least 30 minutes [60.00] 66.00
 Preadmission - full day at least 5 hours [60.00] 66.00
 Preadmission - half day at least 3 hours [30.00] 33.00

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

Full day at least 5 hours [\$58.00] \$63.80
 Half day at least 3 hours [29.00] 31.90
 Brief day at least 1 hour [19.30] 21.23
 Collateral at least 30 minutes [19.30] 21.23
 Home at least 30 minutes [58.00] 63.80
 Crisis at least 30 minutes [58.00] 63.80
 Preadmission - full day at least 5 hours [58.00] 63.80
 Preadmission - half day at least 3 hours [29.00] 31.90

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

Full day at least 5 hours [\$58.00] \$63.80
 Half day at least 3 hours [29.00] 31.90
 Brief day at least 1 hour [19.30] 21.23
 Collateral at least 30 minutes [19.30] 21.23
 Home at least 30 minutes [58.00] 63.80
 Crisis at least 30 minutes [58.00] 63.80
 Preadmission - full day at least 5 hours [58.00] 63.80
 Preadmission - half day at least 3 hours [29.00] 31.90

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

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

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

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

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

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

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

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

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 22, 2003.

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

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

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

Regulatory Impact Statement

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

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

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

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

4. Costs:

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

NOTICE OF ADOPTION

Operation of Outpatient Programs

I.D. No. OMH-26-03-00007-A

Filing No. 1073

Filing date: Sept. 24, 2003

Effective date: Oct. 15, 2003

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

Action taken: Amendment of section 587.4 of Title 14 NYCRR.

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

Subject: Operation of outpatient programs.

Purpose: To delete outdated references to the credentialed alcoholism counselor and credentialed substance abuse counselor and replace them with a single reference to credentialed alcoholism and substance abuse counselor.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-26-03-00007-P, Issue of July 2, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

New York State 911 Board

INFORMATION NOTICE NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Minimum Standards Regarding Call-Taker/Dispatcher Training, Staffing of Public Safety Answering Points, and Equipment, Facilities and Security for Public Safety Answering Points. Summary. At its meeting of June 30, 2003, the Board proposed minimum training requirements for call-takers/dispatchers who receive wireless 911 calls, minimum staffing requirements for public safety answering points, and minimum requirements for the equipment as well as the general building and security provisions at public safety answering point locations. The Notice of Proposed Standards was published in the July 30, 2003 issue of the *Register*. Following a period of public comment, the Board at its meeting of September 17, 2003, adopted the final standards which appear in this Notice. These final standards contain minor amendments to the standards as originally proposed, reflecting the Board's consideration of comments received during the comment period.

For further information, contact: Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: 518-474-6746.

The Minimum Standards are as follows:

21 NYCRR Part 5201

Minimum Standards Regarding Call-Taker/Dispatcher Training
(Statutory Authority: County Law, § 328)

§ 5201.1 Definitions.

- (a) "PSAP" means Public Safety Answering Point, a site designated and operated by a governmental entity for the purpose of receiving emergency calls from customers of a wireless telephone service supplier.
- (b) "Board" means the New York State 911 Board.
- (c) "Call-taker/dispatcher" means any person employed by or in any local or state government agency either full or part-time whose duties include the answering of emergency telephone calls and/or the dispatching of emergency services personnel.
- (d) "ESDTEP" means Emergency Services Dispatch Training/Evaluation Program.
- (e) "Trainer" means any individual designated by the authority to train call-takers/dispatchers.
- (f) "Trainee" means a call-taker/dispatcher who is currently being trained.
- (g) "Authority" means the local governmental authority operating the PSAP.

§ 5201.2 Educational Qualifications.

(a) A call-taker/dispatcher shall have obtained a diploma or Regents diploma evidencing completion of a course of study at an accredited high school or secondary school. Alternatively, he or she shall have obtained a General Equivalency Diploma or its equivalent. Provided, any call-taker/dispatcher who commences employment in such capacity prior to January 1, 2004 shall not be required to meet this qualification.

(b) An applicant for employment as a call-taker/dispatcher shall show proof of the qualification set forth in subdivision (a) of this section, in a form satisfactory to the hiring authority.

§ 5201.3 Basic training standards.

(a) Emergency Services Dispatch Training Evaluation Program.

(1) The authority shall have in place for each PSAP an Emergency Services Dispatch Training/Evaluation Program (ESDTEP). Except for those commencing employment in such capacity prior to January 1, 2004, all call-takers/dispatchers must satisfactorily demonstrate competency in the performance criteria established therein.

(2) The ESDTEP shall consist of a minimum of 200 hours of training, including, but not limited to:

- (i) specific performance criteria;
- (ii) daily written evaluations;
- (iii) observation of the trainee while interacting with the public and all relevant public safety agencies and organizations serviced by the PSAP.

(3) A call-taker/dispatcher who is otherwise subject to the training requirements set forth in this section, but who has been previously employed in such capacity, may in lieu of completing the training requirements, show competency in specific performance areas pursuant to a protocol established by the employing jurisdiction.

(4) Completion time. Every call-taker/dispatcher subject to the training requirements of this section shall satisfactorily complete the ESDTEP training program:

- (i) within 18 months of the date of initial appointment for persons employed more than 20 hours per week; or
- (ii) within 24 months of the date of initial appointment for persons employed 20 hours per week or less.

(5) Supervision.

(i) The ESDTEP program training shall occur under the immediate supervision of a competent trainer.

(ii) Call-takers/dispatchers shall not be assigned to unsupervised duty until the training is satisfactorily completed.

(6) Administrative requirements. The authority shall:

(i) maintain accurate and current copies of curricula consisting of course outlines and descriptions, and specific lesson plans for all training courses;

(ii) maintain and make available accurate training records of all trainees, including daily written evaluations.

(b) Classroom and related instruction.

(1) In addition to the ESDTEP program training, all call-takers/dispatchers shall complete the following:

(i) a course of classroom instruction consisting of a minimum of 40 hours, including but not limited to, the following topics:

- (a) Roles and Responsibilities;
- (b) Legal Aspects;
- (c) Interpersonal Communications;
- (d) Technologies;
- (e) Telephone Techniques;
- (f) Call Classification;
- (g) Radio Communications;
- (h) Stress Management; and

(ii) a course of study in Incident Command System, to include, but not be limited, to the ICS 100 course available from the New York State Emergency Management Office.

