

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

High Cost Home Loans

I.D. No. BNK-12-04-00017-E

Filing No. 278

Filing date: March 5, 2004

Effective date: March 8, 2004

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

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

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

Finding of necessity for emergency rule: Preservation of general welfare

Specific reasons underlying the finding of necessity: Chapter 626 of the Laws of 2002 became effective on April 1, 2003. Provisions of chapter 626, by the enactment of section 6-l of the Banking Law, affect the making of certain home mortgage loans, known as high cost home loans, on after the effective date. Part 41 of Title 3 NYCRR has governed the making of such loans prior to the effective date and is not in conformity with certain provisions of the chapter 626. also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by chapter 626. The revised Part 41 provides a comprehensive regulatory

scheme under which mortgage lenders and brokers will be able to make high cost home loans.

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

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

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

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

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

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

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

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

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

Section 41.1(g) is amended to substitute a definition of “borrower” for “obligor”.

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

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

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

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

Section 41.2(e) is amended to make certain technical revisions.

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

Section 41.3(a) is amended by adding a new disclosure requirement and revising the time limits pertaining to an existing disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability; to add certain conditions in order to determine that repayment ability has been “corroborated by independent verification”; and to substitute “borrower(s)” for “obligor(s)” where the term appears in the text.

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

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

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

Section 41.3(g) is amended to delete a reference to median family income and to revise certain references.

Section 41.4(a) is amended to revise certain time limits applicable to a disclosure requirement.

Section 41.4(b) is amended to make a technical revision.

Section 41.4(d) is amended to revise certain time limits applicable to a disclosure requirement and to clarify the location of the disclosure upon certain mortgage loan application forms.

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

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

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

Section 41.5(b)(5) is amended to revise the definition of packing to make it consistent with other revisions to Part 41 and to revise certain time limits applicable to a disclosure requirement.

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 2, 2004.

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

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

3. Needs and Benefits:

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

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

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

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

None.

8. Alternatives:

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

9. Federal standards:

In the initial promulgation of Part 41, the Banking Department stated the regulations established thresholds that were lower than the thresholds set by the Home Ownership Equity Protection Act (HOEPA). Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-l of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-l refers to certain—but not all—provisions of HOEPA that define points and fees. The amendments would adopt the thresholds and definition established by section 6-l.

10. Compliance schedule:

None. Any modification of existing disclosures or practices by lenders or brokers in regard to any cost home loans made on or after April 1, 2003 are the result of standards established by section 6-l of the Banking Law. Chapter 626, which enacted section 6-l, was approved on October 3, 2002, and brokers and lenders have had sufficient time to familiarize themselves with these standards and subsequently modify their disclosures and practices, if necessary, to comply with the standards of section 6-l. The revised provisions of Part 41 will assist brokers and lenders in complying with the section 6-l requirements.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certification in the Classroom Teaching Service

I.D. No. EDU-12-04-00013-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 80-1.2, 80-2.12, 80-2.13, 80-3.1, 80-3.5, 80-4.3, 80-5.6 and 80-5.13 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1), (2), and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1) and 3010 (not subdivided)

Subject: Technical changes in requirements for certification in the classroom teaching service.

Purpose: To clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

Text of proposed rule: 1. Subdivision (c) of section 80-1.2 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(c) The commissioner shall not issue provisional certificates valid for the classroom teaching service with an effective date that begins after February 1, 2004, [except that the] *unless otherwise specifically prescribed in this Part*. The commissioner may extend the effective date of a provisional certificate after February 1, 2004, pursuant to the requirements of section 80-1.6 of this Subpart.

2. Subdivision (d) of section 80-1.2 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(d) The commissioner shall issue initial and professional teachers' certificates valid for the classroom teaching service beginning with an effective date of September 1, 2004, *except that the commissioner may continue to issue provisional and permanent teachers' certificates valid for classroom teaching service as specifically prescribed in this Part*.

3. Subdivision (f) of section 80-2.12 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(f) This section shall apply to individuals applying for a provisional certificate on or after September 2, 1993, [and who apply prior to February 2, 2004] and upon such application qualify for such provisional certificate, *provided that the requirements of this Subpart apply to such candidates*.

4. Subdivision (e) of section 80-2.13 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(e) This section shall apply to individuals qualifying for a provisional certificate on or after September 2, 1993, [and who apply prior to February 2, 2004] and upon such application qualify for such provisional certificate, *provided that the requirements of this Subpart apply to such candidates*.

5. Subdivision (a) of section 80-3.1 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(a) Application of this Subpart.

(1) Candidates who apply on or after February 2, 2004 for teachers' certificates valid for classroom teaching service shall be subject to the requirements of this Subpart, *unless otherwise specifically prescribed in this Part, and except as prescribed in paragraph (2) of this subdivision*.

(2) Candidates who apply for permanent teachers' certificates in the classroom teaching service shall be subject to the requirements of Subpart 80-2 of this Part, provided that they have been issued a provisional teacher's certificate in the title for which the permanent certificate is sought [with an effective date that begins on or before February 1, 2004].

(3) . . .

6. Paragraph (2) of subdivision (a) of section 80-3.5 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(2) Limitations. The transitional A certificate shall authorize a candidate to teach only in a school district for which a commitment for employment has been made. [In addition, it shall only be valid as long as the candidate is matriculated in good standing in a teacher education program leading to the professional certificate, unless the candidate has completed such program.]

7. Subparagraph (ii) of paragraph (2) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(ii) The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination [language proficiency test in English and the target language] *bilingual extension assessment*.

8. Subparagraph (iii) of paragraph (3) of subdivision (d) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(iii) Applications for the statement of continued eligibility must be filed with the department [on or before February 1, 2004].

9. Paragraph (2) of subdivision (e) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(2) The candidate shall meet the requirements in each of the following [paragraphs] *subparagraphs*:

[(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in classroom teaching services authorizing instruction in career and technical education.]

[(ii)] (i) . . .

[(iii)] (ii) . . .

10. Subparagraph (iii) of paragraph (2) of subdivision (h) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(iii) Applications for the statement of continued eligibility must be filed with the department [on or before February 1, 2004].

11. Paragraph (2) of subdivision (j) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(2) The candidate shall satisfactorily complete 18 semester hours in *at least two additional sciences*.

12. Item (ii) of subclause (1) of clause (a) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills*.

13. Item (ii) of subclause (1) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills*.

14. Item (ii) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills*.

15. Item (ii) of subclause (1) of clause (d) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills*.

16. Paragraph (2) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(2) [A provisional certificate shall be issued for candidates who apply for the provisional teacher's certificate valid for classroom service on or before February 1, 2004, and who upon such application qualify for such provisional certificate effective on or before February 1, 2004.] Candidates who apply *and qualify for a transitional B certificate* on or before February 1, 2004 shall be issued a provisional certificate, upon meeting the requirements for the provisional certificate. Candidates who apply *and qualify for a transitional B certificate* after February 1, 2004 shall be issued an initial certificate, upon meeting the requirements for the initial certificate.

