

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Pine Shoot Beetle Quarantine

I.D. No. AAM-08-04-00001-E
Filing No. 164
Filing date: Feb. 4, 2004
Effective date: Feb. 4, 2004

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

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

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

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

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

tions at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2003, which set forth requirements and restrictions for the movement of host materials. Finally, this rule deletes spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the United States Department of Agriculture (USDA) has tested and determined that these materials are not a host to the pine shoot beetle.

The pine shoot beetle, *Tomicus piniperda*, an insect non-indigenous to the United States, is a destructive wood-boring insect native to Europe. The beetle attacks pine trees by nesting and feeding on new shoots. The resulting damage by the beetle causes shoot and branch mortality which affects the growth and appearance of the tree. Although it is a slow-moving pest, the pine shoot beetle is easily spread through the movement of Christmas trees, nursery stock and pine logs and lumber. The pine shoot beetle was first detected in a Christmas tree farm near Cleveland, Ohio in July of 1992 and subsequently spread to other parts of Ohio as well as to sections of Michigan, Indiana, Illinois, Pennsylvania and New York. On November 19, 1992, the USDA adopted regulations establishing a pine shoot beetle quarantine to help prevent the spread of this pest. On November 25, 1992, the Department, as an emergency measure, adopted section 131.1 of 1 NYCRR, which incorporated by reference that federal quarantine. This emergency measure was ultimately adopted as a permanent rule on March 17, 1993.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that the failure to immediately incorporate by reference the federal regulations which set forth requirements for the movement of host materials and to extend the quarantine to counties where the beetle has been detected, could result in the spread of the pest beyond those areas. This would not only result in damage to the natural resources of the State, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the Christmas tree, nursery and forest products industries throughout New York State. The consequent loss of business would harm industries which are important to New York State's economy and as such, would harm the general welfare. Given the potential for the spread of the pine shoot beetle beyond the areas currently infested and the detrimental consequences that would have, it appears that this rule should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Pine shoot beetle quarantine.

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

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

Pine Christmas trees, pine nursery stock and pine [, spruce, larch and fir] logs and lumber, with bark attached, shall not be shipped, transported or otherwise moved from any point within Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Delaware, Erie, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Oswego, Ontario, Orleans, Otsego, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Wayne, [and] Wyoming and Yates Counties to any point outside of said counties, except in accordance with 7 CFR sections 301.50 through 301.50-10 [(pages 27 - 34) (revised as of January 1, 1995)] (pages 32 - 41) (revised as of January 1, 2003) which is incorporated by reference herein. Copies of the Code of Federal Regulations may be obtained from the U.S. Government Printing Office, Washington, DC 20402 and the material incorporated by reference herein is available for public inspection and copying at the offices of the Department of Agriculture and Markets, Division of Plant Industry, Capital Plaza, One Winners Circle, Albany, NY 12235.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 3, 2004.

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

2. Legislative objectives:

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

3. Needs and benefits:

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

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

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

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

4. Costs:

(a) Costs to the State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties:

Regulated parties exporting host material from the quarantined area, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year with a total annual cost of less than \$1,000.

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

(d) Costs to the regulatory agency:

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

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

5. Local government mandate: None.

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

7. Duplication: None.

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

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

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

Regulatory Flexibility Analysis

1. Effect on small business:

This rule amends the pine shoot beetle quarantine in section 131.1 of 1 NYCRR by extending that quarantine to the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Wayne and Yates. This rule also incorporates by reference, the most recent revisions to federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2003, which set forth requirements and restrictions for the movement of host materials. Finally, this rule deletes spruce, larch and fir

from the list of regulated host materials subject to regulation under the quarantine, since the United States Department of Agriculture (USDA) has tested and determined that these materials are not a host to the pine shoot beetle.

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

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

(b) Annual cost for continuing compliance with the proposed rule:

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

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

5. Minimizing adverse impact:

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

6. Small business and local government participation:

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

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

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

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

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

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

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

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The modification of the quarantine area is designed to prevent the spread of the pine shoot beetle to other parts of the State. It is estimated that there are 3,970 nursery dealers, 2,205 nursery growers, 500 forest products companies, 119 arborists and 12 Christmas tree farms in the State which engage in these industries. They employ an estimated 42,000 people and generate 1.51-billion dollars in revenue per year. A

spread of the infestation would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the spread of the pine shoot beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's Christmas tree, nursery and forest products industries.

Department of Correctional Services

NOTICE OF ADOPTION

Departmental Records

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

Filing No. 167

Filing date: Feb. 6, 2004

Effective date: Feb. 25, 2004

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

Action taken: Repeal of section 5.11; addition of new section 5.11; and amendment of section 6.2(b) and (c) of Title 7 NYCRR.

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

Subject: Departmental records.

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

Text or summary was published in the notice of proposed rule making, I.D. No. COR-47-03-00005-P, Issue of November 26, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Remedial Action Plans

I.D. No. ENV-49-03-00004-A

Filing No. 177

Filing date: Feb. 10, 2004

Effective date: 60 days after filing

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

Action taken: Amendment of sections 372.7 and 373-1.11 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 3, title 3; art. 27, titles 7 and 7; and art. 71, titles 27 and 35

Subject: Remedial action plans.

Purpose: To modify State regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-49-03-00004-P, Issue of December 10, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Deborah L. Aldrich, Department of Environmental Conservation, Division of Solid and Hazardous Materials, 625 Broadway, 9th Fl., Albany, NY 12233-7250, (518) 402-8730, e-mail: dlaldrich@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sportfishing Regulations

I.D. No. ENV-08-04-00007-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 10.1, 10.2 and 10.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-0317, 11-0319, 11-1301, 11-1303 and 11-1316

Subject: Sportfishing regulations.

Purpose: To implement changes in fishing regulations that are necessary to maintain or improve the quality of New York's freshwater fisheries, and correct or clarify existing fishing regulations.

Substance of proposed rule (Full text is posted at the following State website: www.dec.state.ny.us/website/dfwmr/propregs/): The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing (6 NYCRR Part 10). The amendments contained in this proposed rulemaking were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. These amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments that the Department is proposing for 6 NYCRR Part 10:

1. General clarifications:
 - (a) Designating "largemouth and smallmouth bass" as "black bass";
 - (b) Replacing all instances of "no kill" with the more accurate description of "catch and release only";
 - (c) Replacing all instances of "Ice fishing allowed" with "Ice fishing permitted";
 - (d) Special regulations for trout in Wayne County: changing "All waters" to "All waters except the Great Lakes and tributaries";
 - (e) Special regulation for the section of the Hudson River where black bass can be taken all year: adding the wording "from Thurman Bridge upstream";
 - (f) Black bass regulations for tributaries of the Chemung River (Steuben County): adding language to indicate that all tributaries are included;
 - (g) Changing regulations for yellow perch and sunfish in Jefferson County to read "All waters except Sandy Pond";
 - (h) Changing regulatory boundary for Oneida Lake and its tributaries to be east of the Route 81 bridge;
 - (i) Changing Oneida Lake tributary regulations in Oneida County so that the upstream endpoint for the Barge Canal section is Lock 22.
2. Adopt catch and release only regulations for trout on:
 - (a) West Branch Saint Regis River (St. Lawrence County) from Route 11B to Allens Falls Reservoir Dam;
 - (b) Batten Kill (Washington County) from the Vermont State line to the covered bridge at Eagleville;
 - (c) West Branch of the Ausable River (Essex County) from the Whiteface Ski Center downstream to the Route 86 bridge;
 - (d) Saranac River (Clinton County) from North Branch Saranac River upstream 1.4 miles to Stord Brook;
 - (e) Saranac River (Clinton County) from intersection of Sand pond Road and NYS Route 22B in Morrisonville upstream to Kent Falls Dam;
 - (f) Ischua Creek in the area of Franklinville in Cattaraugus County.
3. Remove the baitfish prohibition on:
 - (a) Weed Mines Pond, Town of Copake, (Columbia County);
 - (b) Colgate Lake, Town of Jewett, (Greene County).
4. Prohibit the use of baitfish on:
 - (a) Little Black Pond, Town of Santa Clara, and Benz Pond, Town of Waverly, (Franklin County);

(b) Bog Pond, Clear Pond, Loon Pond and Lost Pond, Town of Long Lake, (Hamilton County);

(c) Sterling Lake (Orange County).

5. General corrections to Part 10:

(a) Correcting the daily limit for lake trout on Schroon Lake and the Schroon River from the lake proper downstream to the Starbuckville dam from three fish per day to two fish per day;

(b) Correcting the minimum length for trout in all tidal streams in Suffolk County from two inches to 12";

(c) Correcting the typographical error for the Cohocton River (Stueben County), from "...Route 145" to "...Route 415";

(d) Correcting the method of taking in Spring Creek (Livingston and Monroe County) and Oatka Creek (Monroe County) during the April 1 to October 15 season by removing the unintended restriction of artificial lures only;

(e) Correcting the existing description for the no kill section of the West Branch of the Ausable River (Essex County), changing "... 22 miles downstream..." to "...2.2 miles downstream...";

(f) Correcting minimum length for walleye Lake Ontario, the St. Lawrence River, Upper Niagara River and Lower Niagara River, changing from 15 inches to 18 inches;

(g) Correcting the ice fishing prohibition on Bigsby Pond and Copperas Pond (Essex County) by changing it to the intended tip-up prohibition.

6. Eliminate special regulations for:

(a) Crappie on Whitney Point Reservoir (Broome County) and Chautauqua Lake (Chautauqua County), and for trout on the Roeliff-Jansen Kill (Columbia County and Dutchess County) since the species are now regulated under statewide regulations;

(b) American shad on the West Branch Delaware River since general angling regulations apply during the time when fishing is not prohibited in this water;

(c) Chittenango Creek (Madison County) Route 20 downstream because the section duplicates that found in the special regulation from Route 20 north to Conrail railroad line;

(d) Eliminating the special regulation for Lake Mahopac (Putnam County);

(e) No kill brook trout fishing in Whey Pond (Franklin County) and changing the daily limit for all trout to three per day in combination;

(f) Black bass and northern pike in the Saranac River (Clinton County) downstream of Union Falls since said regulation now has little or no practical application.