(2) The Board may establish a list of approved classroom and related instructional programs which meet the requirements set forth above.

(3) Completion time. Every call-taker/dispatcher subject to the training requirements of this section shall satisfactorily complete the classroom and related instruction training set forth above within 12 months of the date of initial appointment.

(4) Administrative requirements. The authority shall:

(i) maintain accurate and current copies of curricula consisting of course outlines and descriptions, and specific lesson plans for all training courses;

(ii) maintain and make available accurate training records of all trainees, including daily written evaluations.

(c) Extensions of time.

(1) The Board may grant an extension of time for completion of the training required under subdivision (b) of this section under the following conditions:

- (i) illness;
- (ii) injury;
- (iii) military service;

(iv) special duty assignment required and performed in the public interest;

(v) administrative leave involving the determination of workers' compensation or disability retirement issues, or suspension pending investigation or adjudication of an offense; or

(vi) any other reason documented by the authority, which reason shall be specifically described.

(2) Prior to the expiration of the time required for completion, the authority shall present written notification that the trainee is unable to complete such training due to one or more of the reasons set forth in paragraph (1) herein, accompanied by appropriate documentation.

(3) Any extension of time approved by the Board shall not exceed a single 12-month extension.

(d) The training standards set forth in this rule shall be met through attendance at either a recognized training academy or through an in-house training program. Trainees shall be required to attend all classes and shall not be placed on duty or on call during such training except in cases of emergency.

§ 5201.4 Annual In-Service Training Standards.

(a) Effective January 1, 2004, all call-takers/dispatchers shall:

(1) within each calendar year, complete a minimum of 21 hours of in-service training consisting of, but not limited to, the following:

- (i) TTD Devices;
- (ii) Stress Awareness;
- (iii) Community Relations;
- (iv) Legal Updates;
- (v) Review of Agency Policies and Procedures; and

(2) satisfy any and all applicable mandatory re-certifications, including, but not limited, to:

- (i) Emergency Medical Dispatching;
- (ii) New York Statewide Police Information Network.

(b) No call-taker/dispatcher who shall have failed to satisfy the Annual In-Service Training Standards set forth herein for any calendar year shall be eligible for, or be assigned to, duty in any subsequent calendar year.

(c) The Annual In-Service Training Standards set forth in this rule shall be met through attendance at either a recognized training academy or through an in-house training program.

(d) Administrative requirements. The authority shall:

(1) maintain accurate and current copies of curricula consisting of course outlines and descriptions, and specific lesson plans for all training courses;

(2) maintain and make available accurate training records of all trainees, including daily written evaluations.

§ 5201.5 Specialty training.

(a) The authority may identify positions for which specialized technical and job-specific training is to be required, and shall require completion of such training pursuant to the protocol established within that job specialty.

(b) If the authority has established an Emergency Medical Dispatch (EMD) program at any PSAP, such program shall include and require instruction which meets or exceeds the standard established by the National Highway Traffic Safety Administration (NHTSA) approved program of instruction. All persons employed therein shall complete training for such program within 12 months of the date of appointment. The Board may establish a list of approved EMD training programs.

APPENDIX A

A-1 The following courses of instruction meet or exceed the classroom instruction requirements set forth in 21 NYCRR § 5201.3(b):

A-1.1 Association of Public Safety Communications Officials Basic Telecommunicator Course, Fourth Edition, Version 3 (2000).

A-1.2 National Academies of Emergency Dispatch, Emergency Telecommunicator Manual, Edition 1 (2001).

A-1.3 New York State Municipal Police Training Council, Public Safety Telecommunicator's Course.

A-2 The following programs meet or exceed the NHTSA EMD approved program of instruction:

- A-2.1 Priority Dispatch;
- A-2.2 PowerPhone.

21 NYCRR Part 5202

Minimum Standards Regarding Staffing of Public Safety Answering Points

(Statutory Authority: County Law, § 328)

§ 5202.1 Definitions.

(a) "PSAP" means Public Safety Answering Point, a site designated and operated by a governmental entity for the purpose of receiving emergency calls from customers of a wireless telephone service supplier.

(b) "W-911" means wireless 911.

(c) "Call-taker/dispatcher" means any person employed by or in any local or state government agency either full or part-time whose duties include the answering of emergency telephone calls and/or the dispatching of emergency services personnel.

(d) "Certified" means having a formal program of related instruction and testing as provided either by a recognized organization or by the authority having jurisdiction over the PSAP.

(e) "Qualified" means that the employee has been properly trained and credentialed pursuant to all applicable laws and regulations.

§ 5202.2 Standards.

(a) All PSAPs shall be staffed twenty-four (24) hours a day, seven (7) days a week, by a minimum of two (2) qualified, certified call-takers/dispatchers.

(b) All PSAPs shall have staffing adequate to answer ninety percent (90%) of all incoming W-911 calls within ten seconds of connection.

(c) All W-911 requests shall be dispatched immediately, or as soon thereafter as possible within the practicalities of responding to other 911 calls, in accordance with the PSAP's written policies and procedures for prioritizing service needs.

(d) All PSAPs shall have the following on file:

- (1) a written job description for each job title staffed by the PSAP;
- (2) a written procedure for the emergency recall of off-duty employees;
- (3) a written procedure for quality control of services;
- (4) a written policy and procedure for, or equivalent measures to assess, employee performance; and
- (5) a written policy and procedure for the handling of customer complaints.

(e) All employees assigned to call-taker and/or dispatcher duties shall meet minimum training standards as required by the New York State 911 Board.

(f) All PSAPs shall have on file an organizational chart that is current and available to all personnel. The chart shall reflect the chain of command and lines of authority for communications within the PSAP and shall be organized in a hierarchy.

(g) All PSAPs shall have on file a written procedure that requires personnel to obey any lawful order of a superior transmitted by any duly authorized agent of that superior, regardless of rank involved, and which establishes procedures to be followed when a conflicting order or directive is received.

Part 5202

APPENDIX A

Reference Materials for Guidance in Staffing Standards

A-1 *The Math of Call Center Staffing*, Penny Reynolds, ICCM Weekly (Aug. 8, 2002).

A-2 How Many do We Really Need? A Simple Solution for Determining Staffing, Jennifer Hagstrom, Ed. (Sept. 2000).