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by establishing requirements for certification in the classroom teaching service in the public schools of the State of New York.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

The amendment will clarify the applicability of the new certification requirements for the classroom teaching service, providing that the new certification requirements will apply to candidates who apply for certification on or after February 2, 2004, unless an exception is otherwise specifically set forth in the regulations. This is needed because a number of exceptions are stated in Part 80 that would permit candidates to meet the old requirements. These candidates already hold some type of certification, and are on the path to certification under the old requirements.

The amendment is needed to provide that candidates in the alternative certification programs who applied and qualified for a transitional B certificate on or before February 1, 2004 will be eligible to obtain a provisional certificate, upon meeting the requirements for the provisional certificate. Those applying and qualifying for the transitional B certification after February 1, 2004 will have to apply for the initial certificate and meet the new requirements. This change is necessary as matter of fairness to permit holders of the transitional B certificate who were already on track for obtaining a provisional certificate under the old requirements to obtain that certificate.

The amendment is needed to update the name of the examination for teaching assistants, the "Assessment of Teaching Assistant Skills," and to specify the correct name for the examination required for an extension in bilingual education, the "bilingual extension assessment." In addition it is needed to clarify the language for the general science extension to indicate that study is required in "at least" two additional sciences, rather than in just two additional sciences.

Finally, the amendment removes the requirement that a candidate for an extension in career awareness must hold a base teacher certificate in career and technical education. It also removes the requirement that holders of the transitional A certificate must be in a registered teacher education program. The transitional A certificates are in specific career and technical subjects within the field of agriculture, health or a trade (7-12) and are designed to permit career changes who hold an associate degree or high school education to enter the teaching field in these technical areas. The Department does not believe that either of the requirements proposed for removal are necessary.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process applications for individual evaluations.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose costs on regulated parties, including candidates for teacher certificates.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The amendment will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and provide all evidence of having met the requirements for the certificate sought, including the education and experience requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

The amendment clarifies and corrects omissions in requirements for certification in the classroom teaching service that went into effect on February 2, 2004. Candidates must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom

teaching service that became effective on February 2, 2004. The proposed amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or compliance requirements or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates for teaching certification in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

The amendment will clarify the applicability of the new certification requirements for the classroom teaching service, providing that the new certification requirements will apply to candidates who apply for certification on or after February 2, 2004, unless an exception is otherwise specifically set forth in the regulations.

The amendment will provide that candidates in the alternative certification programs who applied and qualified for a transitional B certificate on or before February 1, 2004 will be eligible to obtain a provisional certificate, upon meeting the requirements for the provisional certificate. Those applying and qualifying for the transitional B certification after February 1, 2004 will have to apply for the initial certificate and meet the new requirements.

The amendment will update the name of the examination for teaching assistants, the "Assessment of Teaching Assistant Skills," and specify the correct name for the examination required for an extension in bilingual education, the "bilingual extension assessment." In addition it will clarify the language for the general science extension to indicate that study is required in "at least" two additional sciences, rather than in just two additional sciences.

Finally, the amendment will remove the requirement that a candidate for an extension in career awareness must hold a base teacher certificate in career and technical education. It will also remove the requirement that holders of the transitional A certificate must be in a registered teacher education program.

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and show the education and experience required for the certificate sought.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire additional professional services in order to comply.

3. Costs:

The amendment will not impose costs on regulated parties, including candidates for certification in the classroom teaching service.

4. Minimizing adverse impact:

The amendment establishes requirements for teacher certification. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

Job Impact Statement

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004. The amendment concerns preparation requirements for service as public school teachers. The proposed amendment will have no effect on the number of jobs or the number of employment opportunities available in this field. Because it

is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in teaching or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pathways to Certification in the Classroom Teaching Service

I.D. No. EDU-12-04-00014-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 80-1.3, 80-2.1, 80-3.8, 80-3.9 and 80-5.17 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3001(2), 3004(1) and (7); 3006(1)(b); 3009(1) and 3010 (not subdivided)

Subject: Pathways to certification in the classroom teaching service.

Purpose: To clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

Text of proposed rule: 1. Section 80-1.3 of the Regulations of the Commissioner of Education is repealed and a new section 80-1.3 is added, effective June 10, 2004, as follows:

80-1.3 Citizenship.

(a) *In accordance with section 3001 of the Education Law, to qualify for a certificate under this Part, the candidate shall be a citizen of the United States or meet the requirements in one or more of the following paragraphs, subject to the limitations therein prescribed, except as provided in subdivision (b) of this section:*

(1) *A candidate who is not a citizen of the United States may be issued a modified temporary license, transitional certificate, provisional certificate, initial certificate, or other time-limited license authorized by this Part, upon meeting the requirements for the certificate or license as defined in this Part and the Education Law, provided the candidate makes due application to become a citizen and thereafter within the time prescribed by law becomes a citizen.*

(2) *A candidate who is not a citizen of the United States may be issued any certificate or license under this Part, upon meeting the requirements for the certificate or license as defined in this Part and the Education Law, if the candidate's immigration status is that of a lawful permanent resident of the United States, provided that the provision permitting such a candidate to teach in the public schools of New York State set forth in subdivision (3) of section 3001 of the Education Law has not expired or been repealed.*

(3) *A candidate who is not a citizen of the United States, has not declared an intention of becoming a citizen, and does not qualify for a certificate under the requirements of paragraph (2) of this subdivision, may be issued a modified temporary license, transitional certificate, provisional certificate, initial certificate, or other time-limited license authorized by this Part, provided that such candidate meets the requirements for the certificate or license, as defined in this Part and the Education Law, and either:*

(i) *possesses the skills or competencies not readily available among teachers holding citizenship; or*

(ii) *demonstrates to the department other good cause for obtaining such certificate, including but not limited to, the need to facilitate a candidate's ability to meet certification requirements of another jurisdiction.*

(b) *The requirements of subdivision (a) of this section shall not preclude a candidate who is not a citizen of the United States from qualifying for a permit or other authorization to teach in the public schools of New York State, in accordance with specific provisions of the Education Law that authorize such teaching service by a candidate who is not a citizen of the United States, such as section 3005 of the Education Law.*

2. Subdivision (a) of section 80-2.1 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(a) Application of this Subpart.

(1) Candidates who apply for provisional teachers' certificates valid for classroom teaching service on or before February 1, 2004 and who upon such application qualify for such provisional certification effective on or before February 1, 2004 shall be subject to the requirements of this Subpart. Candidates who do not meet this condition shall be subject to the

requirements of Subpart 80-3 of this Part, *unless otherwise specifically prescribed in this Part.*

(2) Candidates who apply for permanent teachers' certificates in the classroom teaching service shall be subject to the requirements of this Subpart, provided that they have been issued a provisional teacher's certificate in the title for which the permanent certificate is sought [with an effective date that begins on or before February 1, 2004].