7. Change the daily creel limit for trout from five trout per day to five trout per day, with no more than two longer than 12" to better distribute harvest opportunity for two year old hatchery brown trout and to emphasize the value of larger brown trout for all waters not covered under special regulations in Allegany, Cattaraugus, Chautauqua, Erie and Wyoming counties and for the following waters currently covered under special regulations:

(a) Rushford Lake, Allen Lake and the Genesee River (excluding the newly proposed catch and release section from the Route 19 bridge in Shongo downstream 2.5 miles) in Allegany County;

(b) Case Lake, Harwood Lake, and New Albion Lake in Cattaraugus County.

8. Amend the daily limit for trout on the waters below to 5 per day, with no more than 2 larger than 12 inches from April 1 through October 15 and keeping the stream open for fishing the remainder of the year under a catch and release artificial lures only regulation

(a) Clear Creek, Lime Lake Outlet and McKinstry Creek (Cattaraugus County);

(b) Hosmer (Sardinia) Brook (Erie County);

(c) Clear Creek, and all of Wiscoy Creek except 0.5 miles upstream to 0.5 miles downstream of East Hillside Rd. Bridge (Wyoming County).

9. Adopt new special regulations that will allow for a year-round trout season, ice fishing permitted, with a daily creel limit of five trout per day, with no more than two longer than 12" for Red House Lake and Quaker Lake in Cattaraugus County.

10. Remove the Salmon River and Little Sandy Creek as exceptions from the 15 inch minimum size limit for trout and salmon in Lake Ontario tributaries and eliminate the Monroe County qualifier from Irondequoit Creek to allow a 9 inch minimum size limit for the entire creek.

11. Reduce the minimum length for crappie from 9 inches to 8 inches on Lake Champlain for consistency with regulations in effect for the State of Vermont.

12. Increase the minimum length of yellow perch to 8 inches in all Nassau County waters except Hempstead Lake.

13. Increase the minimum size from 15 inches to 18 inches and reducing the daily limit from 5 fish to 3 fish for walleye in Chautauqua Lake (Chautauqua County), Fern Lake (Clinton County), Harris Lake, (Essex County), Rainbow Lake (Franklin County), Lake Algonquin (Hamilton County), Butterfield Lake (Jefferson County), Burden Reservoir (Rensselaer County), and Horseshoe Lake (St. Lawrence County) to afford increased protection and maximize the restoration potential for the species.

14. Reduce the minimum length for walleye in Oneida Lake and its tributaries (Madison, Oneida, Onondaga and Oswego Counties) from 18 inches to 15 inches.

15. Extend the open season for muskellunge and tiger muskellunge on the St. Lawrence River, Lake Ontario and Lower Niagara River from November 30 to December 15 to expand trophy muskellunge angling opportunities.

16. Change the starting date for the black bass season on the St. Lawrence River and its tributaries (upstream to the first barrier impassible to fish) to the fourth Saturday in June for consistency with regulations in effect for the Province of Ontario.

17. Amend the closing date of the walleye season for the Lower Niagara River, from March 15 to December 31 to provide greater protection of spawning stock prior to the opening of the fishing season in May.

18. Amend regulations in the Lower Niagara River for Atlantic Salmon so that only one fish greater than or equal to 25 inches can be harvested.

19. Broaden the current one fish per day creel limit for rainbow trout and steelhead in Jefferson County to include all waters tributary to Lake Ontario (from the lower most bridge upstream to the first barrier impassible by fish).

20. Adopt special regulations for Sylvan Lake (Dutchess County) to establish a year-round trout season with no minimum size, a five fish per day limit and ice fishing is permitted.

21. Adopt special regulations for a year-round catch and release bass season in Artist Lake and Belmont Lake (Suffolk County) to protect and restore the quality of the bass populations.

22. Adopt a year-round catch and release only season for all species in Hempstead Lake (Nassau County) except black bass.

23. Amend the special regulation for lake trout in Piseco Lake (Hamilton County) by increasing the minimum size to 21 inches and decreasing the daily limit to two fish per day to increase the average size of lake trout being caught by anglers.

24. Adopt a special regulation for Round Lake (Town of Long Lake, Hamilton County) where brook trout will be regulated under a 12 inch minimum size limit, three fish per day daily limit, artificial lures only and the use or possession of baitfish is prohibited.

25. Institute a catch-and-release regulation for American shad in the: Susquehanna River (Tioga and Broome County), Tioughnioga River (Broome County), Chenango River (Chenango County) and Chemung River and tributaries (Chemung County).

26. Amend regulations for New York City Park waters so that all species will be regulated under a year round catch and release only season, and eliminating the special regulations for largemouth and smallmouth bass to all other waters in Bronx, Kings, NY, Queens and Richmond Counties to provide greater fishing opportunity and consistency between the State and City regulations.

27. Amend the trophy section of the Saranac River (Clinton County) from Imperial Dam upstream to accommodate the newly proposed catch and release trout section from Morrisonville upstream to Kent Falls Dam.

28. Shorten the current catch and release only section on the Beaver Kill (Delaware County) to end at the Iron Bridge in Horton to accommodate the newly proposed regulation that prohibits fishing in the thermal refuge area.

29. Prohibit all fishing in the thermal refuge area of the Beaver Kill (Delaware County) from the Iron Bridge at Horton downstream to the first Rt. 17 overpass from July 1 through August 31 so aggregations of trout that concentrate in this section of stream during periods of high temperature can be protected.

30. Amend the special regulations for Floodwood Pond, Square Pond, and Rollins Pond (Franklin County) to permit ice fishing.

31. Add a special regulation that permits ice fishing on Beardsley Lake (Montgomery County).

32. Eliminate the misprint of an April 1 though October 15 trout season for Oneida Creek from Peterboro Road downstream to the NYS Thruway (Oneida County) and adding the same to the special regulations for Oriskany Creek (Oneida County) as originally intended.

33. Amend the special regulations for Skaneateles Creek (Onondaga County) to include landlocked salmon.

34. Remove Ramapo River (Rockland County) from the special regulation that excludes it from those rivers and streams where black bass are regulated under a ten inch minimum size limit.

35. Prohibit the use or possession of rainbow smelt in Lake George (Essex, Warren and Washington Counties) to help protect the population numbers of this forage species for lake trout and landlocked salmon.

36. Change the special regulations for chain pickerel on Delaware River border waters to include all species of pickerel.

37. Change the wording for the special prohibition on fishing in Dutch Hollow Brook in Cayuga County to include a prohibition on dipnetting during the walleye spawning period.

38. Amend the special regulation for muskellunge on Chautauqua Lake to also include tiger muskellunge.

39. Remove "Gaff hook and clubs prohibited" for Chautauqua Lake since statewide regulations already prohibit the use of gaffs for open water fishing.

40. Repeal the special regulations for the Finger Lakes as they are currently constructed with a new table format for increased readability.

Text of proposed rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, Bureau of Fisheries, 625 Broadway, Albany, NY 12233-4753, (518) 402-8928, e-mail: sxkeeler@gw.dec.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.

Summary of Regulatory Impact Statement

1. Statutory Authority

Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department of Environmental Conservation (Department) to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety and the safety and protection of private property. Sections 11-1301 and 11-1303 of the ECL empower the Department to fix by regulation open seasons, size and catch limits and manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the Environmental Conservation Law), in all waters of the state. Section 11-0317 of the ECL empowers the Department to adopt regulations, after consultation with the appropriate agencies of the neighboring states and the Province of Ontario, establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara River and the St. Lawrence River. Section 11-0319 of the ECL empowers the Department to adopt regulations establishing open seasons, minimum size limits, manner of taking and daily and seasonal limits for taking fish in the waters of the New York City water supply which are open or may be opened in the future to the public for fishing. Section 11-1316 of the Environmental Conservation Law empowers the Department of Environmental Conservation to designate by regulation waters in which the use of bait fish is prohibited.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits and restrictions regarding the manner of taking fish are the basic tools used by the Department in achieving the Legislature's intent. The purpose of setting seasons is to prevent the over-exploitation of fish populations during vulnerable periods, such as spawning, thereby insuring a healthy population. Size limits are necessary to maintain quality fisheries and to insure that adequate numbers survive to spawning age. Creel limits are used to distribute the harvest of fish among many anglers and angling days and optimize resource benefits. Regulations governing the manner of taking fish upgrade the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences and limit exploitation. Catch-and-release fishing regulations are used in waters capable of sustaining outstanding growth and survival of fish to reduce fishing mortality to the lowest possible level. Relaxation of fishing mortality results in a large population of desirable-sized fish which provides an outstanding recreational opportunity for those anglers willing to forego the opportunity to harvest fish.

3. Needs and Benefits

Most significant fishery resources in New York State are monitored through annual or periodic survey and inventory by Bureau of Fisheries staff. These fisheries surveys identify particular situations where changes in fishing regulations may be required to maintain the quality of a particular fishery or significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of users groups or the need to correct or clarify existing regulations. Candidate regulations addressing identified needs are devel-

oped by Bureau of Fisheries staff and reviewed with sportsmen's groups, either locally, regionally or state-wide depending upon the significance of the proposal. Proposals may be amended based upon input received through public comment.

In order to facilitate compliance by the angling public, significant revisions of all non-emergency regulations are currently conducted on a biennial schedule. The annual schedule for review and filing of proposed amendments to regulations is timed to allow publication of changes to regulations in the annual New York State Fishing Regulations Guide. The Guide will be available for public distribution prior to the initiation of fishing and sporting license sales for the 2004-05 license year.

4. Costs

Enactment of the rules and regulations described herein governing fishing will not result in increased expenditures by the State, local governments or the general public.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. Paperwork

No additional paperwork will be required as a result of these proposed changes in regulations.

7. Duplication

There are no other state or federal regulations which govern the taking of fish.

8. Alternatives

The alternative to the proposed regulations would be to retain current fishing regulations. In the absence of the proposed changes, opportunities to enhance the quality or public use and enjoyment of fisheries may be deferred or lost. Some fish populations may decline if the proposed regulations are not enacted in a timely manner.