A-3 Communications Center Staffing Formulas: Old Studies in a New Environment, APCO Int'l. Pub. Safety Commun., APCO Bulletin, Project (40) RETAINS, Yvonne Klees, Features Ed. (Mar. 2001).

A-4 Standard for Public Safety Communications Agencies, Commission on Accreditation for Law Enforcement Agencies.

A-5 Standard for Professional Qualifications for Public Safety Telecommunicator, National Fire Protection Agency 1061 (1996 ed.).

A-6 Public Safety Answering Point (PSAP) Accreditation Program, Program Standards Manual, New York State Sheriffs' Association.

A-7 Staffing formulas as may be provided by telephone service suppliers in the particular jurisdiction.

21 NYCRR Part 5203

Minimum Standards Regarding Equipment, Facilities and Security for Public Safety Answering Points

(Statutory Authority: County Law, § 328)

§ 5203.1 Definitions.

(a) "PSAP" means Public Safety Answering Point, a site designated and operated by a governmental entity for the purpose of receiving emergency calls from customers of a wireless telephone service supplier.

(b) "IWS" means Intelligent Work Station.

(c) "CAD" means Computer Aided Dispatch.

(d) "ANI" means Automatic Number Identification.

(e) "ALI" means Automatic Location Identification.

(f) "WSP" means Wireless Service Provider.

(g) "ACDR" means Automatic Call Detail Record.

(h) "Authority" means the local governmental authority operating the PSAP.

- (i) "TDD" means Telecommunication Device for the Deaf.
- (j) "TTY" means Teletypewriters.
- (k) "NYSPIN" means New York Statewide Police Information Network.
- (l) "Re-Bid" means the ability to request updated ALI information as needed to plot latitude and longitude coordinates.
- § 5203.2 Equipment.
 - (a) Intelligent Workstations (IWS).
 - (1) All PSAPs shall have the ability to integrate multiple systems (CAD, IWS, and Mapping) into one operational system.
 - (2) All PSAPs shall have the ability to accept and process 10 digits of ANI information or 20 digits (10 ANI & 10 pANI) of ALI information.
 - (b) Computer Aided Dispatch (CAD) System.
 - (1) A PSAP's CAD system shall accommodate call volumes and other sizing parameters as required by the authority.
 - (2) A PSAP's computer system shall provide operational capabilities as required by the authority.
 - (3) A PSAP's CAD system shall have the capabilities of displaying the location of all wireless calls using latitude and longitude, if a CAD based mapping solution is used.
 - (c) Mapping program (Other than CAD based).
 - (1) All mapping programs shall be compatible with the IWS system.
 - (2) All mapping programs shall be able to plot and display X and Y coordinates provided by all wireless service providers.
 - (3) All mapping programs shall be regularly updated to reflect changes in the PSAP's coverage area.
 - (4) All mapping systems shall display a map display which can be navigated based on address and location coordinates provided from the PSAP's ALI system.
 - (d) ANI/ALI Operations. All PSAPs shall:
 - (1) have enhanced 911 capability, including Automatic Number Identification (ANI) and Automatic Location Identification (ALI);
 - (2) have the ability to receive 20 digit ANI/ALI data from all wireless service providers;
 - (3) have dedicated redundant data links to the designated ALI/ANI database providers;
 - (4) have the capability to receive the ANI/ALI information as soon as the call is answered by a call-taker; and
 - (5) have the ability to re-bid for ALI information.
 - (e) Recorder system. The authority shall:
 - (1) ensure that all emergency communications to and from all PSAPs, including telephone and radio transmissions, shall be recorded;
 - (2) have a written policy establishing procedures for the playback and recording of emergency communications;
 - (3) have a written policy for the securing and storage of recordings;
 - (4) establish criteria, and have a written policy for, access to recordings;
 - (5) maintain a schedule for retention of PSAP recordings; and
 - (6) ensure that instant playback units are located at all call-taker positions.
 - (f) Call detail record. All PSAPs shall have the capability to provide an automatic call detail record (ACDR) of every emergency call received, either by recording equipment or CAD log.
 - (g) Telecommunications devices for the deaf (TDD).
 - (1) All PSAPs shall meet all requirements of the Americans with Disabilities Act (ADA), including but not limited to:
 - (i) direct access for all teletypewriters (TTY); and
 - (ii) equipping of each call-taking position with a TTY or TTY-compatible device.
 - (2) The authority shall have a written procedure for the handling of silent or open line TDD calls.
 - (h) New York Statewide Police Information Network (NYSPIN).
 - (1) All PSAPs shall have direct access to the NYSPIN system.
 - (2) The authority shall have a written procedure for participation in the NYSPIN system.
 - (i) System service. The authority shall have a service agreement or agreements for all PSAPs, for the timely repair of equipment.
 - (j) System clock.
 - (1) All PSAPs shall have a time synchronization package for the purpose of coordinating system-wide timing among the various 911 systems and support systems.
 - (2) The time synchronization package shall provide the means for wireless enhanced 911 systems, CAD systems, recorders, display clocks, and all other automated systems containing clocks to operate on the same time source.

- (3) All system clocks shall automatically adjust for Daylight Savings Time and leap second, and shall have a time zone offset for UTC (Universal Coordinated Time).
- § 5203.3 Building.
 - (a) Fire protection. All PSAPs shall comply with the New York State Uniform Fire Prevention and Building Code.
 - (b) Facility power.
 - (1) All PSAPs shall have an engine driven generator as an emergency source of power.
 - (2) All PSAPs shall have an uninterruptible power system (UPS) which shall maintain the power connection during the transition from commercial power to the standby generator power for critical systems and applications.
 - (3) The authority shall have a written procedure for the testing of standby power sources.
 - (4) The authority shall conduct documented inspections and testing of standby power sources at least monthly.
 - (c) Facility hours of operation. All PSAPs shall be fully operational 24 hours a day, 7 days a week, and 365 days a year (366 days during leap year).
 - § 5203.4 Security.
 - (a) Facility access.
 - (1) All PSAPs shall be locked and secured from intrusion.
 - (2) Access to a PSAP shall be restricted to authorized persons only.
 - (b) System protection. All PSAPs shall be equipped with software protection as required by the authority.
 - § 5203.5 General.
 - (a) Backup site. The authority shall:
 - (1) maintain a redundant backup PSAP site, wired and ready, for use in case of the necessity to vacate the primary PSAP;
 - (2) have a written procedure for evacuating the primary PSAP and transfer of operations to the backup site; and
 - (3) document the testing of the backup site on a quarterly basis.
 - (b) Overflow calls. The authority shall have a written policy to handle overflow of wireless 911 calls.