(3) *Candidates who were matriculated in a program registered pursuant to Part 52 of this Title as leading to certification in the classroom teaching service whose participation in that program was interrupted by mobilization in active military service between September 11, 2001 and February 1, 2004 shall be granted an extension of time to complete the requirements under this Subpart for the provisional or permanent certificate in the classroom teaching service equal to the amount of time the candidate was in active military service, provided the candidate provides the department with adequate documentation verifying the effective dates of such military service and matriculation in the registered program when mobilized for active military service. Such extension shall commence on September 1, immediately following the concluding date of the candidate's active military service.*

[(3)] (4) . . .

3. Section 80-3.8 of the Regulations of the Commissioner of Education is added, effective June 10, 2004, as follows:

80-3.8 *Statement of continued eligibility for teachers of theater. Upon application, a person employed in New York State in a public school or other school for which teacher certification is required, as a teacher of theater for three of the five years immediately preceding February 2, 2004, may be issued by the department a statement of continued eligibility pursuant to which such person may continue to teach theater in the classroom teaching service without the certificate prescribed in this Subpart, provided that such person holds a permanent certificate in the classroom teaching service. The statement of continued eligibility shall be valid for service in any school district.*

4. Section 80-3.9 of the Regulations of the Commissioner of Education is added, effective June 10, 2004, as follows:

80-3.9 *Exception for licensed speech-language pathologists.*

(a) *Initial certificate. In lieu of meeting the education and examination requirements prescribed in subdivision (b) of section 80-3.3 of this Part, a candidate may meet the following requirements for an initial certificate as a teacher of speech and language disabilities (all grades):*

(1) *the candidate must request in writing an exception to stated preparation under this section;*

(2) *the candidate must submit an application for initial certification to the department; and*

(3) *the candidate must be registered and hold a New York State license in speech-language pathology, pursuant to Title VIII of the Education Law.*

(b) *Professional certificate. In lieu of meeting the education, experience, and examination requirements prescribed in subdivision (b) of section 80-3.4 of this Part, the candidate issued an initial certificate under the requirements of subdivision (a) of this section shall meet the following requirements for a professional certificate as a teacher of speech and language disabilities (all grades):*

(1) *the candidate must continue to be registered and hold a New York State license in speech-language pathology, pursuant to Title VIII of the Education Law;*

(2) *the candidate must satisfactorily complete three years of experience as a teacher of the speech- and hearing-handicapped in a school offering instruction in any grade, pre-kindergarten through grade 12; or three years of equivalent experience as determined by the department, such as experience providing speech-language pathology services to children in a preschool program, as defined in section 200.1 of this Title;*

(3) *the candidate must achieve a satisfactory level of performance on the liberal arts and sciences portion of the New York State Teacher Certification Examinations; and*

(4) *the candidate must satisfactorily complete while under the initial certificate, except for course work specified in subparagraph (ii) of this paragraph, either:*

(i) *40 clock hours of coursework or other professional development activities which are approved by a school district or BOCES under the school district's or BOCES' professional development plan established in accordance with section 100.2(dd) of this Title, and which must be in the following subjects: classroom management; literacy education; and the development of knowledge, understanding, and skills for working with general education teachers in terms of the impact of speech, language, and*

hearing disabilities on learning in the general curriculum areas of the State learning standards for students, which are prescribed in Part 100 of this Title; or

(ii) *six semester hours of undergraduate or graduate coursework from an institution of higher education with programs registered pursuant to Part 52 of this Title or a regionally accredited institution of higher education, which may be completed prior to the candidate obtaining the initial certificate and which must be in the following subjects: classroom management; literacy education; and the development of knowledge, understanding, and skills for working with general education teachers in terms of the impact of speech, language, and hearing disabilities on learning in the general curriculum areas of the State learning standards for students, which are prescribed in Part 100 of this Title; or*

(iii) *40 continuing competency hours in acceptable learning activities, as defined in section 75.4 of this Title, except for undergraduate or graduate coursework as otherwise specified in subparagraph (ii) of this paragraph, which must be in the following subjects: classroom management; literacy education; and the development of knowledge, understanding, and skills for working with general education teachers in terms of the impact of speech, language, and hearing disabilities on learning in the general curriculum areas of the State learning standards for students, which are prescribed in Part 100 of this Title; or*

(iv) *a combination of the activities prescribed in subparagraphs (i), (ii), and/or (iii) of this paragraph that the department determines provides equivalent educational preparation.*

5. Section 80-5.17 of the Regulations of the Commissioner of Education is added, effective June 10, 2004, as follows:

80-5.17 *Conditional initial certificate in the classroom teaching service.*

(a) *For initial certification in a certificate title in the classroom teaching service for which this Part requires completion of an examination requirement, the commissioner may issue to a candidate who has not met such examination requirement a two-year nonrenewable conditional initial certificate, notwithstanding that the examination requirement has not been met, and deem that all other requirements for the initial teacher's certificate in the certificate title in the classroom teaching service have been met, provided that the candidate holds a valid regular teacher's certificate in the same or an equivalent title by a state which has contracted with the State of New York pursuant to section 3030 of the Education Law, the interstate agreement on the qualifications of educational personnel, and provided further that such regular teacher's certificate issued by the other state evidences knowledge, skills and abilities comparable to those required for certification in New York State.*

(b) *To meet the requirements for a full initial certificate in such certificate title, the candidate shall be required to submit to the commissioner, at least 60 days prior to the expiration of the conditional initial certificate, satisfactory evidence of meeting the examination requirement for the initial certificate title sought, as prescribed in this Part. If the candidate meets such examination requirement, the commissioner shall issue an initial certificate.*

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (3) of section 3001 of the Education Law establishes a citizenship requirement as a qualification for teaching in the public schools of New York State, with exceptions, and authorizes aliens to teach in the public schools pursuant to regulations of the Commissioner of Education.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by establishing requirements for certification in the classroom teaching service in the public schools of the State of New York.

3. NEEDS AND BENEFITS:

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

The amendment clarifies the citizenship requirement for certification consistent with recent statutory change. The amendment implements the provisions of section 3001 of the Education Law, which establishes exceptions to the citizenship requirement for teaching in the public schools of New York State. As permitted in section 3001 of the Education Law, the regulation provides that a candidate who is not a citizen of the United States may qualify if the candidate is a lawful permanent resident of the United States. It also establishes a number of exceptions that would allow non-citizens to obtain time-limited teaching certificates.

The amendment will permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004. This change is needed to accommodate such candidates who were on track for meeting the requirements for certification under the requirements that were in place at the time they were called to service for the country. The Department believes that these candidates should not be penalized for such service.

The amendment renews two pathways to certification needed to meet teacher shortages. The first would permit licensed and registered speech-language pathologists to qualify for teaching certificates in speech and language disabilities (all grades) under an exception to the regular requirements. The second would permit certified out-of-state teachers to qualify for a "conditional" first level certificate, allowing holders two years to pass the New York State certification examination. Both pathways expired on February 1, 2004, and reinstatement is needed to meet teacher shortages.