9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

10. Compliance Schedule

These regulations, if adopted, will become effective on October 1, 2004. It is anticipated that regulated persons will be able to immediately comply with these regulations.

Regulatory Flexibility Analysis

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. These amendments were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The Department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, record-keeping or other compliance requirements on small businesses or local governments. All reporting or record-keeping requirements associated with sportfishing are administered by the Department. The proposed regulations are not anticipated to change the number of participants or the frequency of participation in regulated activities. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rulemaking proposal does not change this process.

Based on the above, the Department has determined that a regulatory flexibility analysis for Small Businesses is not required.

Rural Area Flexibility Analysis

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. These amendments were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The Department has determined that the proposed rules will not impose an adverse impact or any new or additional reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. All reporting or record-keeping requirements associated with sportfishing are administered by the Department. The proposed regulations are not anticipated to change the number of participants or the frequency of participation in regulated activities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rulemaking proposal does not change this process.

Since the Department’s proposed rulemaking will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, record-keeping, or other compliance requirements, the Department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation’s (Department) general regulations governing sportfishing. The proposed regulations affect people who angle for fish for recreational purposes. Fishing regulation changes of the nature and magnitude of those proposed generally occur biennially as part of the Department’s efforts to regularly review and update existing regulations.

Based upon extensive past experience with such rule making efforts, the Department does not anticipate any direct effects from the subject proposed rulemaking on employment opportunities in New York State. The Department’s proposed rulemaking is not expected to change the number of participants or the frequency of participation in regulated activities. Moreover, the proposed regulations would not directly apply to or affect any specific jobs. Some jobs may be indirectly affected, such as fishing guides, but indirect effects are not the subject of this impact statement. Nevertheless, the impacts to guides should be generally positive because the proposed amendments are intended to improve New York’s freshwater fisheries and the angling experience associated with these fisheries. Therefore, the Department has concluded that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a job impact statement is not required.

Department of Health

NOTICE OF ADOPTION

Live Adult Liver Donation and Transplantation

I.D. No. HLT-38-03-00006-A

Filing No. 173

Filing date: Feb. 10, 2004

Effective date: Feb. 25, 2004

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

Action taken: Amendment of section 405.22 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Live adult liver donation and transplantation.

Purpose: To establish minimum standards for live adult liver donation and transplant services at hospitals approved to provide such services.

Substance of final rule: The proposed regulations amend section 405.22 of Part 405 of 10 NYCRR to add a new subdivision (l) to set standards for live adult liver transplantation services.

The regulations require any hospital performing live adult liver transplantation to establish an Independent Donor Advocate Team (IDAT) whose main interest is to be centered on the well being of the potential liver donor. The regulations outline the team’s composition, characteristics and responsibilities. The main responsibilities are to educate the potential donor on all aspects of live adult liver donation, evaluate the potential donor’s medical and psychosocial suitability for donation, and support the potential donor through the entire decision-making and donation process. Upon completing its evaluation, the team is required to provide written recommendations to the donor surgeon regarding the potential donor’s suitability for organ donation.

The IDAT is required to structure a process of “informed choice” designed to provide the potential donor with all the information necessary to make an informed decision and emphasize that the decision to donate is not a foregone conclusion. Specific information about the donation process and the medical, psychosocial and financial risks must be provided to the donor. The IDAT must also assess the potential donor’s understanding of the procedure and risks, as well as the extent to which the potential donor may feel coerced to donate. A two-week period of reflection is required between the determination by the IDAT and donor surgeon that the potential donor is a suitable candidate for organ donation and the actual signing

of the informed consent document. The entire disclosure and consent process must be documented in the donor’s medical record.

The regulations establish medical and psychosocial criteria for both the donor and the recipient. Minimum standards and staffing requirements are also established for the members of the surgical teams and anesthesia teams. Requirements for the postoperative period include care levels for the donor, minimum medical and nursing staffing requirements and radiology service requirements.

The post discharge provisions require a follow-up appointment with the donor surgeon and coordination of continuing post-operative care with the donor’s primary care physicians. Minimum standards for post-discharge medical testing are established as well as a requirement for psychosocial follow-up as needed. The hospital is also required to attempt to follow donors for their lifetime to monitor the medical and psychosocial effects of donation and to report this data to the Department of Health.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 405.22(1)(6)(vi)(c), (7) and (8)(i).

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

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

Although the regulation has been changed since it was published in the *State Register* on September 24, 2003, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

This regulation is based on the recommendations of the New York State Committee on Quality Improvement in Living Liver Donation, a committee of the New York State Transplant Council (hereinafter referred to as “The Committee”). The Committee was charged with reviewing the issue of live adult donor liver transplantation and developing recommendations pertaining to the care of live liver donors in New York State. Since publication of the Notice of Proposed Rule Making in the *State Register* on September 24, 2003 comments were received from the New York State Society of Anesthesiologists, Inc., the New York State Association of Nurse Anesthetists, Inc., the New York State Nurses Association and Francis L. Delmonico, M.D., Director of Renal Transplantation for Massachusetts General Hospital.

The following is a summary of the comments received and the Department’s responses:

COMMENT

The regulations mandate that a “care team” must deliver anesthesia to live liver donors (1)(6)(vi)(b). This is unprecedented and though many facilities use this model to deliver anesthesia services it would prevent an attending anesthesiologist from being the sole provider of anesthesia care.

RESPONSE

The existing requirements for anesthesia services contained in NYCRR 405.13 remain in effect for all anesthesia services provided in hospitals, including liver donor programs. The new regulations, as they pertain to anesthesia services in liver donor cases, supplement the existing requirements. These provisions do not prohibit an anesthesiologist from being present and accepting full responsibility for the evaluation and all phases of the procedure and post-operative care rather than delegating such responsibilities to team members.

COMMENT

The use of the term “joint responsibility” in (1)(6)(vi)(c) could create both legal and medical difficulty and confusion. The regulation does not specify who will have the authority to direct the anesthesiology team and could put patients at risk if team members disagreed on how to conduct a case.

RESPONSE

The use of the phrase “joint responsibility” was not intended to introduce a new legal concept into anesthesiology care or create confusion with other existing requirements. Consequently, a non-substantial change was made to the regulation to clarify how the responsibility for care is intended to be shared when more than one health care professional is involved in the provision of anesthesiology services. The word “jointly” has been removed and the phrase “under the direction of the attending anesthesiologist” has been added. The regulation now reads to require team members to “be responsible, under the direction of the attending anesthesiologist, for the evaluation and care of the patient through all phases of the procedure pertaining to the administration of, and recovery from, anesthesia”.

COMMENT

As proposed, the regulation would require the presence of two separate anesthesiologists in the operating room all times (one for the donor and one for the recipient). No other surgical procedure has this requirement.

RESPONSE

The regulation does require two separate attending anesthesiologists, one for donor and one for the recipient. However, these anesthesiologists are not required to be present in the operating room at all times. The regulation requires that they be present for the critical anesthetic and surgical portions of the procedures and immediately available at all other times. Although the express requirement for two separate anesthesiologists in the operating room is unique, the requirement is necessitated by the uniqueness of the procedure, *i.e.*, that two patients are involved in a highly complex medical procedure simultaneously.

COMMENT

Section (1)(7)(vii) provides that live liver donors have prioritized access to the operating room for an emergent complication requiring reoperation. Decisions concerning access to operating rooms should be handled in accordance with policies and procedures already established by hospitals.

RESPONSE

The Department's intent is that these patients shall be given priority when in the need of re-operation amongst patients in the same risk category to help ensure that donors who have undergone the initial procedure solely to benefit another person are placed at no greater risk than is minimally necessary. The Department does not expect live liver donors to have priority over patients in a higher risk category. Facilities are obligated to undertake any action necessary to adequately care for the donor, including making an operating room and staff available.

COMMENT

Subdivision (1)(7)(v), mandates that a member of the care team with special training in pain management shall be available for consultation with the transplant team. This poses a staffing issue by mandating that a member of the team has this specific education and that he or she be continually available to consult with the transplant team.

RESPONSE

This requirement only applies if the anesthesia team includes a professional with this specific background. If the anesthesia care team does not have a professional with this type of training and experience, the requirement does not apply.

COMMENT

The regulation will require the hospital attempt to track the donor and his or her condition for the donor's lifetime. Mechanisms for tracking the donor for life have not been established in the medical field.

RESPONSE

The Department is working with NYCLT and the five hospitals that do liver transplants to develop meaningful data collection policies and procedures consistent with United Network for Organs Sharing (UNOS) and the Department of Health and Human Services initiatives.

COMMENT

The regulation requires a three dimensional liver scan with volume assessment at one-year post transplant on all donors. Clinical decision-making must be left to the attending surgeon.

RESPONSE

Experts on the Committee strongly recommended this as a standard to assess the patient's level of recovery and need for additional monitoring since existing data and information on donor recovery is inconclusive. The Department plans to revisit the regulations in the future and modify the requirements based on the empirical evidence that may result from the data collected in accordance with these regulations and any changes in the standard of care that may develop.

COMMENT

Minimum registered nurse to patient staffing ratios, similar to those included in this regulation, should be adopted for all acute care settings.

RESPONSE

These regulations were developed at the recommendation of the Committee on Quality Improvement in Living Liver Donation to help assure the health, safety and welfare of those individuals who are considering, or have decided to, engage in the selfless act of donating a portion of their liver to save the life of another person. The standards address concerns and issues unique to living liver donors that were not previously addressed in regulation. The evaluation of standards applicable to all other acute care services was outside the mission and expertise of the Committee, and consequently, outside the scope of this regulation.

COMMENT

In the composition of the Independent Donor Advocate Team (IDAT) the term, "transplant coordinator/nurse clinician" should be further clarified to ensure that the nurse is a registered professional nurse since "nurse clinician" is not a defined term or protected title.

RESPONSE

In the Department's experience, all hospitals that use transplant coordinators or nurse clinicians employ registered professional nurses in that capacity.

COMMENT

The use of the term "Licensed Master Social Worker" may be premature. The law establishing this protected title does not take effect until September 1, 2004.