Niagara Falls Water Board

EMERGENCY RULE MAKING

Water and Wastewater Treatment and Distribution System

LD. No. NFW-41-03-00013-E

Filing No. 1102

Filing date: Sept. 25, 2003

Effective date: Sept. 25, 2003

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

Action taken: Addition of Parts 1950 and 1960 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-f

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

Specific reasons underlying the finding of necessity: The Board has determined that the emergency adoption of regulations is necessary for the preservation of public health, safety and welfare of the people of Niagara Falls, New York and the service area of the system, in as much as the board must be able to effectively regulate all persons who will use the system as of the acquisition date, which is on or about Sept. 25, 2003.

Subject: Regulation of water and wastewater treatment and distribution system in Niagara Falls.

Purpose: To establish regulations for all persons who use the water, wastewater and stormwater facilities located in the City of Niagara Falls and nearby service area.

Substance of emergency rule: The Niagara Falls Water Board has adopted regulations in connection with the Board's acquisition of the water, wastewater and storm water facilities of the City of Niagara Falls (collectively the "System"). The Board acquired the System as of September 25, 2003.

The regulations are in two parts. Part 1950 constitutes the Board's Water Regulations and Part 1960 constitutes the Board's Wastewater Regulations (collectively the "Regulations"). Both parts establish a comprehensive set of rules and regulations with respect to the operation, maintenance and management of the System. The Regulations apply to all persons who use the System and to properties served by the System, located within and outside the City of Niagara Falls (the "Service Area"). The Regulations are substantially the same as the City's ordinances in effect before the Board's acquisition of the System.

Board Water Regulations. The Regulations provide for the beneficial use of the Board's water facilities through the regulation of connection and water use, as well as for the Board's equitable recovery of the cost of the System. Provision is made for the confidentiality of persons who use the System and the information that they provide in accordance with the Freedom of Information Law and other applicable state and federal statutes and regulations.

The Regulations generally require every dwelling, house or other building that uses water to be supplied from the water mains of the Board through a separate service. Provision is also made in these Regulations for temporary service to such properties. The Board does not guarantee to any user any fixed or constant pressure or continuous supply. The Regulations also make provision for applications for water service together with payment of fees to obtain a permit for connection to the System. No work or improvements to supply water may be performed without obtaining such permits from the Board. The Regulations contain various technical requirements for establishment of water service branches upon written application to the Board.

Except in unique circumstances, all water will be furnished to users of the System through a metered service only. The supply of water through separate service must be recorded by one meter only. If additional meters are desired, the Regulations make provisions for such additional meters. The Regulations make extensive provisions for the size and location of meters within dwelling houses and other buildings that are served by the System. Whenever a service is to interconnect in any manner with any other supply of water, other than the Board, a separate detail of such interconnection must be presented and comply with the State Sanitary Code and the Niagara County Health Department. The Board reserves the right to enter, at any reasonable time, and with reasonable notice, any premises where a water meter is installed, to test, examine, repair, remove, replace or modify such meter. All meters remain the property of the Board and the Board has the obligation to repair, excepted in limited circumstances, without cost to the property owner.

The Regulations obligate all users to pay and be liable to pay the Board for such fees, rates and other charges as the Board may establish from time to time. A schedule of such fees, rates and charges is set forth in Section 1950.20. The Service Area is divided into three districts. A schedule of billing for consumption of water in these districts is set forth in the Regulations. Charges for consumption of water by significant industrial users will be billed on a monthly basis. The Regulations provide for procedures to bill and collect unpaid water charges and for discontinuance of service upon appropriate notice to all users.

A tapping application is required for erection, construction, alteration or maintenance of any building or structure or for any other purposes that requires a temporary use of water. Provision is made for application for taps into the water mains and for recovery of real costs of the Board.

No person, other than an employee or authorized contractor of the Board, may open, close or interfere in any manner with any water main, pipe or related equipment belonging to the Board without the written permission of the Board's Director. Similarly, only persons authorized by the Board may operate any fire hydrant or attempt to modify a water meter, except the City Fire Department. The Regulations provide several rules with respect to the general use of fire hydrants, hydrant flow test and charges for fire protection.

The Regulations make cross-reference to the City's Plumbing Code and require that all plumbing work be done by a duly licensed plumber. The Regulations specify various types of attachments and materials that may be used by plumbers in connection with the System.

The Board has established a policy to protect the public water supply against actual or potential cross-connections by isolating within premises contamination that may occur because of undiscovered or unauthorized cross-connection of the premises. The Regulations make extensive provisions to prevent cross-connections and to assure the integrity of protective devices, inspection and testing at least annually. All users of the System are required to prevent cross-connections between the potable water piping system and any other piping system within the user's property. All tests for

backflow prevention must be done in conformance with certified backflow prevention device testers and with the assistance of the Niagara County Health Department.

The Regulations authorize the Director of the Board to take any and all actions with respect to property owners or users receiving water service from the Board whenever any provision in the Regulations are contravened including, but not limited to, termination of water service, correction of violations within a set timeframe, disconnection, modification and/or construction of appropriate safety devices and structures, and requirement of the payment of a surcharge or fee. The Regulations provide a process for the resolution of disputes including provision for administrative orders and a hearing to determine all facts, provide a written report to the Board with a recommendation, based on evidence presented for a final determination as to enforcement action by the Board.

Any person found violating any provision of Part 1950 will be served by the Director with a written notice stating the nature of the violation. Monetary penalties are set forth in the Regulations, including a penalty in the amount of up to \$5,000 per day for each violation for significant industrial users.

Board Wastewater Regulations. The Regulations provide for the maximum possible beneficial public use of the Board's publicly owned treatment works through regulation of construction, sewer use and wastewater discharges and provide criteria for equitable distribution of the cost of the Board's publicly owned treatment works. These Regulations establish provisions to prevent the introduction of pollutants which would interfere with the operation of the Board's treatment works, pass through the treatment works to waters of the State or otherwise contaminate the Board's treatment works' sludge. These Regulations govern sewer connections, control of the quantity and quality of discharges, wastewater pretreatment, criteria for distribution of costs, criteria for the use of the Board's treatment work's capacity, issuance of significant industrial user and industrial commercial user permits. The Regulations establish sewer connection standards and conditions as well as penalties and other procedures in cases of violations of the Regulations.