The amendment also permits individuals who were employed in a public school or other school requiring certification, as theater teachers for a prescribed period prior to February 2, 2004, to continue to teach without additional certification, provided the teacher holds a permanent certificate in the classroom teaching service. The new teacher certification requirements establish the new certificate title, theater (all grades). This title did not exist before February 2, 2004. The amendment is needed as a matter of fairness to permit teachers who have recent employment as theater teachers to continue their employment.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Depart-

ment. The State Education Department will use existing staff and resources to process applications for individual evaluations.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose costs on regulated parties, including candidates for teacher certificates.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The amendment will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and provide all evidence of having met the requirements for the certificate sought, including the education and experience requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

The amendment clarifies and supplements the new requirements for certification in the classroom teaching service that went into effect on February 2, 2004. Candidates must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004. The proposed amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or compliance requirements or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates for teaching certification in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

The amendment clarifies the citizenship requirement for certification consistent with recent statutory change. The amendment implements the provisions of section 3001 of the Education Law, which establishes exceptions to the citizenship requirement for teaching in the public schools of New York State. As permitted in section 3001 of the Education Law, the regulation provides that a candidate who is not a citizen of the United States may qualify if the candidate is a lawful permanent resident of the United States. It also establishes a number of exceptions that would allow non-citizens to obtain time-limited teaching certificates.

The amendment will permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004.

The amendment renews two pathways to certification needed to meet teacher shortages. The first would permit licensed and registered speech-language pathologists to qualify for teaching certificates in speech and language disabilities (all grades) under an exception to the regular requirements. The second would permit certified out-of-state teachers to qualify for a "conditional" first level certificate, allowing holders two years to pass the New York State certification examination. Both pathways expired on February 1, 2004.

The amendment also permits individuals who were employed in a public school or other school requiring certification, as theater teachers for a prescribed period prior to February 2, 2004, to continue to teach without additional certification, provided the teacher holds a permanent certificate in the classroom teaching service.

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and show the education and experience required for the certificate sought.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire additional professional services in order to comply.

3. Costs:

The amendment will not impose costs on regulated parties, including candidates for certification in the classroom teaching service.

4. Minimizing adverse impact:

The amendment establishes requirements for teacher certification. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

Job Impact Statement

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004. The proposed amendment will have no effect on the number of jobs or the number of employment opportunities available in the field of teaching or any other field. Because it is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in teaching or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Resource Management Plan for Surf Clams

I.D. No. ENV-48-03-00003-A

Filing No. 276

Filing date: March 9, 2004

Effective date: March 24, 2004

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

Action taken: Amendment of Part 43 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0308 and 13-0309

Subject: Resource management plan for surf clams found in New York State waters of the Atlantic Ocean.

Purpose: To change the timeframe for evaluating population survey data.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ENV-48-03-00003-EP, Issue of December 3, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Maureen Davidson, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0496, e-mail: mcdavids@gw.dec.state.ny.us

Assessment of Public Comment

The Department of Environmental Conservation received one comment on the proposed amendments to 6 NYCRR Part 43. The comment is listed below, along with the Department's response.

Comment: The proposed regulations eliminate the daily limit of 14 cages per day. This action benefits those vessels that can carry 28 cages. (A cage is a surfclam industry container that holds 48 US bushels.) Vessels that carry less than 28 cages must continue to make more than one trip a week to take the weekly harvest limit. Vessels that hold less than 28 cages are not economically viable in a competitive fishery.

Response: In eliminating the daily cage (harvest) limit for surfclams, the department is seeking to remove unnecessary regulation. The surfclam harvest is controlled through weekly and annual harvest limits. The elimination of the daily harvest limit will not have any impact on the weekly or annual amount of surfclams harvested by a particular vessel. Larger vessels may be able to take the weekly limit (28 cages) in one day, but they remain subject to the same weekly limit as smaller vessels.

NOTICE OF ADOPTION

Youth Hunt for Wild Turkey

I.D. No. ENV-52-03-00018-A

Filing No. 275

Filing date: March 9, 2004

Effective date: March 24, 2004

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

Action taken: Amendment of section 1.40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0905

Subject: Wild turkey youth hunt.

Purpose: To provide for a two-day youth hunt prior to the regular opening of the Spring Turkey Season for youth hunting on a Junior Hunting License.

Text of final rule: 6 NYCRR Section 1.40, "Hunting wild turkey," is amended as follows:

§ 1.40 Hunting wild turkey.

(Section 1.40 through Paragraph 1.40(c)(2) remains unchanged.)

A new paragraph 1.40(c)(3) is added to read as follows:

(3) *Spring youth hunt.*

(i) *Season.* There shall be a spring youth hunt for wild turkey.

Eligible participants shall be those persons twelve through fifteen years old holding a turkey permit and junior hunting license, or persons twelve through fifteen years old holding a turkey permit but not required to have a hunting license pursuant to Section 11-0707 of the Environmental Conservation Law. The youth hunt shall be open in all areas of the state in which a spring turkey hunting season is held pursuant to paragraph 2 of this subdivision, and the dates of the youth hunt shall be as follows:

(a) *During years in which May 1st is a Thursday, Friday, Saturday or Sunday, the spring youth hunt shall be the last full weekend (Saturday and Sunday) of April.*

(b) *During years in which May 1st is a Monday, Tuesday, or Wednesday, the spring youth hunt shall be the next to last full weekend of April.*

(ii) *Supervision.* Any youth participating in the spring youth hunt for wild turkey shall be accompanied by an adult as required by Environmental Conservation Law § 11-0929. An adult who is accompanying a youth hunter pursuant to this section shall possess a valid hunting license and turkey permit. An adult who is accompanying a youth hunter may call for and otherwise assist the youth hunter, but shall not carry a firearm or longbow or kill a wild turkey during the youth hunt.

(iii) *Bag limit.* A youth hunter may take one bearded turkey during the youth hunt. A turkey taken during the youth hunt shall be counted as part of the youth hunter's regular spring season bag limit.

(Subdivision 1.40(d) through end of section 1.40 remains unchanged.)

Final rule as compared with last published rule: Nonsubstantive changes were made in section 1.40(c)(3)(i), (ii) and (iii).

Text of rule and any required statements and analyses may be obtained from: Gordon Batcheller, Department of Environmental Conservation, 625 Broadway, 5th Fl., Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatche@gw.dec.state.ny.us

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

Minor changes appear in subparagraphs 1.40(c)(3)(i), (ii) and (iii) of the rule as adopted when compared to the last published version of the proposed rule. The changes made to the previously published proposed rule simply clarify the age of persons eligible to participate in the youth hunt (eligible youth are those 12, 13, 14, and 15 years old), and clarify that all participating youth hunters must be accompanied by an adult. These changes do not necessitate any revision of the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

The Department received comments from thirty-four individuals and four non-governmental organizations (New York Farm Bureau, New York Chapter of the National Wild Turkey Federation (NWTF), the Southern Tier Chapter of NWTF, and the Delaware County Sportsman's Federation). Eighty percent of individuals and all of the non-governmental organizations expressed support the Department's proposal.