RESPONSE

Due to the short time frame between the establishment of this regulation and effective date of the above-mentioned law the regulation was written to conform to the new law. A licensed social worker will suffice until the new law takes effect.

COMMENT

A psychiatric nurse practitioner might be well qualified to serve on the IDAT to fulfill the role identified for the psychiatrist. Additionally, a psychiatric nurse practitioner or a registered nurse may be well qualified to serve on the team to fulfill the role identified for the social worker.

RESPONSE

The Committee concluded that the specific titles named in the regulation were essential to ensure the donor's best interests are served. The regulation is a minimum standard and does not preclude a psychiatric nurse practitioner from being on the team.

COMMENT

Post discharge referrals should include nursing care. Donors may need counseling, teaching and care coordination that are functions of the registered nurse.

RESPONSE

The regulation does not preclude referrals for nursing care and is not intended to supplant all other discharge planning requirements and practices, including the provision of nursing care when appropriate.

COMMENT

Why must a donor have a "vital emotion relationship" with the recipient? Could not a donor make an informed choice to act to save the life of a stranger?

RESPONSE

The Committee deliberated this issue at length and concluded that, at this time, due to the unique risks involved in adult live liver donation they could not support donation between a stranger and a recipient.

COMMENT

The requirement that a donor be 18 years of age is too rigid.

RESPONSE

The Committee deliberated this requirement and considered a higher age limit of 21 due to the risks involved in live liver donation. The committee concluded that the legal age of majority (18 years of age) should be the minimum standard.

COMMENT

Consideration should be given to allowing a qualified registered nurse (RN) First Assistant to participate in the surgical procedure to satisfy the need for the third attending surgeon.

RESPONSE

The Committee concluded that the specific titles and numbers of personnel named in the regulation were essential to ensure the patient's best interests were served.

COMMENT

The requirements listed in (1)(3)(i) though (iv) are within the scope of practice of a certified acute care nurse practitioner.

RESPONSE

The Committee concluded that the specific titles named in the regulation were essential to ensure the donor's best interests are served.

COMMENT

Consideration should be given to including an RN with operating room experience on the surgical team.

RESPONSE

The regulation does not preclude a registered professional nurse with operating room experience from being a member of the surgical team.

COMMENT

The requirement that the anesthesia team have had anesthesia responsibility for major liver resection is overly restrictive.

RESPONSE

The Committee deliberated this issue at length and considers this to be the minimum requirement for anesthesia team members to ensure high quality care during this unique and complex procedure.

COMMENT

The ICU and PACU are not interchangeable. The requirement should be that donors receive intensive care in the PACU, and if appropriate may be transferred to the ICU.

RESPONSE

The committee concluded that postoperatively during day 0-1, ICU or PACU level care is a minimum standard. It is not expected that hospitals will alter their existing policies of having all patients transferred directly to the PACU, and then, when appropriate, to the ICU. This provision is intended to ensure that such patients will not be transferred to a lower level of care within the first postoperative day.

COMMENT

The term "transplant team" as used in the postoperative care requirement is not defined.

RESPONSE

The term "transplant team" refers to the attending surgical team.

COMMENT

Within (1)(7) there are two subparagraphs labeled (v).

RESPONSE

The regulation has been revised to correct this typographical error.

COMMENT

The term "physician's assistant" is antiquated and should be replaced "physician assistant".

RESPONSE

A non-substantial change was made to the regulation. As per this comment, the term "physician's assistant" has been change to "physician assistant".

COMMENT

The language in (8)(i) appears to create an inappropriate barrier between the attending transplant surgeon and the primary registered nurse. The primary RN must be able to seek direct consultation with the surgeon in those instances where the medical team is non-responsive to a patient's needs.

RESPONSE

The regulation does not prohibit the primary registered nurse from directly consulting with the attending surgeon when he or she determines it is necessary.

COMMENT

In addition to the RN staffing delineated in the nursing ratio established in the regulation, each living liver transplant service should include a clinical nurse specialist with experience in live liver transplantation nursing care.

RESPONSE

This is a minimum standard. The regulation does require that all nursing staff involved in the care of these patients have on-going education and training in live liver donor transplantation nursing care.

COMMENT

The regulation's staffing ratios are minimums that are to "increase as appropriate for the acuity level of the patient." The Department should develop an acuity scale for live liver transplant.

RESPONSE

Facilities must have the flexibility to organize and staff to meet the care needs of the patients they serve.

COMMENT

Names and beeper numbers of the transplant team should be posted on all units receiving transplant patients.

RESPONSE

This is a good recommendation that facilities should consider incorporating into their policies and procedures to help ensure compliance with the requirement that "an attending transplant surgeon should be available immediately." However, incorporation of this level of detail into the regulation appears unnecessary in light of the standard expressed.

COMMENT

The term "primary care physician" in (1)(11)(ii) should be changed to "primary care practitioner" to be inclusive of those who may choose to have their primary care needs managed by a certified nurse practitioner.

RESPONSE

While independent practitioners, all certified nurse practitioners are required to have a collaborative agreement with a physician. This provision requires the written discharge plan to be provided "to all health care professionals involved in the donor's case." This may include a certified

nurse practitioner, as well as the physician, who may be the collaborating physician.

COMMENT

All those reviewing the post discharge care plan with the donor (social worker etc.) as required by (1)(11)(iii), should only be reviewing the components of the plan that are within his or her scope of practice.

RESPONSE

The Department expects all professions to work within their scope of practice. Those disciplines that have a specific post discharge plan are expected to review that plan with the donor at some point prior to discharge.

COMMENT

The discharge plan should include instructions on when to contact a health care professional for advice.

RESPONSE

The Department considers this to be a standard of care applicable to all health care, whether such care is provided on an inpatient or outpatient basis. Thus, its reiteration here is unnecessary.

COMMENT

Responders for the post discharge hotline required by (1)(11)(v) should be limited to registered nurses or physicians since the function may include the assessment of patient symptoms.

RESPONSE

The Department would expect all calls to be referred to the appropriate licensed professional as necessary.

COMMENT

Follow-up care should be described in provider neutral terminology to permit post discharge care to be provided by certified nurse practitioners and nurses where appropriate.

RESPONSE

The regulation requires that the need for a variety of post discharge care services, including social and psychological supports be considered and provided, if necessary. The regulation does not preclude the provision of services by a certified nurse practitioner or registered nurse when appropriate, nor mandate that every service be provided. Due to the unique nature of the procedures and the potential post-discharge care issues raised, assessment by a physician is appropriate in addition to any care that may be provided by a certified nurse practitioner.

COMMENT

Any reports required by the Commissioner should be publicly accessible.

RESPONSE

Reports to the Commissioner are available to the public through the Freedom of Information Act, with redactions to protect the personal privacy of individual patients as appropriate.

NOTICE OF ADOPTION

Smoking Cessation Products

I.D. No. HLT-39-03-00003-A

Filing No. 174

Filing date: Feb. 10, 2004

Effective date: Feb. 25, 2004

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

Action taken: Addition of section 85.21(t) to Title 10 NYCRR and amendment of section 505.3(f)(3) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a(4)

Subject: Smoking cessation products.

Purpose: To add over-the-counter (OTC) smoking cessation products to the list of Medicaid reimbursable OTC products.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-39-03-00003-P, Issue of October 1, 2003.

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

Text of 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, NY12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsna@health.state.ny.us

Assessment of Public Comment

The Department received one comment which was from New York City's Department of Health and Mental Hygiene supporting the regulatory change to add over-the-counter (OTC) tobacco cessation products to the list of Medicaid reimbursable OTC products.

NOTICE OF ADOPTION

Severe Acute Respiratory Syndrome (SARS)**I.D. No.** HLT-41-03-00005-A**Filing No.** 175**Filing date:** Feb. 10, 2004**Effective date:** Feb. 25, 2004

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

Action taken: Amendment of sections 2.1 and 2.5 of Title 10 NYCRR.**Statutory authority:** Public Health Law, sections 225(4), (5)(a), (g), (h), (i) and 206(1)(d) and (e)**Subject:** SARS reporting and laboratory specimen submission.**Purpose:** To add severe acute respiratory syndrome to the communicable disease list.**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-41-03-00005-P, Issue of October 15, 2003.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Monkeypox**I.D. No.** HLT-47-03-00003-A**Filing No.** 176**Filing date:** Feb. 10, 2004**Effective date:** Feb. 25, 2004

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

Action taken: Amendment of sections 2.1 and 2.5 of Title 10 NYCRR.**Statutory authority:** Public Health Law, sections 225(4), (5)(a), (g), (h), (i) and 206(1)(d) and (e)**Subject:** Monkeypox.**Purpose:** To require reporting of suspected cases of monkeypox.**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-47-03-00003-P, Issue of November 26, 2003.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

Action taken: Amendment of Part 152 (Regulation 124) of Title 11 NYCRR.**Statutory authority:** Insurance Law, sections 201, 301 and 2342(d) and (e); and L. 2002, ch. 1, part A, section 42, as amd. by L. 2002, ch. 82, part J, section 16**Finding of necessity for emergency rule:** Preservation of general welfare.**Specific reasons underlying the finding of necessity:** Section 42 of Part A of Chapter 1 of the Laws of 2002, requires that any physician, surgeon or dentist who wants to participate in the excess medical malpractice insurance program established by the Legislature in 1986 must participate in a proactive risk management course. Section 42 authorized the Superintendent to promulgate regulations that provide for the establishment and administration of such plans. Section 42, as originally enacted on January 25, 2002, established an effective date of July 1, 2003 for participation in these courses. However, on May 29, 2002, Section 16 of Part J of Chapter 82 of the Laws of 2002 was enacted and the effective date was amended to July 1, 2002.

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

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

Subject: Physicians and surgeons professional insurance merit rating plans.**Purpose:** To establish guidelines and requirements for medical malpractice merit rating plans and risk management plans.**Substance of emergency rule:** Section 152.1 is amended by adding paragraph (e) which details the statutory authority for proactive risk management programs.