All persons who own any occupied building accessible to the Board treatment works are required at their own expense to connect to the System. No connection may be made to the System except by a plumber duly registered and licensed by the City. All persons are required to use such materials as are approved by the City and the Board for all connections to the System. Interceptors and separators are required to be maintained in efficient and operating condition. With several exceptions, each separate building shall be provided with an independent sewer connection to the System. Every connection requires a permit from the Board upon a written application and inspection by the Board. The Board reserves the right to do any work incident to making connections and the cost of any such work may be charged to the property owner.

The disposal of sanitary wastewater and industrial wastewater to other than the Board treatment works is prohibited, except for certain industrial waste. Industrial waste discharges require a valid SPDES discharge permit. The disposal of hauled waste into the System is also prohibited, except upon a Board permit. The Regulations make provisions for industrial discharges and for significant industrial users as to the quantity and quality of the discharge, and for pretreatment of industrial wastewater. Certain discharges are expressly prohibited and they are set forth in the Regulations with incorporation by reference to 40 CFR Part 262 and 40 CFR Part 403. The Board has established local limits in accordance with the provisions of 40 CFR Part 403. The Regulations require notice of change in volume or character of waste, and for measuring, recording and sampling devices.

Board personnel are authorized to enter upon all properties served by the Board for the purpose of inspection of the premises, observation, measurement, sampling and testing in accordance with the Regulations.

Each Significant Industrial User ("SIU") is required to install either a suitable control manhole or monitoring station. The Regulations provide for such installations and monitoring. The Regulations provide for determination of wastewater characteristics with a sampling program for all SIUs. Each SIU is required to provide protection from slug discharges, and a plan to control slug discharges.

All proposed new industrial users are obligated to apply to the Board for a discharge permit. The Regulations establish the requirements for such applications, the issuance of permits, and for the modification, duration and termination of permits.

The Board has established categorical pretreatment standards in accordance with 40 CFR Parts 405-471. The Regulations make provision for

reporting and compliance with pretreatment regulations, and authorize compliance schedules to be established for all industrial users.

All users are obligated to pay the Board such fees, rates and other charges as the Board may establish. The schedule of fees, rates and charges for wastewater services is also contained in Section 1950.20 as well as throughout Part 1960. Board wastewater users are divided into three classes: SIU, Commercial/Small Industrial/Residential and Hauled Waste. The Regulations make provision for the billing and collection of fees, rates and charges with respect to each class of user.

The Board Director is given authority to issue permits as well as to initiate courses of action with respect to users who violate the Regulations, permits, and as determined by the Director including, rejection of waste, requirement of pretreatment program, establishment of control over quantities and rates of discharge, payment of surcharges, requirements for surveillance and monitoring of discharges and reporting as well as for termination of wastewater service. The Regulations make provision for administrative orders as well as for dispute resolution including a hearing with a final determination by the Board based upon recommendations by a hearing officer or the Director.

Provision is made for penalties that may be imposed on all users who violate the Regulations, permits or orders in an amount not exceeding \$10,000 per day per violation.

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 December 23, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14303, (716) 566-1512, e-mail: cmartorana@hiscockbarclay.com

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement is not attached, but will be published in the *Register* within 30 days of the rule's effective date.

Niagara Frontier Transportation Authority

NOTICE OF ADOPTION

Freedom of Information Law Regulations

I.D. No. NFT-19-03-00004-A

Filing No. 1075

Filing date: Sept. 25, 2003

Effective date: Oct. 15, 2003

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

Action taken: Amendment of Part 1156 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1299-e(5)

Subject: Freedom of Information Law regulations.

Purpose: To conform to revisions in State law.

Text or summary was published in the notice of proposed rule making, I.D. No. NFT-19-03-00004-P, Issue of May 14, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Ruth A. Keating, Senior Counsel, Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, NY 14203, (716) 855-7398, e-mail: Ruth_Keating@nfta.com

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Property Tax Refunds by New York State Electric & Gas Corporation

I.D. No. PSC-08-03-00010-A

Filing date: Sept. 24, 2003

Effective date: Sept. 24, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 03-M-0084 approving the terms of the joint proposal regarding property tax refunds received by New York State Electric & Gas Corporation (NYSEG).

Statutory authority: Public Service Law, sections 66(1), (4), (5), (10) and 113(2)

Subject: Property tax refunds.

Purpose: To resolve rate making issues in NYSEG's property tax refund proceeding.

Substance of final rule: The Commission adopted the terms, conditions and provisions of the Joint Proposal establishing the ratemaking treatment for property tax refunds received by New York State Electric & Gas Corporation.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-M-0084SA1)

NOTICE OF ADOPTION

Submetering of Electricity by KSLM Columbus Apartments

I.D. No. PSC-21-03-00017-A

Filing date: Sept. 26, 2003

Effective date: Sept. 26, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 03-E-0598, allowing KSLM Columbus Apartments to submeter electricity at 120 W. 97th St., 160 W. 97th St. and 135 W. 96th St. in New York City.

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

Subject: Submetering of electricity.

Purpose: To approve the submetering of electricity at KSLM Columbus Apartments.

Substance of final rule: The Commission authorized KSLM Columbus Apartments to submeter electricity at 120 West 97th Street, 160 West 97th Street and 135 West 96th Street in New York City, located in the territory Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0598SA1)

NOTICE OF ADOPTION

Transfer of Certain Cable System Facilities by Deposit Television, Inc. to Adams CATV, Inc.**I.D. No.** PSC-22-03-00025-A**Filing date:** Sept. 24, 2003**Effective date:** Sept. 24, 2003

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

Action taken: The commission, on July 23, 2003, adopted an order in Case 03-V-0569 allowing the transfer of certain cable system facilities, franchises and State certificates of confirmation currently held by Deposit Television, Inc. (Deposit) to Adams CATV, Inc. (Adams).

Statutory authority: Public Service Law, section 222

Subject: Transfer of cable system facilities, franchises and State certificates of confirmation.