Supporters of the proposal cited the following positive factors associated with the establishment of a youth hunt for wild turkey: (1) It will help young people develop into ethical and skilled hunters. (2) It will enhance youth/adult relationships by providing a high-quality outdoor experience. (3) Other states have youth hunts with great success. (4) It will provide a positive hunting and learning experience for young people.

Opponents of the proposal cited the following concerns: (1) There already is ample turkey hunting opportunity for young hunters during the regular (May) season. (2) The youth hunt for waterfowl was not effective in convincing young hunters to continue hunting, and any increase in youth participation or retention in hunting (as active, adult hunters) as a result of the proposed hunt will be negligible. (3) Hens will be disturbed or killed during an earlier hunting season. (4) The youth hunt will increase illegal hunting activity (by adults). (5) The youth hunt should be restricted to twelve and thirteen year old hunters. (6) The youth season is unfair to adult hunters. (7) The youth hunt will be difficult to enforce, especially since the Department's Division of Law Enforcement already has inadequate resources.

Additionally, four people submitted comments suggesting that disabled hunters also be allowed to hunt wild turkeys during the same weekend identified as the "youth hunt for wild turkey." They cited the special needs for access to turkey hunting areas, and the difficulty disabled persons have when competing with ambulatory hunters.

The purpose of the proposed youth hunt for wild turkey is to provide a high quality opportunity for adult hunters to mentor young people, during a time when there will be a low chance of "interference" from other hunters. As cited in the original proposal published December 31, 2003, a recent survey of turkey hunters showed that 77% of respondents believe that it is very important to provide youth turkey hunting opportunities. The Department's proposals will fulfill that expressed need.

Because eligible hunters are school-aged and public and private schools are in session during the month of May, in practice, youth hunters are restricted to weekend-only hunting during the May season. The proposed youth hunt provides an additional weekend of opportunity for school-aged hunters, which is approximately a twenty-five percent increase in days available for hunting.

The Department estimates that up to 6,000 youth hunters will participate in the youth hunt for wild turkeys. Since the opening day spring turkey hunting success rate is relatively low (only one out of every ten turkey hunters take a bird on opening day), the Department estimates that no more than about 1,000 turkeys will be taken during the youth hunt for wild turkeys. This represents less than 3% of the estimated total turkey harvest in any given spring. The youth hunt is not expected to significantly increase the total harvest of wild turkeys.

Also, while the youth hunt for wild turkeys will provide a significant increase in hunting opportunity for school-aged hunters (about 25% more opportunity), the youth hunt for wild turkeys will not significantly reduce hunting opportunity for adult hunters.

The Department believes that it is appropriate to allow all young hunters (12, 13, 14, or 15 years old) to participate in the youth hunt for wild turkey. Parents or guardians should have the option to allow young hunters to participate in this opportunity at an age deemed appropriate by the parent or guardian. Restricting the youth hunt to only two years would

unnecessarily reduce parental or guardian discretion in deciding when their child is ready to be taught and mentored in safe and ethical turkey hunting practices. Also, the Junior Hunting license is specifically designated in the Environmental Conservation Law for this age group.

Hens may be encountered by hunters during the proposed youth hunt at the end of April. However, this is already occurring during the early part of the regular May season without any observable negative effects on nesting activity. The Department has no evidence suggesting that the earlier youth hunt will significantly increase hen mortality or reduce nesting success. (Bearded hens are a lawful target during New York's spring turkey season.) Moreover, any hens disturbed early in the season are likely to re-nest later in May. The Department believes that the benefits of the youth hunt for wild turkeys are greater than any potential effects on nesting activity.

The Department does not anticipate that there will be a significant increase in illegal hunting activity during the youth hunt for wild turkey. The Department's proposal published December 31, 2003 described the timing of the youth hunt, indicating that there will always be at least a three-day break between the end of the youth hunt and the start of the regular season. The Department expects that this break will reduce the potential for law enforcement violations. The Department is committed to vigorous enforcement of the Environmental Conservation Law, and will closely monitor compliance with the legal requirements of the youth hunt for wild turkey. This will include modification of patrol schedules to increase the number of officers working the morning hours to maximize field contacts with youth hunt participants. Therefore, the youth hunt will provide an excellent opportunity for outreach between Environmental Conservation Officers and young hunters. The proposed regulations provide clear requirements for the role of the adult during a youth hunt, and these will be strictly enforced (e.g., the adult may not carry a firearm).

The comments pertaining to disabled hunters do not directly apply to the Department's proposal to establish a youth hunt for wild turkeys. The Department appreciates the concerns of the disabled community relative to barriers to full access to hunting and other outdoor activities. However, the proposed regulations are specifically aimed at providing a hunting opportunity for youth, and the Department does believe this purpose would be served by opening this limited season to other user groups.

The Department plans to evaluate the youth hunt during the 2004, 2005, and 2006 seasons to determine whether it should be continued. The components of the Department's evaluation will include, but not be limited to: (1) Participation levels (i.e., number of persons participating in the youth hunt). (2) Participant satisfaction/complaints. (3) Satisfaction/complaints of non-participants (i.e., persons not able to participate in the youth hunt). (4) Compliance with applicable laws and regulations. The results of the Department's evaluation, and its recommendations, will be widely available to interested hunters and other concerned stakeholders.

Minor changes appear in subparagraphs 1.40(c)(3)(i), (ii) and (iii) of the rule as adopted when compared to the last published version of the proposed rule. The changes made to the previously published proposed rule simply clarify that only 12, 13, 14, and 15 year old hunters may participate in the youth hunt for wild turkey, and that all participating youth hunters must be accompanied by an adult.

Department of Health

EMERGENCY RULE MAKING

Treatment of Opiate Addiction

I.D. No. HLT-37-03-00001-E
Filing No. 274
Filing date: March 5, 2004
Effective date: March 5, 2004

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

Action taken: Amendment of section 80.86 and addition of section 80.84 to Title 10 NYCRR.

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

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption of the regulations is necessary to protect the public health and safety. The regulations are based on the federal Drug Addiction Treatment Act of 2000 (DATA), which dramatically expands opioid dependent patients' access to treatment of addiction. The provisions in the DATA become effective immediately upon the FDA approval of a Schedule III-V controlled substance for the treatment of opiate addiction. A product containing buprenorphine has received FDA approval for such use and is the first such product to receive FDA approval for this indication.

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

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

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

Subject: Treatment of opiate addiction.

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

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

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

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

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

(1) buprenorphine

(b) An authorized physician is a physician registered with the department to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction pursuant to this section and specifically registered with the Drug Enforcement Administration to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction, and approved for such purpose pursuant to the provisions of Article 32 of the Mental Hygiene Law.

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

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

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

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

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

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

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

addiction treatment registration number in lieu of the practitioner's Drug Enforcement Administration registration number.