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire May 3, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Anna Lemecha, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5128, e-mail: alemecha@ins.state.ny.us**Regulatory Impact Statement**

1. Statutory authority: Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law, and to effectuate any power granted under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2343(d) provides that the Superinten-

Insurance Department

EMERGENCY RULE MAKING

Physicians and Surgeons Professional Insurance Merit Rating Plans**I.D. No.** INS-08-04-00002-E**Filing No.** 165**Filing date:** Feb. 4, 2004**Effective date:** Feb. 4, 2004

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

dent shall, by regulation, establish a merit rating plan for physicians professional liability insurance. Section 2343(e) provides that the Superintendent may approve malpractice insurance premium reductions for insured physicians who successfully complete an approved risk management course, subject to standards prescribed by the Superintendent by regulation. Section 42 of Part A of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002, requires that all physicians, surgeons and dentists participating in the excess medical malpractice insurance program established by the Legislature in 1986 participate in a proactive risk management program. Section 42 authorizes the Superintendent to promulgate regulations which provide for the establishment and administration of these risk management courses.

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

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

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

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

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

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

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

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

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

In addition, insured physicians taking the Internet-based courses would not incur any transportation expenses that are associated with attending lecture format risk management courses. Furthermore, physicians would

not have to schedule time away from their practice since these courses could be taken on line at virtually any time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

Although they are not regulated parties, this part affects physicians, surgeons and dentists, some of whom may be considered small businesses, since they are required to attend proactive risk management courses if they wish to be eligible to participate in the excess medical malpractice insurance program. This may entail scheduling time away from their medical practice in order to participate in these courses. However, it should be

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

course will qualify both for continuing medical education and for participation in the excess medical malpractice insurance program.

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

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

Job Impact Statement

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

EMERGENCY RULE MAKING

Claim Submission Guidelines for Medical Service and Hospital Claims Submitted in Paper Form

I.D. No. INS-08-04-00003-E

Filing No. 166

Filing date: Feb. 4, 2004

Effective date: Feb. 4, 2004

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

Action taken: Addition of Part 230 (Regulation 178) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 2402, 2404, 2601, 3201, 3216, 3217, 3221, 3224, 3224-a, 4235, 4303, 4304, 4305, 4321 and 4322

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

Specific reasons underlying the finding of necessity: The Insurance Department has received over 88,000 complaints against HMOs and insurers concerning late payment of claims since the prompt payment statute (Chapter 666 of the Laws of 1997) became effective in 1998. The Insurance Department has levied monetary penalties against insurers and HMOs for untimely payment and untimely denial of claims for health care services.

The health care industry and the insurance industry have conflicting views concerning the manner in which the prompt payment statute should be administered. Insurers and HMOs would prefer the imposition of penalties based on general business practices instead of being based on a per claim violation. The healthcare industry believes that timeframes for payments should be shortened and more fines should be assessed. Providers contend that they continue to carry large amounts of receivables on their books; insurers and HMOs contend that providers are submitting claims that are less than complete, requiring requests for basic information that should have been included on the claim form.

There are still many debates about what needs to be done in order to alleviate the disagreement over whether the prompt payment statute has been an effective tool in resolving some of the issues that led to its enactment.

The Insurance Department convened the Healthcare Roundtable in order to foster discussion and agreement between the health care providers and the health insurance industry. The Healthcare Roundtable is comprised of associations that represent providers, insurers and HMOs. As a result of the Roundtable discussions, the health insurance industry and the health care providers reached agreement on what information must be included in a claim form to make it ready for processing. Roundtable meetings are still continuing, and will discuss additional changes that are necessary to streamline and effectuate the prompt payment requirements. This regulation must be promulgated as an emergency measure so that, as discussions continue, the clean claim parameters can be put in place and assessed by

the Roundtable to determine what other claim payment guidelines are needed.

This agreement referred to above on the claim payment guidelines component of the prompt payment process is being memorialized in a regulation, which should go a long way in developing a healthy relationship between the health care provider community and the health insurance industry. This regulation will ensure that claims are adjudicated more quickly and could help to ensure continued financial viability of certain health care providers.

Subject: Claim submission guidelines for medical service and hospital claims submitted in paper form.

Purpose: To create claim payment guidelines based on agreement with the industry on what is needed in order to determine when a health care insurance claim is considered complete and ready for payment.

Text of emergency rule: A new Part 230 of Chapter IX of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 178), entitled "Prompt Payment Of Health Insurance Claims", is adopted to read as follows:

Section 230.1. Claim submission guidelines. A claim for payment of medical or hospital services submitted on paper shall be deemed complete if it contains the minimum data elements set forth below. If the minimum data elements set forth below are not present or accurate, the payer may, but need not, adjudicate the claim if the payer can determine, based on the information submitted, whether such claim should be paid or denied. Even if the claim is deemed complete, a payer may, pursuant to the provision of Section 3224-a(b) of the New York Insurance Law, request specific additional information, distinct from information on the claim form, necessary to make a determination as to its obligation to pay such claim. For the purposes of this regulation, "payer" shall mean an insurer licensed pursuant to Articles 32, 42 and 43 of the Insurance Law or an entity certified pursuant to Article 44 of the Public Health Law.

(a) In the case of a medical claim submitted on the national standard form known as a CMS 1500 (previously known as HCFA 1500 (New York State)), attached as an appendix (Appendix 18-C, infra), the claim shall contain at least the items in the following fields of the claim form, except as otherwise provided below:

- 1a. Insured's I.D. Number*
- 2. Patient's Name*
- 3. Patient's Date of Birth and Gender*
- 4. Insured's Name (Last Name, First Name)*
- 5. Patient's Address*
- 9. Other Insured's Name (if appropriate)*
- 9a. Other Insured's Policy or Group Number (if appropriate)*
- 9b. Other Insured's Date of Birth and Gender (if appropriate)*
- 9c. Employer's Name or School Name (if appropriate)*
- 9d. Insurance Plan Name or Program Name (if appropriate)*
- 10a. Is Patient's Condition Related to Employment?*
- 10b. Is Patient's Condition Related to Auto Accident?*
- 10c. Is Patient's Condition Related to Other Accident?*
- 11. Insured's Policy, Group or FECA Number if provided on ID Card*
- 11d. Is There Another Health Benefit Plan?*
- 12. Patient's or Authorized Person's Signature (Can be completed by writing "signature on file" where appropriate)*
- 13. Insured's or Authorized Person's Signature (if appropriate)*
- 17. Name of Referring Physician or Other Source (if appropriate)*
- 17a. I.D. Number of Referring Physician (if appropriate)*
- 18. Hospitalization Dates Related to Current Services (if appropriate)*
- 21. Diagnosis or Nature of Illness or Injury*
- 24A. Dates of Service*
- 24B. Place of Service*
- 24D. Procedures, Services, or Supplies*
- 24E. Diagnosis Code (refer to item 21)*
- 24F. \$ Charges*
- 24G. Days or Units (for Durable Medical Equipment) (if appropriate)*
- 25. Federal Tax I.D. Number*
- 28. Total Charge*
- 29. Amount Paid (if appropriate)*
- 30. Balance Due*
- 31. Signature of Physician or Supplier Including Degrees or Credentials (if not already on file, except as required by applicable Federal and State laws)*
- 32. Personal Identifying Number of the particular practitioner rendering the care plus, if practicing in a group, the Identifying Number of the group as well.*

For items listed above with the notation "(if appropriate)" the generic nature of the standard claim form produces some instances when the information is not relevant in a particular instance. In those cases, the insurer shall not insist upon completion of that item if the information is not relevant to the situation of that particular practitioner or patient or the information will not be used by the insurer. If an item is not applicable at all, it should be left blank rather than inserting a notation that it is not applicable.

(b) In the case of a hospital claim submitted on the national standard form HCFA 1450 (previously known as UB-92), attached as an appendix (Appendix 25, *infra*) and incorporated herein by reference, the claim shall contain at least the items in the following fields of the claim form, except as otherwise provided below:

1. Provider Name and Address
3. Patient Control Number
4. Type of Bill
5. Federal Tax Number
6. Statement Covers Period
7. Covered Days (if appropriate) (interim bill, etc.)
8. Non-Covered Days (if appropriate)
9. Coinsurance Days (if appropriate)
10. Lifetime Reserve Days (if appropriate)
11. Newborn Birthweight (if appropriate)
12. Patient Name
13. Patient Address
14. Patient Birthdate
15. Patient Sex
17. Admission Date
18. Admission Hour
19. Type of Admission
22. Discharge Status Code
42. Revenue Codes
43. Revenue Description
44. HCPCS/CPT4 Codes
45. Service Date
46. Service Units
47. Total Charges By Revenue Code
48. Non-Covered Charges
50. Payer Name
51. Provider ID
54. Other Insurance Payment (if appropriate)
55. Estimated Amount Due (if appropriate)
58. Insured's Name
59. Patient Relationship
60. Patient's Cert. SSN - HIC - ID No.
62. Insurance Group Number (if on card) (where appropriate)
67. Principal Diagnosis Code
68. Code
69. Code
70. Code
71. Code
72. Code
73. Code
74. Code
75. Code
76. Admitting Diagnosis Code
77. E-Code
78. DRG #
79. P.C.
80. Principal Procedure Code and Date
81. Other Procedures Code and Date
82. Attending Physician's ID Number

For items listed above with the notation "(if appropriate)" the generic nature of the standard claim form produces some instances when the information is not relevant in a particular instance. In those cases, the insurer shall not insist upon completion of that item if the information is not relevant to the situation of that particular practitioner or patient or the information will not be used by the insurer. If an item is not applicable at all, it should be left blank rather than inserting a notation that it is not applicable.

(c) The list set forth in subdivision (a) of this section shall apply to all claims submitted on paper subject to this section, regardless of whether the policy form is health insurance issued by an insurer pursuant to Articles 32, 42 or 43 of the Insurance Law or coverage issued by an entity with a certificate of authority issued pursuant to Article 44 of the Public Health

Law. Nothing in this Part shall prohibit an insurer or entity with a certificate of authority issued pursuant to Article 44 of the Public Health Law from electing to accept some or all claims with less information than the complete list above.

(d) For the purposes of this section, the term "submitted on paper" shall include claims submitted via non-electronic format, such as mail and facsimile.

Appendix 18-C of Title 11 is amended to read as follows:

(See Appendix in the back of this issue.)