Purpose: To permit Adams to acquire certain cable system facilities, franchises and State certificates of confirmation from Deposit.

Substance of final rule: The Commission authorized the transfer of certain cable system facilities, franchises and State Certificates of Confirmation from Deposit Television, Inc. to Adams CATV, Inc., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-V-0569SA1)

NOTICE OF ADOPTION

Transfer of Assets by HHD Development Corp. to Copake Lake South Shore Service, Inc.**I.D. No.** PSC-27-03-00011-A**Filing date:** Sept. 25, 2003**Effective date:** Sept. 25, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 03-W-0885, authorizing the transfer of HHD Development Corp.'s water supply system to Copake Lake South Shore Service, Inc.

Statutory authority: Public Service Law, sections 89-h and 5(4)

Subject: Transfer of assets.

Purpose: To allow HHD Development Corp. to transfer its water system assets to Copake Lake South Shore Service, Inc.

Substance of final rule: The Commission approved a joint petition by Copake Lake South Shore Service (South Shore), Inc. and HHD Development Corp. for the transfer of assets associated with the fresh water supply located at Copake Lake from HHD Development Corp. to Copake Lake South Shore Services, Inc. and granted South Shore a waiver of the Commission's rate setting requirements, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-W-0885SA1)

NOTICE OF ADOPTION

Electronic Meters by Invensys Metering Systems**I.D. No.** PSC-28-03-00013-A**Filing date:** Sept. 26, 2003**Effective date:** Sept. 26, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 03-E-0414, authorizing the utilization of the iCon electronic meter series.

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

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

Purpose: To allow electric utilities and other entities in New York State to use electronic meters manufactured by Invensys Metering Systems.

Substance of final rule: The commission approved a request by Invensys Metering Systems to utilize the iCon Electronic Meter Series: iSO1, iSA1, iNO1 and iNA1 for revenue metering and billing applications in New York State.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0414SA1)

NOTICE OF ADOPTION

Sale of 345 kV Circuit Breaker by Consolidated Edison Company of New York**I.D. No.** PSC-29-03-00012-A**Filing date:** Sept. 29, 2003**Effective date:** Sept. 29, 2003

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

Action taken: The commission, on Sept. 29, 2002, adopted an order in Case 03-E-0967, allowing Consolidated Edison Company of New York, Inc.'s (Con Edison) to transfer a 345 kV circuit breaker to Entergy Nuclear Indian Point 3, LLC (ENIP3).

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

Subject: Transfer and sale of a 345 kV circuit breaker.

Purpose: To permit Con Edison to transfer a new circuit breaker to ENIP3.

Substance of final rule: The Commission adopted on a permanent basis the July 2, 2003 Order authorizing Consolidated Edison Company of New York, Inc. to transfer a 345 kV circuit breaker to Entergy Nuclear Point 3, LLC.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0967SA1)

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

Alleged Violation of the Public Service Law by Champlain Telephone Company

I.D. No. PSC-41-03-00006-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 actions related to Champlain Telephone Company's alleged violation of the Public Service Law, sections 107 and 110 and the company's failure to comply with commission rules relating to cost allocation, among other matters. The commission may require Champlain Telephone Company to take corrective actions including, but not limited to, refunds and accounting treatments.

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

Subject: Alleged violation of the Public Service Law and related matters.

Purpose: To consider actions regarding Champlain Telephone Company.

Substance of proposed rule: The Commission is considering actions related to Champlain Telephone Company's alleged violation of the Public Service Law, §§ 107 and 110 and the company's failure to comply with Commission rules relating to cost allocation, among other matters. The Commission may require Champlain Telephone Company to take corrective actions including, but not limited to, refunds and accounting treatments.

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. (94-C-0095SA25)

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

Definition of Telephone Service by Frontier Telephone of Rochester, Inc.

I.D. No. PSC-41-03-00007-P

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

Proposed action: The Public Service Commission has received a complaint from Frontier Telephone of Rochester, Inc. against Vonage Holdings Corp. alleging that Vonage is providing telephone service in New York State without complying with the Public Service Law and commission regulation. Because this complaint raises generic concerns that could affect a number of entities, a notice requesting comments on the complaint has been issued. The commission will evaluate the comments received and may make determinations concerning the applicability of the Public Service Law to various forms of service, including voice over internet protocol (VOIP).

Statutory authority: Public Service Law, sections 2, 90 and 96

Subject: Definition of telephone service pursuant to the Public Service Law.

Purpose: To investigate and determine whether various forms of service and telephone service.

Substance of proposed rule: The Commission has received a complaint from Frontier Telephone of Rochester, Inc. against Vonage Holdings Corp. alleging that Vonage is providing telephone service in New York State without complying with the Public Service Law and Commission regulation. Because this complaint raises generic concerns that could affect a number of entities, a Notice Requesting Comments on the complaint has been issued. The Commission will evaluate the comments received and may make determinations concerning the applicability of the Public Ser-

vice Law to various forms of service, including Voice Over Internet Protocol (VOIP).

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-1285SA1)

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

Lightened Regulation by Sterling Power Partners, L.P.

I.D. No. PSC-41-03-00008-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 a petition from Sterling Power Partners, L.P. seeking lightened regulation of its electric generation facility that will sell its output into competitive wholesale markets.

Statutory authority: Public Service Law, sections 2(13), 5(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b, 119-c

Subject: Lightened regulation.

Purpose: To consider granting lightened regulation to Sterling Power Partners, L.P.

Substance of proposed rule: The Public Service Commission is considering a request from Sterling Power Partners, L.P. seeking lightened regulation of its electric generation facility that will sell its output into competitive wholesale markets. The Commission may grant, reject or modify, in whole or in part, the relief requested.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1304SA1)

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

Economic Development by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-41-03-00009-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, or modify, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedules, P.S.C. No. 2—Retail Access, P.S.C. No. 9—Electricity, EDDS No. 2 and PASNY No. 4 to become effective Dec. 22, 2003.

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

Subject: Economic development.

Purpose: To implement additional economic development service to government agencies and make modifications in the minimum monthly charge and Rider Y.