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

Section 80.86 is amended to read as follows:

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

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

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

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

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

(2) the date of the inventory;

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-37-03-00001-P, Issue of September 17, 2003. The emergency rule will expire May 3, 2004.

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

Regulatory Impact Statement

Statutory Authority:

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

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

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

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

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

DOH/OASAS Task Force:

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

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

The agencies sent a joint mailing to physicians detailing the regulatory requirements and registration process. The agencies established a joint registration application by which qualified physicians simply complete the

joint application and send it to OASAS. Once OASAS reviews and approves the application, the approved application is sent to DOH for their approval. Due to the joint application process, the agencies work closely together through the registration process.

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

Outreach:

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

Costs:

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

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

The Department of Health anticipates a simple registration form for physicians and pharmacies that wish to register for this program. Participation in this program is entirely voluntary. The Department of Health has partnered with OASAS to streamline the registration process for physicians.

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

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

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

Duplication:

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

Alternatives:

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

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

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

Compliance Requirements:

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

Professional Services:

Registered pharmacies that choose to submit the required prescription data electronically may need to make a minor change to their current software. Because almost all New York State pharmacies already have a program in place to submit this data, the department does not anticipate that they will be charged for adding buprenorphine data to the current data they submit to the department. The department does not expect a large number of physicians to dispense buprenorphine. Of those that do, the department does not expect them to submit the required data electronically; therefore there no professional services will be required.

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimize Adverse Impact:

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Finding:

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

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

Measures Taken to A Certain Finding:

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

Job Impact Statement

Nature of Impact:

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

Categories and Numbers Affected:

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

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

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

Self-Employment Opportunities:

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

Assessment of Public Comment

One public comment on the proposed rule was received.

The City of New York, Human Resources Administration (HRA), is in full support of the proposed regulations. In its comment, HRA also expressed the importance of exploring how to prevent client and pharmacy fraud, as patients will not be going to a clinic and taking their medication under supervision.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Expedited HIV Testing of Women and Newborns

I.D. No. HLT-12-04-00012-P

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

Proposed action: Amendment of section 69-1.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 576, 2500-a and 2500-f

Subject: Expedited HIV testing of women and newborns.

Purpose: To amend the current comprehensive program in response to recent advances in medical knowledge and the rapid HIV testing technology to enhance protection of newborns.

Text of proposed rule: Paragraph (2) of Subdivision (1) of Section 69-1.3 of NYCRR is amended to read as follows:

(2) if no HIV test result obtained during the current pregnancy is available for the mother not known to be HIV-infected, arrange an immediate screening test of the mother with her consent or of her newborn for HIV antibody with results available as soon as practicable, but in no event longer than [48 hours] *12 hours after the mother provides consent for testing or, if she does not consent, 12 hours after the time of the infant's birth.*

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

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

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) section 2500-f requires the commissioner to promulgate regulations to implement a comprehensive program for the testing of newborns for HIV and/or the presence of HIV antibodies. The proposed revision to the regulation amends the current comprehensive program in response to recent advances in medical knowledge concerning the prevention of perinatal HIV transmission and the availability of rapid

HIV testing technology, with at least one device suitable for "point-of-care" use.

Legislative Objectives:

In the memorandum accompanying the comprehensive newborn testing bill (Chapter 220 of the Laws of 1996), the legislature indicated its purpose was "to ensure that newborns who are born exposed to HIV receive prompt and immediate care and treatment and counseling that can enhance, prolong and possibly save their lives". Transmission of HIV from mother to newborn can be prevented in many cases by the administration of antiretroviral medications, which are recommended to be given to the mother starting during the second trimester of pregnancy, continued during labor, and given to the newborn after birth. The proposed amendment to 10 NYCRR, Subpart 69-1.3(2) will ensure that the HIV exposure status is available for all newborns whose mothers have not been tested for HIV during the current pregnancy or for whom HIV test results are not available at delivery. By requiring that HIV test results be available as soon as is practicable but in no case later than twelve hours from the time of the mother's consent to testing or the time of the infant's birth, the Department intends to ensure that medical providers and patients have the information they need to make decisions about preventive treatment in a timely manner.

Needs and Benefits:

Improvements in medical knowledge and major advances in medical technology have occurred since the current program for the Expedited HIV Testing of Women and Newborns was implemented in August 1999. To date, the success of New York State's efforts to reduce perinatal HIV transmission to the lowest possible level has resulted in a decrease in the rate of perinatal HIV transmission for all HIV-exposed infants born in New York from 10.9% in 1997 to 3.9% in 2001. However, transmission is still occurring in instances where the HIV exposure status of an infant was identified too late to provide effective intervention. In such infants therapy must begin within 12 hours of birth to be effective in reducing the risk of transmission. In an addendum to the NYSDOH PCR study, published in the *New England Journal of Medicine* on 4/1/99, it was demonstrated that when ARV was given to the newborn within 12 hours of birth there was a 5.9% rate of HIV transmission. There was no significant benefit if ARV was begun after 12 hours birth as the transmission rate increased to 25%. The ability to have results from expedited HIV testing as soon as possible in cases where there was no history of prenatal HIV testing, coupled with the administration of prophylactic antiretroviral therapy, ideally during labor but no later than 12 hours of birth, is of vital importance in further reducing perinatal HIV transmission. To reduce perinatal HIV transmission to the greatest extent possible, facilities are urged not to view the 12-hour turn-around-time as the goal of testing, but as the outside limit for offering effective therapeutic interventions to prevent transmission of HIV from the mother to her newborn.

Costs:

Costs to State and Local Governments:

The cost to State Government is minimal and can be covered by existing programs and staff. There is no cost to local government except to the extent they own and operate maternity hospitals. Any cost to the State and local governments will be reduced by the savings to the Medicaid program by reducing the costs of care as fewer incidences of HIV transmission to newborns occur. Local governments that operate medical facilities will incur costs as described in the section on Costs to Regulated Parties noted below.

Costs to Regulated Parties:

The approved rapid test is CLIA- waived due to low complexity and may be performed either in the centralized laboratory or at the point-of-care, subject to appropriate NYSDOH approvals. The Department will work closely with facilities to assist them in meeting the turn-around-time requirements of this proposal.

The vast majority (141) of the 159 birthing facilities currently hold a clinical laboratory permit in HIV testing or are eligible for fast-track approval for a permit in HIV testing. These facilities already have or could readily develop the capability of generating HIV test results on-site within twelve hours without additional costs. This is especially true for facilities with around-the-clock centralized laboratory services. Reagent, equipment, personnel and overhead costs for testing a single specimen using an instrument-based method (*i.e.*, EIA) are approximately \$15 for routine testing, but up to ten times that amount for "on demand" (STAT) testing. Birth facilities would incur costs directly related to this proposal whenever expedited testing needed to be performed in the laboratory outside normal testing hours, and qualified staff needed to be called in specifically to run one test. Facilities using such an on-call staffing approach to expedited

newborn HIV testing would incur up to 1.5 times the usual hourly wage for a medical technologist, which is estimated to be \$40 per hour (including benefits) or \$50 per hour (including benefits) if the technologist is a supervisor.