A new Appendix 25 of Title 11 is adopted to read as follows:

(See Appendix in the back of this issue.)

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 May 3, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Terri Marchon, Insurance Department, 25 Beaver St., New York, NY 10004-2319, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: The Superintendent's authority for the adoption of Part 230 of Title 11 (Regulation 178) is derived from Sections 201, 301, 1109, 2402, 2404, 2601, 3201, 3216, 3217, 3221, 3224, 3224-a, 4235, 4303, 4304, 4305, 4321 and 4322 of the Insurance Law.

Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the Superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization (HMO) and its subscribers. Section 2402 authorizes the Superintendent to levy civil penalties as a separate violation for each violation of Section 3224-a. Section 2404 authorizes the Superintendent to levy civil penalties against any person for failure to provide a good faith response to request for information. Section 2601 sets forth the unfair claims settlement practices that are prohibited by the statute. Section 3201 authorizes the Superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 3224-a sets forth the timeframes and penalties for untimely payment of undisputed claims for health care services under contracts issued pursuant to Articles 32, 42 and 43 of the Insurance Law and Article 44 of the Public Health Law. Section 3224 gives the Superintendent the authority to establish a standard claim form for physicians or other health care providers to be used for accident and health insurance claims. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts written by non-profit corporations. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by non-profit corporations. Sections 4321 and 4322 establish standards for individual direct payment contracts issued by health maintenance organizations.

2. Legislative Objectives: Chapter 666 of the Laws of 1997 amended the Insurance Law relating to the settlement of claims for health care and payment for health care services and took effect January 22, 1998. The law was intended to set timeframes within which insurers and HMOs must pay undisputed claims for health care services submitted by subscribers and health care providers. The legislation prescribed penalties in the form of interest payable on claims paid later than 45 days. The law also amended Section 2402 and gave the Superintendent the power to levy monetary penalties against insurers and HMOs for their failure to pay undisputed claims within 45 days of receipt, or untimely denials of claims, or for requesting additional information needed to process the claim beyond 30 days of receipt of the claim. The Insurance Department established mechanisms for accepting complaints from health care providers and created

procedures for levying monetary penalties against insurers and HMOs for violation of the prompt payment statute.

Since January of 1998, the Department has received over 88,000 complaints from health care providers against HMOs and insurers regarding the timely payment of health care claims. The Department has collected monetary penalties of approximately 5 million dollars from insurers and HMOs for violations of Section 3224-a of the Insurance Law. Insurers and HMOs have altered their processes to accommodate the handling of large volumes of complaints generated as a result of the prompt payment statute.

Since 1998, several bills have been sponsored by providers in attempts of tightening the timeframe requirements for timely claim payments and increasing the penalties for non-compliance with prompt payment requirements. Conversely, insurers and HMOs have sponsored legislation attempting to establish a general threshold of substantial compliance only, beyond which monetary penalties would be assessed.

3. Needs and Benefits: Prompt payment laws have been enacted in a number of states with varying degrees of penalties. There are many debates amongst the various associations that represent health care providers, insurers and HMOs regarding when a claim is determined to be clean and therefore ready for payment.

The Superintendent of Insurance convened the Healthcare Roundtable to encourage dialogue between the various associations representing health care providers, insurers and HMOs in order to ameliorate many of the issues surrounding what constitutes a clean or undisputed claim, with agreement to discuss more challenging issues at a later date. The Roundtable agreed that it must first set parameters for determining the information required to be included in a claim form for it to be considered complete. The group agreed that the guidelines established by the State of Connecticut in the form of a regulation, would assist in resolving much of the discussion surrounding the information or data fields that must be included in a claim form in order for it to be considered complete.

The attached regulation is the result of several meetings, discussions and agreements, and represents a consensus of the Healthcare Roundtable. Members of the Roundtable include the Medical Society of the State of New York, The Healthcare Association of New York, The Greater New York Hospital Association, The Conference of Blue Cross Blue Shield Plans, the Health Plan Association, the American College of Obstetricians and Gynecologists, and various provider representatives.

The following is a brief description of how the proposed regulation is consistent with the legislative intent.

The statement in support of the legislation indicates that HMOs and insurers do not pay claims and bills in a timely fashion, to the detriment of providers and patients alike. Before the enactment of the prompt payment statute, existing law did not require insurers and HMOs to pay specific claims or bills for health care services within any particular timeframe. Neither did existing law require interest on unpaid claims or bills for health care services. The lack of specific statutory provisions encouraged payers to delay payments to take advantage of interest, which can be earned on the moneys being withheld from payment. The intent of the prompt payment law is to provide protection to both patients and health care providers relative to the timely payment of claims by insurers and HMOs. The powers granted to the Superintendent of Insurance to investigate and enforce compliance with the prompt payment requirements established by the law as well as the interest and penalty sanctions established by the law, help assure that payments are made in a timely fashion.

Prior to the legislation, there were generally no repercussions for paying claims late. Healthcare providers complained that there were no incentives or penalties for honoring claims, and hospitals were accumulating large receivables because insurers paid late. Since the enactment of the legislation, the argument has changed to a discussion of what the necessary elements are for a substantially complete claim. Insurers and HMOs contend that providers are filing complaints with the Insurance Department for late payment of claims when in many instances the claims submitted are deficient.

The State of Connecticut recognized that guidelines were required in order to determine those instances where the insurer or HMO had all of the information necessary to pay the claim but paid the claim late nonetheless. This regulation is similar to Connecticut's in that the parameters are clear and consistent with the healthcare claims process for provider claims submitted on paper. This regulation is also based on agreement with the industry on what needs to be accomplished to curtail the arguments on whether the claim in question is complete.

4. Cost: Any cost associated with implementing the claims payment guidelines was established by statute and has already been incurred by insurers, who readied their claims processing functions in early 1998 in

order to process claims within the requisite timeframes. In fact, insurers have already established procedures to handle the increased number of complaints filed by health care providers. Insurers and HMOs believe that the clean claim provisions in this proposed regulation will prevent providers from submitting unnecessary complaints to the Insurance Department regarding claims that are deficient. The prevention of such a practice could also serve to reduce costs to regulated parties and the Department.

5. Local Government Mandates: The proposed regulation does not impose any new mandates on any county, city, town, village, school district or fire district.

6. Paperwork: The proposed regulation does not impose any reporting requirements on insurers, HMOs, or health care providers. No additional paperwork will be required from insurers, HMOs or health care providers, other than what is already required by statute.

7. Duplication: The proposed regulation does not overlap or duplicate any other state regulations, or federal mandates.

8. Alternatives: Interest groups representing providers and payers met on numerous occasions to develop the parameters for determining what constitutes a substantially complete claim. There are no alternative approaches to resolving the discussion other than the agreement reached between the provider associations, and the health insurer and HMO associations. These interested parties prefer that the agreement should be memorialized in a regulation.

9. Federal Standards: There are no federal laws that require timely payment of undisputed health care claims. There is a new claims payment regulation issued by the United States Department of Labor, which relates to the processing of claims under employer group contracts, but the federal regulation does not address timely payment of health care claims.

10. Compliance Schedule: Since interested parties representing providers, HMOs, and insurers developed the regulation, these parties are aware of the regulatory provisions and will be able to bring practices into compliance with the requirements. Insurers and HMOs are ready to accept the guidelines, as they will improve insurers' and HMOs' relationships with the provider community, which is essential for the viability of health insurance in New York State.

Regulatory Flexibility Analysis

1. Effect of the Rule: The regulation will affect HMOs and insurers paying claims under contracts written pursuant to Articles 32, 42, and 43 of the Insurance Law and Article 44 of the Public Health Law. Insurers licensed to do business in New York do not fall within the definition of small business found in Section 102(8) of the State Administrative Procedures Act. The regulation will also affect health care providers submitting claims for payment for health care services submitted on the CMS 1500 claim form and the CMS 1450 form. It sets forth guidelines for determining when a claim is considered complete and ready for processing. This regulation is the result of meetings with the health care providers and insurers and HMOs, and represents a consensus finally reached between the Department and various interested parties on what needs to be accomplished in order for a claim to be considered substantially complete. The regulation could affect small businesses that are comprised of health care providers. The regulation does not apply to or affect local governments.

2. Compliance Requirements: Prompt payment reporting, recordkeeping and other compliance requirements are imposed by statute. Insurers and HMOs are already paying claims for healthcare services to providers. There are no compliance requirements for local governments. There are no compliance requirements for small businesses including health care providers other than clarifying what constitutes a substantially complete claim.

3. Professional Services: Insurers and HMOs are not required to obtain professional services to comply with this regulation. Providers do not have to obtain additional professional services as a result of this regulation.

4. Compliance Costs: The implementing legislation requires that insurers and HMOs pay undisputed claims within 45 days of receipt, or deny the claim, or request additional information within 30 days of receipt. Insurers and HMO are already responding to the mandates of the prompt payment statute. This regulation is requested by interested parties in order to establish the framework for what is considered a substantially complete claim that is ready for processing. The regulation does not impose any additional cost to HMOs and insurers. As a result of this regulation, insurers and HMOs will need to request additional information less frequently, reducing their costs of processing claims.

5. Economic and Technological Feasibility: The regulation is designed to foster better understanding among interested parties about what is needed to speed the processing of health care claims. Adherence on the part of the health care provider will speed the processing of health care

claims and curtail the various requests from insurers and HMOs for additional information.

6. Minimize Adverse Impact: The regulation minimizes the adverse impact on health care providers, many of which are small businesses. If claims are substantially complete when submitted, HMOs and insurers do not need to request additional information. Consequently, payment to providers will be faster, resulting in lower receivables on the books of health care providers. Differing compliance timetables or exemption from coverage by the regulation is not feasible given existing statutory requirements for prompt payment of claims.

7. Small Businesses and Local Government Participation: Notification of the Department's intent to propose the regulation was included in the Department's regulatory agenda, accessible to small businesses and local governments. Interested parties representing HMOs, insurers and providers developed the regulation during meetings convened by the Department and therefore had an opportunity to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and Estimated Number of Rural Areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Health care providers in New York State are comprised of mostly physicians, but include other health care providers in individual practices or small groups throughout the state.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: This regulation requires no additional recordkeeping or reporting by insurers or HMOs other than that which they are required to perform by statute. Although health care providers are being asked to include certain elements on the claim form to make it substantially complete, these elements have always been required by HMOs and insurers for claims that are submitted on paper by health care providers. The regulation will not add any new reporting requirements for health care providers, and professional services will not be needed to comply with the proposed regulation.