Substance of proposed rule: On September 23, 2003, Consolidated Edison Company of New York, Inc. (the company) made a tariff filing to add a new Service Classification No. 15-RA to P.S.C. No. 2 - Retail Access, applicable to economic development service to government agencies. The company also proposes changes to P.S.C. No. 2 - Electricity to: (1) add a new General Rule III-11 (W) to describe how power and energy will be allocated when a customer is served under one or more economic development programs and revise provisions in its rate schedules to provide for consistency with and make appropriate reference to the new general rule; (2) eliminate the application of the Minimum Monthly Charge (MMC) to economic development programs; (3) change MMC provisions to clarify how pure base revenue and customer charges are calculated; and (4) modify Rider Y - High Load Density Service to reference all economic development programs and to simplify the definition of the term "contract demand". The company also proposes to modify the 235 MW exemption from the Monthly Adjustment Clause and the Adjustment Factor - MAC in the EDDS No. 2 Schedule to incorporate allocations to customers served under the new S.C. No. 15 - RA.

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-1378SA1)

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

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

I.D. No. PSC-41-03-00010-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 the filings of various LDCs and municipalities regarding their annual reconciliation of gas expenses and gas cost recoveries.

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

Subject: Annual reconciliation of gas expenses and gas cost recoveries.

Purpose: To consider the filings of various LDCs and municipalities.

Substance of proposed rule: The Commission is considering whether to accept, reject or modify the filings by Fourteen local distribution companies and two municipalities reconciling purchased gas costs and gas cost adjustment recoveries for the twelve months ended August 31, 2003.

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

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

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

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

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

(03-G-1325SA1)

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

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

I.D. No. PSC-41-03-00011-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 the filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

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

Subject: Annual reconciliation of gas expenses and gas cost recoveries.

Purpose: To consider the filings of various LDCs and municipalities.

Substance of proposed rule: The Commission is considering whether to accept, reject or modify the filings by Fourteen local distribution companies and two municipalities reconciling purchased gas costs and gas cost adjustment recoveries for the twelve months ended August 31, 2003.

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

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

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

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

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

(03-G-1325SA2)

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

Customer Service Agreements by Niagara Mohawk Power Corporation

I.D. No. PSC-41-03-00012-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, modify, or reject, in whole or in part, a petition by Niagara Mohawk Power Corporation, dated Aug. 28, 2003.

Statutory authority: Public Service Law, sections 5(2) and 66(12)

Subject: Release from two customer service agreements under Niagara Mohawk Service Classification SC-11.

Purpose: To seek release from terms of two particular customer service agreements; and obtain a waiver from the requirement of mailing a notice of intent by April 1, 2003.

Substance of proposed rule: The New York State Public Service Commission (PSC) is considering whether to approve, modify, or reject, in whole or in part, the August 28, 2003 petition of Niagara Mohawk Power Corporation (NMPC). NMPC's petition asks that the Company be released, as of September 1, 2003, from each of two Customer Service Agreements applying under Service Classification SC-11, wherein the customer has executed a Form H extension prior to February 1, 2002, but later decided not to extend its agreement with NMPC, through any year covered in NMPC's Rate Plan. Moreover, the Commission will consider whether to waive its requirement that NMPC indicate its intention to file the above request to customers by April 1, 2003.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(01-M-0075SA20)

Department of State

EMERGENCY RULE MAKING

Cease and Desist Zone for Real Estate Brokers and Salespersons

I.D. No. DOS-41-03-00001-E

Filing No. 1071

Filing date: Sept. 24, 2003

Effective date: Sept. 24, 2003

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

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

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

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

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

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

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

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

*Cease and Desist Zone
(Canarsie)*

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

Within the County of Kings as follows:

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire December 22, 2003.

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

2. Legislative objectives:

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

3. Needs and benefits:

A public hearing was held in IS 211 in Canarsie on December 14, 2000. At the public hearing testimony was given by community leaders who spoke on behalf of their constituents. Speakers included two State Senators, a spokesperson for a Member of the Assembly, members of Community Board 18, representatives of civic associations for the community and homeowners. In addition, a statement on behalf of the President of the Borough of Brooklyn was read into the record. Each of the speakers and the statement supported the proposed cease-and-desist zone citing the need to curb the aggressive solicitation practices of real estate agents in the affected communities. The speakers cited frequent telephone calls, unwanted mail and flyers, as well as door-to-door solicitations, as intrusive and unwanted solicitation practices by real estate brokers and salespersons. Accordingly, the Secretary of State has determined that homeowners in the Brooklyn community of Canarsie have no practical means of stopping the unwanted and intrusive solicitations and that the homeowners need immediate relief. This rule will provide those homeowners who do not wish to be solicited with an effective and practical means of so notifying real estate brokers and salespersons.

4. Costs:

a. Costs to regulated parties:

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

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

(5). Copies will also be made available for inspection and copying at Department of State offices.

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

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

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

b. Costs to the Department of State:

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

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

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

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

5. Local government mandates:

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

6. Paperwork:

Homeowners who do not want to be solicited will have to file an owner's statement with the Department of State. The owner's statement will indicate the owner's desire not to be solicited and will set forth the owner's name and the address of the property within the cease-and-desist zone. The Department of State will provide homeowners with a standard form although use of the form is not mandatory. Owner's statements will be provided to community leaders for distribution to their constituents. In addition, owner's statements will be available from the Department of State on request, as well as available on the Department's web site. The Department of State will prepare a cease-and-desist list containing the names and addresses of all of the homeowners who filed an owner's statement. The list will be available, at no cost, on the Department's website. The publication will also be sold to the public, including real estate brokers and salespersons. The price will be \$10 per copy. Except for orders submitted by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

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

8. Alternatives:

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

The Department of State did not consider any other alternatives.

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

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

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

The rule does not apply to local governments.

2. Compliance requirements:

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

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

3. Professional services:

A licensee will not need professional services in order to comply with the rule. The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

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

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

5. Economic and technological feasibility:

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

6. Minimizing adverse economic impact:

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

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

7. Small business participation:

The Department of State conducted an open public hearing on December 14, 2000, at I.S. 211, in the Brooklyn community of Canarsie. The time, date and place of the public hearing was well advertised within the affected communities. Testifying at the hearing on behalf of their constituents were two State Senators, a spokesperson for a Member of the Assembly, members of Community Board 18, representatives of civic associations for the community and homeowners. In addition, a statement on behalf of the President of the Borough of Brooklyn was read into the record.

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

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for real estate brokers or real estate salespersons.