The Department will work closely with facilities that do not have current capacity to consistently generate results in 12 hours or less, and assist them in meeting regulatory requirements. Costs of introducing in-house HIV testing include costs of reagents, devices and human resources necessary to validate the test method and write protocols, at an estimated maximum one-time cost of \$1000. Facilities that conduct testing at point of care, *i.e.*, in the labor and delivery department, would also incur minimal costs associated with initial training and ongoing competency assessment of non-laboratory testing personnel, *i.e.*, labor and delivery nursing staff, although technologists may also travel to patient floors to lend their expertise in the performance of tests and interpretation of results. The cost of conducting initial training for a group of 8 or fewer nurses can be estimated by multiplying the hourly wage of a supervisor-qualified technologist by 8 hours of training in device use, troubleshooting, recordkeeping and quality assurance activities, and adding the cost of 25 test devices. The device designated for point-of-care testing has a list price of \$10.00 - \$15.00 for each test kit.

Overall, the Department estimates that the costs of performing tests at the point-of-care are likely to be less than, or equal to, the costs of expedited HIV tests currently performed in a centralized laboratory. This estimate is based on the fact that rapid HIV tests do not require the purchase or maintenance of expensive laboratory equipment and that the cost of testing devices (OraQuick., SUDS.) and the salaries of personnel conducting the tests are comparable. The cost of expedited HIV testing done in a reference laboratory (cost at one commercial laboratory is \$75.00/expedited test) may not change, but birth facilities using these laboratories will have to ensure that they will be able to report results within the 12-hour turn-around-time. The cost to the birth facility in time spent to provide pre-test HIV counseling is not expected to differ from the current cost of expedited HIV testing, which includes reimbursement rates of \$52 for testing and \$44 for counseling (\$96.00/expedited test).

In light of the advances in testing technology, and the benefits of early initiation of antiretroviral therapy to prevent mother-to-child transmission of HIV, many birth facilities will opt to use a rapid HIV test device that generates results in a half-hour or less. Facilities may perform rapid HIV testing either in the laboratory itself or at the point-of-care subject to appropriate NYSDOH approval. Laboratories with an HIV testing permit may choose to conduct "stat" testing 24 hours a day, 7 days a week using a standard instrument-based (*e.g.*, EIA) testing technology within the 12 hour time limit. However, testing using rapid testing devices is encouraged to obtain HIV test results as soon as possible. While procedures such as immediate transport of specimens by courier to a near-by laboratory, may, in theory, be effective for meeting a 12-hour turn-around-time, the Department's experience with such complex arrangements shows them to usually be an unacceptable alternative for on-site expedited testing.

Of the 159 regulated hospitals and birthing centers affected by this amendment, 141 hold laboratory permits that include HIV and/or diagnostic immunology testing, the latter of which would be allowed, in response to the adoption of this amendment, to add HIV testing through a fast-track mechanism. For any of these 141 facilities that choose to add a new test to an existing HIV or fast-tracked diagnostic immunology permit, costs for protocol development, staff training, test validation and implementation of quality assurance measures are expected to be approximately \$1000. There are no additional costs associated with modifying an existing permit to add a category or test. The remaining 18 birth facilities would incur an additional cost if they seek to provide HIV testing on-site, including an initial cost of \$1000 plus annual fees based on gross annual receipts.

Facilities offering on-site testing at the point-of-care, *i.e.*, in the labor and delivery suite under the auspices of an existing permitted laboratory, would incur minimal costs for initial training and ongoing competency assessment of non-laboratory testing personnel, *i.e.*, labor and delivery nurses. The cost of conducting initial training for a group of 8 or fewer nurses can be estimated by multiplying the hourly wage of a supervisor-qualified technologist by 8 hours of training (on average approximately \$50.00/hour by 8 hours equating to \$400.00) in device use, troubleshooting, recordkeeping and quality assurance activities, and adding the cost of 25 test devices (\$15 per test by 25=\$375). Therefore, the total training costs would be approximately \$775. Cost attributable to periodic competency assessments of one to two hours could be calculated using the same formula. A materials cost of approximately \$10.00 - \$15.00 a test would be attributable to one single-use device and control materials.

Costs would be offset by revenue generated from third party billing, including Medicaid. Costs of expedited HIV testing in labor, delivery and newborn nursery settings will continue to diminish as efforts to increase prenatal HIV counseling and testing succeed. Any other provider costs associated with rapid HIV testing in the labor and delivery settings are medically appropriate and must continue to be considered part of labor and delivery costs.

Costs to the Department of Health:

The Department will use existing staff to review and approve HIV testing applications, and to conduct on-site surveys of applicant facilities.

Local Government Mandates:

This amendment to the current regulation will not impose any new program services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district, except for those local governments operating hospitals with maternity services.

Paperwork:

Paperwork related to point-of-care rapid HIV tests does not significantly differ from that currently required by expedited testing regulations. This paperwork includes the clinician's written order for testing, notation of the completion of pre- and post-test counseling, documentation of the acquisition of the test specimen and recording the test result in the medical record. Some paperwork will be required of birth facilities that seek an addition to an existing permit, and for those that choose to seek a new HIV testing permit.

Duplication:

None.

Alternatives:

There are no alternatives to the 12-hour time limit proposed by this amendment because a longer time period would result in some HIV-exposed infants not being detected in time to administer therapy to prevent HIV transmission. Because advances in scientific knowledge and medical technology allow for rapid HIV testing, the Department determined that the proposed revision to the regulation is the best approach to protect the public health.

Federal Standards:

There are currently no Federal regulations related to prenatal or newborn testing. The Federal government has provided only recommendations and guidelines for these activities. The proposed regulatory change is consistent with current federal recommendations.

Compliance Schedule:

The Department has already advised regulated parties that an emergency amendment is in place. The Department understands that many facilities previously initiated activities to implement rapid HIV testing. The Department expects that facilities will be in compliance by the permanent regulation's effective date.

Regulatory Flexibility Analysis

Effect on Small Businesses:

The proposed rule will impact an estimated three birth hospitals and four birthing centers that meet the definition of a small business (independently owned and employs 100 or fewer individuals). No real impact on small businesses is expected, since regulations requiring expedited HIV testing are already in place. No new costs to local governments are anticipated, except for those operating hospitals with maternity services.

Compliance Requirements:

The reporting, recordkeeping and other affirmative acts that impact small businesses or local governments would not change with this proposed amendment. Current regulations require hospitals and birthing centers to assess whether mothers who present for delivery have a negative HIV test result from the current pregnancy or a positive HIV test result during or prior to the pregnancy. If no test result is documented, the mother is offered consented expedited HIV testing. If she declines, an expedited HIV test is performed on her infant, without consent. Current regulations require a turn-around-time for preliminary HIV test results of no more than 48 hours from the time the specimen is collected. The proposed rule change would decrease the turn-around-time to within 12 hours after the mother's consent for testing, or if she does not consent, within 12 hours of the infant's birth.