3. Costs: Any cost in relation to the prompt payment of claims was imposed by statute. Insurers and HMOs are already responding to the mandate of the statute. It is also anticipated that payments for healthcare services will get to health care providers faster resulting in lower amounts of receivables being carried as assets by healthcare providers, and a faster infusion of money into the community.

4. Minimize Adverse Impact: Because the same requirements apply to both rural and non-rural entities, the regulation will impact all affected entities the same. In fact, the regulation has the potential to decrease insurers' and HMOs' expenses, possibly reducing rate increase requests. It will also accelerate payment to providers for the delivery health care services. This acceleration of payment will help in keeping local doctors in family practice in their respective communities, and will foster consumers' continued access to health care providers.

5. Rural Area Participation: Notification of the Department's intent to propose the regulation was included in the Department's regulatory agenda. In addition, interested parties representing HMOs, insurers and providers, potentially located in rural areas, discussed the regulation during meetings convened by the Department and therefore had an opportunity to participate in the rule making process.

Job Impact Statement

This regulation will not adversely affect jobs or employment opportunities in New York State. The regulation is intended to improve the relationship between payers and providers, ultimately getting payment to providers more quickly, and keeping providers in their communities. As a result of the regulation, insurers will spend less time requesting information from health care providers. The regulation will also ease the confusion surrounding whether insurers have exercised bad faith in requesting additional information.

There is no anticipated adverse impact on job opportunities in this state.

NOTICE OF WITHDRAWAL

Comprehensive Motor Vehicle Insurance Reparatons Act

I.D. No. INS-50-03-00006-W

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

Action taken: Notice of proposed rule making, I.D. No. INS-50-03-00006-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 17, 2003.

Subject: Regulations implementing the Comprehensive Motor Vehicle Insurance Reparatons Act.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Motor Vehicle Insurance Reparatons Act

I.D. No. INS-08-04-00006-P

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

Proposed action: This is a consensus rule making to amend Subpart 65-3 (Regulation 68-C) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and art. 51

Subject: Regulations implementing the Comprehensive Motor Vehicle Insurance Reparatons Act.

Purpose: To conform the fraud warning statement contained in no-fault claim forms with the current statutory language as contained in Regulation 95; amend any incorrect references and typographical errors; and present the forms in a more easily readable format.

Substance of proposed rule (Full text is not posted on a State website): All prescribed No-Fault claim forms have been amended to conform the fraud warning statement with the text as revised in the Fourth Amendment to Regulation 95 as currently written in Part 86 of this Title; the No-Fault denial of claim form has been amended to include additional Insurance Department locations to conform with the Tenth Amendment to Regulation 64 as currently written in Part 216 of this Title; and to amend any incorrect references, addresses and typographical errors and to present the forms in a more easily readable format.

In addition, Form AR — Arbitration Request Form has been withdrawn from the Appendix. This has been done to conform with the First Amendment to Regulation 68-D, Part 65-4 which permits the designated organization to prescribe the arbitration request form's content while permitting the Superintendent to approve it before it is used. As such, the American Arbitration Association has developed its own arbitration request form that is used by the parties who file for No-Fault arbitration.

Text of proposed rule and any required statements and analyses may be obtained from: Anna Lemecha, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5128, e-mail: alemecha@ins.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.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written since all prescribed No-Fault claim forms have been amended to conform the fraud warning statement with the text as revised in the Fourth Amendment to Regulation 95 as currently written in Part 86 of this Title; the No-Fault denial of claim form has been amended to include additional Insurance Department locations to conform with the Tenth Amendment to Regulation 64 as currently written in Part 216 of this Title; changes were made to amend any incorrect references, addresses and typographical errors; and the forms were amended to be presented in a more easily readable format.

In addition, Form AR — Arbitration Request Form has been withdrawn from the Appendix. This has been done to conform with the First Amendment to Regulation 68-D, Part 65-4, which permits the designated organization to prescribe the arbitration request form's content while permitting the Superintendent to approve it before it is used. As such, the American Arbitration Association has developed its own arbitration request form that is used by the parties who file for No-Fault arbitration.

A prior consensus rule was also withdrawn because inaccurate information was contained in page two of Form NF-1B regarding the proof of claim references for bill submissions and wage loss.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely amends No-Fault claim forms to conform with the current applicable statutory and regulatory requirements relating thereto.

Division of the Lottery

EMERGENCY RULE MAKING

Video Lottery Gaming

I.D. No. LTR-08-04-00005-E

Filing No. 168

Filing date: Feb. 6, 2004

Effective date: Feb. 6, 2004

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

Action taken: Addition of Part 2836 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1617-a

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

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

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

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

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

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

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

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

loss in aid to education of approximately \$1 to \$4 million per week which would have to be made up from other state revenues.

Subject: Video lottery gaming.

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

Substance of emergency rule:

Chapter 383 of the Laws of 2001 as amended by Chapter 85 of the Laws of 2002, as amended by Chapter 62 of the Laws of 2003, codified as § 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks around New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 5, 2004.

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

Regulatory Impact Statement

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

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

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

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

While the Division considers video lottery gaming to be very similar to other lottery games that the Division has successfully conducted for over twenty-five years, some components set it apart from those more traditional games. For example, most of the Division's current licensed agents

are food and beverage retailers. Video lottery gaming will require the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key employees, and employees.

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

A Notice of Proposed Rulemaking was published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Because of this, and based on comments received during the public comment period, it was necessary to revise the proposed regulations. These emergency regulations include the revisions. By way of example, sections were added authorizing the issuance of badges for temporary employees, expressly setting forth a procedure to request exemption from the regulations, and authorizing the video lottery gaming agents to use Division logos and other copyrighted material to advertise and promote video lottery gaming at the licensed facilities.

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

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

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

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

According to data provided by the racetracks, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will approximate \$240 million if all eligible venues participate. Each racetrack's proposed project differs. The cost for each facility ranges from \$4 million to over \$100 million dollars. The regulations require video lottery gaming agents housing over 2500 terminals to equip the facility with an alternate emergency power source. It is estimated that this could cost those agents an additional \$250-\$300 per video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electrical and communication upgrades.

The racetracks will incur certain labor costs associated with operating video lottery gaming. The gaming facilities throughout the state are expected to employ upwards of a total estimated 1,900 people. Individual gaming agents will be employing approximately 70 to 700 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries ranging from \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs that will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. It is anticipated that most of these controls will be established through suffi-

cient experienced racetrack personnel. Additional external auditing costs are expected to average approximately \$65,000 annually.

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

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

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

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

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

Vendors supplying goods or services not directly related to gaming must register to do business with the video lottery gaming agents. However, if their contracts exceed certain thresholds outlined in the regulations, they will be required to undergo a full licensing procedure. In particular, non-gaming vendors will be required to submit license applications if any of the following conditions exist:

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

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

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

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

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

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

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

8. Alternatives: In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Division has spent a considerable amount of time since the legislation was signed studying video lottery gaming venues in other states, namely, Delaware, Rhode

Island, and West Virginia. In some respects, the video lottery gaming design in these regulations is modeled on those states; however, there are significant differences. For example, the video lottery games and the video lottery terminals are designed to meet specific legal requirements unique in this state.

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

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

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

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

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

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

As a result of this outreach effort, a number of revisions were made and included in the first proposed regulations published in July 2003. The public comment period which followed elicited a number of comments primarily from prospective licensees. Many of those comments proved valuable in drafting these emergency regulations which both meet the needs of the regulated community while maintaining the high standards established by the Division to operate and regulate its games. All comments received are available for public review by contacting Susan E. Beaudoin, Esq., Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, New York 12301 or by calling 518-388-3408 or e-mailing to sbeaudoin@lottery.state.ny.us.

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

As another alternative, the Division entered into a Memorandum of Understanding with the Racing and Wagering Board to avoid potential duplicative licensing requirements for the racetrack employees.

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

Based on forecasted estimates provided by the racetracks themselves, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will exceed \$240 million if all eligible venues participate. Each facility's proposed project differs. The cost for each facility ranges is from \$4 million to over \$100 million dollars. The regulations require video lottery gaming agents housing over 2,500 terminals to equip the facility with an alternate emergency power source. It is estimated that this will cost those agents an additional \$250-\$300 per installed video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The gaming facilities throughout the state are expected to employ upwards of a total estimated 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual hourly salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

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

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

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

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

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

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

tion of the Notice of Proposed Rulemaking on July 16, 2003, the Lottery received numerous comments mostly from prospective licensees, during the public comment period. These emergency regulations include revisions made to the regulations as a result of that comment period.

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

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

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ upwards of 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

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

Section 29.8, right to audit, the Finance Director is the appropriate fiscal officer, and the County Attorney is the appropriate legal officer of the County of Tompkins referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be [\$2.50] \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and [\$2.50] \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Tompkins County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be [\$2.50] \$10.00 per annum. *The increased fees provided for in Local Law No. 2 of 2003 shall apply to original registrations made on or after May 1, 2004 and upon renewal of registrations expiring on and after July 1, 2004.*

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

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Consensus Rule Making Determination

This proposed regulation would amend new 15 NYCRR Part 29.12(g) to provide for an increase in the Tompkins County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the *Commissioner must* collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

Tompkins County already has a use tax in effect. Pursuant to Local Law No. 2 of 2003, the Commissioner is required to collect an increased tax. The tax shall be five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. Previously, the tax was \$2.50. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Tompkins County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the collection of the Tompkins County Use Tax by DMV shall have no impact on job opportunities in New York State.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tompkins County Motor Vehicle Use Tax

I.D. No. MTV-08-04-00004-P

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

Proposed action: This is a consensus rule making to amend section 29.12(g) of Title 15 NYCRR.

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

Subject: Tompkins County motor vehicle use tax.