The rule provides a means by which homeowners in the designated community can notify real estate brokers and real estate salespersons that the homeowners do not want to be solicited for the purchase, sale or rental of their homes.

Since the homeowners who file a homeowner's statement with the Department of State are not interested in receiving solicitations from real estate brokers or real estate salespersons, publication of names and addresses of those homeowners and the resulting notification to real estate brokers and salespersons will not have any substantial impact on jobs or employment opportunities for real estate brokers or salespersons.

EMERGENCY RULE MAKING

Filing of Secured Interests

I.D. No. DOS-41-03-00002-E

Filing No. 1072

Filing date: Sept. 24, 2003

Effective date: Sept. 24, 2003

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

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

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

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

Specific reasons underlying the finding of necessity: This rule is being adopted on an emergency basis to preserve the general welfare. Article 9 of the Uniform Commercial Code plays an important role in the economy of the State of New York. Accordingly, the volume and value of international, interstate and intrastate secured transactions filed in the State of New York requires that electronic filing be permitted and encouraged, and that revised article 9 of the Uniform Commercial Code be otherwise implemented and continued without interruption. Uniform Commercial Code § 9-526 directs the Secretary of State to adopt rules necessary to carry out the provisions of the revised article 9. This rule is adopted on an emergency basis because, in the Department's opinion, compliance with the requirements of section 202(1) of the State Administrative Procedure Act would be contrary to the public interest that will be served by permitting and encouraging electronic filing of financing statements and amendments under the Uniform Commercial Code and by otherwise ensuring that the revised Article 9 is effectively administered on a continuing basis, thus avoiding potential disruption and uncertainty relating to the creation, filing and perfection of security interests in the State of New York.

Subject: Filing of secured interests.

Purpose: To implement the provisions of art. 9 of the Uniform Commercial Code, as revised by L. 2001, ch. 84.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 22, 2003.

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

Regulatory Impact Statement

1. Statutory authority:

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

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

2. Legislative objectives:

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

3. Needs and benefits:

These rules are necessary to implement UCC Article 9, as revised by Chapter 84 of the Laws of 2001. By providing rules for filing and indexing, a filer will know what forms to use, as well as how to complete and file those forms. Having those rules, filers can avoid mistakes which could cause expense, delay or jeopardize the perfection and priority of a filer's security interest. By providing rules under which a filing office receives and responds to search requests, a lender or other interested party will be

better able to prepare a search request and to evaluate the search results. Having these rules will help a lender to avoid mistakes which could cause expense, delay or jeopardize the perfection or priority of security interests. The fees are required by revised UCC § 9-525 and, as user fees, will defray the cost of administering Revised Article 9.

4. Costs:

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

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

b. Costs to the Department of State:

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

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

c. Costs to other State agencies:

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

d. Cost to local governments:

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

5. Local government mandates:

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

6. Paperwork:

The rules designate approved UCC forms, which are national forms that will be used in other states. Those forms are described in § 143-1.3 of the rules. The newly revised forms are, in many respects, similar to the old

forms. Completion of the new forms should not impose any new burdens on any person who files a form or requests information on a new form.

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

7. Duplication:

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

8. Alternatives:

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

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

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

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

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

2. Compliance requirements:

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

The fees set forth in Subpart 143-5 first became effective (pursuant to a prior rule) on April 1, 2003, and are higher than those applicable prior to that date. However, the search logic rules contained in this rule reflects the searching capabilities of the new computer system recently installed at the Department of State. This new computer system permits off-site searching of UCC records by the public via the internet. The Department of State charges no fee for such internet searches. The public is permitted to print copies of UCC documents retrieved by the internet search system; again, the Department of State charges no fee for such copies. Further, this rule permit UCC documents to be transmitted to the Department of State's office by facsimile transmission and by XML transmission. These delivery methods should simplify filing, particularly where parties located some distance from Albany wish to file quickly. These advantages will be available to all businesses, including small businesses.

The fee applicable to electronic filings under these rules, coupled with the ability to perform free searches via the internet, and to print free copies of the documents found by such internet searches, may result in the overall cost of a UCC transaction being lower under the new rules than it was under the rules implementing former Article 9. For example, under former

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

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

3. Professional services:

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

4. Compliance costs:

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

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

5. Economic and technological feasibility:

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

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

The new computer system recently installed at the Department of State permits off-site searching of UCC records by the public via the internet. Small businesses with internet access can use this feature without cost. The Department of State will continue to perform searches for those who request such service. Therefore, small businesses without internet access will continue to be able to obtain UCC searches in the same manner such searches are now obtained. The Department of State will continue to charge the applicable fee for performing such searches. This fee was increased from \$7 to \$25 on April 1, 2003; this rule continues this fee at \$25.

6. Minimizing adverse impact:

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

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

7. Small business and local government participation:

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

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

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

2. Reporting, recordkeeping and other compliance requirements:

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

3. Costs:

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

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

4. Minimizing adverse impact:

The Department of State is not aware of any information suggesting that these rules may impose any adverse impact on rural areas. Fees for services rendered under Revised Article 9 of the UCC and Article 10-A of the Lien Law are maintained at the amounts which first became effective (by prior rule) on April 1, 2003. The fees apply uniformly throughout the State (subject to the provisions, similar to those found in prior rules implementing UCC Article 9, for additional filing fees to be charged by filing offices in New York City and Nassau County). Further, internet searching of the department of State's UCC records is now available, and these rules permit submission of documents by electronic means (XML transmission) and by facsimile. These innovations permit easier searching and filing by all, particularly by those located in areas more distant from Albany.

5. Rural area participation:

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

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

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

Job Impact Statement

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

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

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations at the State University College at Oneonta

I.D. No. SUN-20-03-00009-A

Filing No. 1099

Filing date: Sept. 29, 2003

Effective date: Oct. 15, 2003

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

Action taken: Amendment of sections 564.2, 564.3 and 564.9 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic and parking regulations at the State University of New York College at Oneonta.

Purpose: To clarify parking regulations and increase certain parking fines from \$40 to \$50.

Text or summary was published in the notice of proposed rule making, I.D. No. SUN-20-03-00009-P, Issue of May 21, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Ellen Lacy Messina, State University of New York, Office of University Counsel, State University Plaza, S-317, Albany, NY 12246, (518) 443-5400, e-mail: messinel@sysadm.suny.edu

Assessment of Public Comment

The agency received no public comment.