Purpose: To increase the tax.

Text of proposed rule: Subdivision (g) of section 29.12 is amended to read as follows:

(g) Tompkins County. The Tompkins County [Board of Representatives] *Legislature* adopted Local Law No. [3] 2 on May 20, 2003 [on July 25, 1995], *amending Local Law No. 3 of 1995* to establish a Tompkins County Special Motor Vehicle Use Tax. The Chairman of the [Board of Representatives of] Tompkins County *Legislature* entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part [on November 30, 1995], for the collection of such tax on original registrations made on and after December 1, 1995 and upon the renewal of registrations expiring on and after February 1, 1996. The [Chairman of the Board of Representatives] *County Treasurer* of Tompkins County is the appropriate fiscal officer, except that, (i) for the purposes of Section 29.5, deposit of taxes, the Finance Director is the appropriate fiscal officer, and (ii) for the purpose of

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Nassau County Motor Vehicle Use Tax

I.D. No. MTV-08-04-00008-P

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

Proposed action: This is a consensus rule making to amend section 29.12(c) of Title 15 NYCRR.

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

Subject: Nassau County motor vehicle use tax.

Purpose: To increase the tax.

Text of proposed rule: Subdivision (c) of section 29.12 is amended to read as follows:

(c) Nassau County. The Nassau County [Board of Supervisors] *Legislature* adopted Local Law [No. 14 on December 16, 1991] 1-2004, which Local Law was approved by the County Executive on [December 17, 1991] *January 29, 2004*, to establish a Nassau County Special Motor Vehicle Use Tax. The County Executive of Nassau County entered into an

agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part [on January 22, 1992,] for the collection of such tax on original registrations made on and after [March 1, 1992] *May 1, 2004* and upon the renewal of registrations expiring on and after [April 18, 1992] *July 1, 2004*. The County [Executive] *Treasurer* is the appropriate fiscal officer, [except that, (i) for the purposes of Section 29.5(a), deposit of taxes, the County Comptroller is the appropriate fiscal officer, and (ii) for the purpose of Section 29.8, right to audit, the County Comptroller is the appropriate fiscal officer,] and the County Attorney is the appropriate legal officer of the County of Nassau referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be [\$5] \$15 per annum on such motor vehicles [weighing 3500 lbs. or less and \$10 per annum for such motor vehicles weighing in excess of 3500 pounds]. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Nassau County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be [\$10.00] \$40 per annum.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Consensus Rule Making Determination

This proposed regulation would amend 15 NYCRR Part 29.12(c) to provide for an increase in the Nassau County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

Nassau County already has a use tax in effect. Pursuant to the authority contained in Chapter 685 of the Laws of 2003 and Local Law 1-2004 of 2004, the Commissioner is required to collect an increased tax. The tax shall be fifteen dollars per annum on passenger vehicles, and forty dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Nassau County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the collection of the Nassau County Use Tax by DMV shall have no impact on job opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Property by New York State Electric and Gas Corporation

I.D. No. PSC-36-03-00015-A

Filing date: Feb. 4, 2004

Effective date: Feb. 4, 2004

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

Action taken: The commission, on Jan. 21, 2004, adopted an order in Case 03-M-1150, approving with conditions New York State Electric & Gas Corporation's (NYSEG) request to sell its Court Street building and property located in Binghamton.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To allow NYSEG to sell property that is no longer required for transactions.

Substance of final rule: The Commission authorized the sale of New York State Electric and Gas Corporation's building and property located at 267 Court Street in the City of Binghamton, Broome County to 267 Court Street, LLC, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-M-1150SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Flexible Rate Contracts between Electric Utilities and Business Customers

I.D. No. PSC-08-04-00009-P

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

Proposed action: As discussed in an order instituting proceeding issued Jan. 12, 2004 in Case 03-E-1761, the commission is considering updating the tariffs, policies and procedures for negotiating flexible rate contracts between electric utilities and business customers in order to properly promote economic development. The commission may adopt, modify or reject, in whole or in part, policies and procedures on the issues raised in its Jan. 12, 2004 order.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (2), (5), (12), (12-b), (12-c) and (14)

Subject: Flexible rate contracts between electric utilities and business customers.

Purpose: To update the policies and procedures for negotiating flexible rate contracts between electric utilities and business customers.

Substance of proposed rule: As discussed in an Order Instituting Proceeding issued January 12, 2004 in Case 03-E-1761, the Commission is considering updating the tariffs, policies and procedures for negotiating flexible rate contracts between electric utilities and business customers in order to properly promote economic development. The Commission may adopt, modify or reject, in whole or in part, policies and procedures on the issues raised in its January 12, 2004 Order.

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

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

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

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

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

(03-E-1761SA1)

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

Submetering of Electricity by Rachel Bridge Corporation

I.D. No. PSC-08-04-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by Rachel Bridge Corporation to submeter electricity at Rachel Bridge Apartments located at 1365 St. Nicholas Ave., 111 Wadsworth Ave., 1370 St. Nicholas Ave. and 260 Audubon Ave., New York, NY.

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

Subject: Submetering of electricity for existing master metered residential rental units owned or operated by private or government entities.

Purpose: To permit electric submetering at Rachel Bridge Apartments located at 1365 St. Nicholas Ave., 111 Wadsworth Ave., 1370 St. Nicholas Ave., and 260 Audubon Ave., New York, NY.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private or government entities according to established guidelines. The Owners of Rachel Bridge Apartments located at 1365 St. Nicholas Avenue, 111 Wadsworth Avenue, 1370 St. Nicholas Avenue and 260 Audubon Avenue, New York, NY, Rachel Bridge Corporation, have submitted a proposal to master meter and submeter this residential rental complex. The total electric building usage for this complex will be master metered and each unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at Rachel Bridge Apartments, located at 1365 St. Nicholas Avenue, 111 Wadsworth Avenue, 1370 St. Nicholas Avenue and 260 Audubon Avenue, New York, NY.

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

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

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

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

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

(04-E-0103SA1)

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

Submetering of Electricity by Dara Owners Corporation

I.D. No. PSC-08-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by Dara Owners Corporation to submeter electricity at Dara Gardens, located at 150-29 72nd Rd., Kew Garden Hills, New York, NY.

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

Subject: Submetering of electricity for existing master metered residential rental units owned or operated by private or government entities.

Purpose: To permit electric submetering at Dara Gardens, 150-29 72nd Rd., Kew Garden Hills, New York, NY.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private

or government entities according to established guidelines. The Owners at Dara Gardens, 150-29 72nd Road, Kew Garden Hills, New York, NY, Dara Owners Corporation, have submitted a proposal to master meter and submeter this residential rental complex. The total electric building usage for this complex will be master metered and each unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at Dara Gardens, 150-29 72nd Road, Kew Garden Hills, New York, NY.

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

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

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

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

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

(04-E-0104SA1)

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

Submetering of Electricity by Adam Jakubowicz

I.D. No. PSC-08-04-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by Adam Jakubowicz to submeter electricity at 410 W. 48th St., New York, NY.

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

Subject: Submetering of electricity for new master metered residential rental units owned or operated by private or government entities.

Purpose: To permit electric submetering at 410 W. 48th St., New York, NY.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private or government entities according to established guidelines. The Owner at 410 West 48th Street, New York, NY, Adam Jakubowicz, has submitted a proposal to master meter and submeter this multistory commercial building that will be expanded for new residential units. The total electric building usage for this complex will be master metered and each residential unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at 410 West 48th Street, New York, NY.

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

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

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

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

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

(04-E-0110SA1)

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

**Transmission Service Overcharges by the Village of Silver Springs
I.D. No. PSC-08-04-00013-P**

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Village of Silver Springs to use a refund related to transmission service overcharges by the New York State Electric and Gas Corporation to retire outstanding debt.

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

Subject: Transmission service overcharges.

Purpose: To allow the Village of Silver Springs to use a refund to retire outstanding debt.

Substance of proposed rule: The Village of Silver Springs is proposing to use proceeds from a refund related to transmission overcharges by the New York State Electric and Gas Corporation to retire outstanding debt.

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

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

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

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

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

(04-E-0117SA1)

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

**Waiver of Certain Requirements by Time Warner Cable of New York City
I.D. No. PSC-08-04-00014-P**

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

Proposed action: Petition of Time Warner Cable of New York City for a waiver of the requirements of 9 NYCRR 595.4(c)(ii) of the PSC rules and regulations.

Statutory authority: Public Service Law, section 595.4(c)(ii)

Subject: Request for a waiver of the requirements of 9 NYCRR 595.4(c)(ii).

Purpose: To permit Time Warner Cable of New York City to place one of its nine PEG access channels on a tier above basic service.

Substance of proposed rule: The Commission is considering whether to grant Time Warner Cable of New York City a waiver of the requirements of 9 NYCRR 595.4(c)(ii) to allow one of its nine PEG access channels to be placed on a service tier higher than Basic Service.

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

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

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

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

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

(04-V-0089SA1)

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

**Initial Tariff Schedule—Electronic Filing by Corbin Hill Water Corp.
I.D. No. PSC-08-04-00015-P**

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, Corbin Hill Water Corp.'s initial tariff schedule, P.S.C. No. 1—Water, to become effective July 1, 2004.

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

Subject: Initial tariff schedule—electronic filing.

Purpose: To approve the tariff schedule.

Substance of proposed rule: On February 3, 2004, Corbin Hill Water Corp. (Corbin Hill or the company), filed an electronic initial tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate to become effective July 1, 2004. Corbin Hill currently has no customers, but at full development will have 96 customers. Corbin Hill is located in the Corbin Hills Subdivision, Town of Highlands, Orange County. The company proposes a metered rate for quarterly usage of \$5.00 per thousand gallons for all usage over 9,000 gallons per quarter. There is also a quarterly service charge of \$75.00. The tariff defines when a bill will be considered delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge is \$25 during normal business hours Monday through Friday, and \$50.00 outside of normal business hours Monday through Friday and on weekends and public holidays. The company's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.nv.us) - located under the file room - Tariffs. The Commission may approve, modify or reject, in whole or in part, Corbin Hill's request.

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

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

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

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

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

(04-W-0115SA1)