Professional Services:

Impacted small businesses and local governments would need the same staff of health care providers (doctors, nurses, nurse practitioners, physicians assistants), counseling and support staff as they currently employ. No additional staff would be needed.

Compliance Costs:

The percentage of women receiving prenatal counseling and testing is steadily increasing, and the need for expedited HIV testing in the intrapar-

tum period is decreasing. As of December 2002, hospital data indicate that approximately 94% of all women giving birth have documentation of their HIV status before delivery. This rate was 62% in July 1999, one month before expedited testing in delivery settings was implemented. Using these data, the need for expedited HIV testing has clearly decreased through the years, from an estimated 120,000 mothers/infants in 1999 to less than 15,000 in 2002. At \$52 per test, the total statewide testing cost in 1999, estimated to be \$6.24 million per year, has decreased to \$780,000 per year. This number is expected to continue to decline as more women accept prenatal HIV testing. The cost for expedited HIV testing using rapid, point-of-care testing kits is not expected to exceed the cost of expedited testing as currently performed and would be considerably less if facilities choose to take advantage of point-of-care rapid testing.

Economic and Technological Feasibility:

The proposed amendment to the regulatory program is economically and technologically feasible since it is not anticipated that additional staff would be required and rapid, point-of-care testing technology is readily available.

Minimizing Adverse Impact:

Provider costs associated with rapid, point-of-care expedited HIV testing are medically appropriate and must be considered part of labor and delivery costs. Current reimbursement rates for expedited HIV testing subsidize the costs incurred by the delivery facility (\$44 for counseling and \$52 for testing), and will continue. Since preventing HIV transmission saves the high treatment costs for HIV-infected persons, expedited HIV testing in the labor and delivery setting is actually cost effective. Hospitals and birthing centers also realize savings as a result of this program by not having to employ outreach staff to find mothers after discharge since post-test counseling can be done while the mother is still in the hospital.

Small Businesses and Local Government Participation:

In advance of publication, the proposed amendment to the regulation was discussed at a two hour meeting held on March 23, 2003 by the Greater New York Hospital Association with representatives from 31 birthing facilities and the Health and Hospitals Corporation attending, and on April 30, 2003 at a video-conference hosted by the Hospital Association of New York State and broadcast to birthing facilities statewide.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Forty-four counties meet the definition of a rural area (population less than 200,000) and an additional 11 counties have towns that are classified as rural (towns with population densities of 200 persons or less per square mile). The proposed amendment to the current regulation applies to hospitals and birthing facilities in 55 counties. These facilities already follow the Expedited HIV Testing regulation; significant program expansion is not expected. There are no birth facilities in the remaining seven counties.

Reporting, Recordkeeping and Other Compliance Requirements:

The reporting, recordkeeping and other affirmative acts that will impact hospitals in rural areas have already been undertaken to comply with the Expedited HIV Testing regulation. Current regulations require maternity hospitals and freestanding birthing centers to ensure that all women who present for delivery with no documentation of HIV status are counseled about expedited HIV testing, and, arrange that an immediate HIV screening test of the mother with her consent or of her newborn without consent is performed. Technological advances mean that rapid HIV screening tests can now be performed at the point-of-care. Birth facilities can choose to use the new technology for rapid HIV testing, or to continue with the expedited HIV testing program already in place at their facilities. If the new technology is not chosen, the decreased turn-around-time for the return of preliminary test results will have to be negotiated with either the hospital-based or the commercial laboratories that perform expedited HIV testing.

Professional Services:

Hospitals in rural areas would not need additional professional staff to provide this service for women without known HIV test results.

Costs:

According to current annualized data, fewer than 50 maternity patients or newborns in any hospital or birthing center operated in rural areas require expedited HIV testing. This number will continue to diminish as efforts to promote prenatal HIV testing succeed. If an average of \$52 (the total per test average cost of ELISA or SUDS testing, exclusive of counseling) for each expedited HIV test is used to estimate the total cost of expedited testing (test device, equipment and personnel), the total annual cost for rapid expedited HIV testing in each rural birth facility will be approximately \$2,600, or less, depending on the number of maternity patients or newborns needing rapid testing.

Minimizing Adverse Impact:

Additional provider costs associated with testing are medically appropriate and must be considered part of labor and delivery costs. However, preventing HIV transmission is cost effective because of the high cost of treatment for HIV-infected persons. Hospitals and birthing centers will realize savings as a result of this program by not having to employ outreach staff to find mothers after discharge since post-test counseling can be done while the mother is still in the hospital.

Rural Area Participation:

In advance of publication, the proposed amendment to the regulation was discussed at a two hour meeting held on March 23, 2003 by the Greater New York Hospital Association with representatives from 31 birthing facilities and the Health and Hospitals Corporation attending, and on April 30, 2003 at a video-conference hosted by the Hospital Association of New York State and broadcast to birthing facilities statewide.

Job Impact Statement

A Job Impact Statement is not attached because this amended rule will not have a substantial adverse impact on jobs and employment opportunities as apparent from its nature and purpose.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of Laboratories Performing Environmental Analysis

I.D. No. HLT-12-04-00015-P

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

Proposed action: Amendment of Subpart 55-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 502

Subject: Approval of laboratories performing environmental analysis.

Purpose: To standardize terminology, address new technology and practices; lessen the regulatory burden on environmental laboratories that conduct business in more than one state; codify criteria for method approval, clarify criteria for compliance and enforcement activities.

Substance of proposed rule (Full text is not posted on a State website):

This amendment revises and reorganizes Subpart 55-2 to standardize and clarify terminology related to Department oversight of environmental laboratories; modify existing requirements to address new technology and practices; bring New York's standards into alignment with recently promulgated national standards for environmental testing; and consolidate regulatory requirements on similar or related topics into more easily referenced sections.

In Section 55-2.1, terminology is altered for clarity and consistence with nationally recognized terms. Definitions are added for the following terms: "approved laboratory"; "quality system"; "denial"; "suspension"; "revocation"; and "predictive standard deviation." The term "director" is changed to "technical director", and the definition existing in Section 55-2.9 is moved to Section 55-2.1. The proposed revision adds a requirement that the laboratory owner designate a lead technical director. "Target value" is redefined as "assigned value," with analyte concentration based on sample preparation. The definition of "approved method" is modified to reflect current practice. Other changes include replacing the term "inspection" with "on-site assessment," and substituting "radiochemical" for "radiological."

Section 55-2.2 contains requisites moved from Section 55-2.4 concerning certificates of approval, including testing categories, and specifies that only approved methods for which a demonstration of capability has been conducted on-site by the laboratory may be employed to qualify for approval. The section also specifies the information that would be included on a certificate of approval.

Section 55-2.3 establishes that the Department, in determining whether an applicant laboratory qualifies for approval, must consider the laboratory's documentation of its quality system, as well as its performance in required proficiency testing. The section also clarifies that analytes, sample types and methods in use at the laboratory must be specified in the application for approval. Criteria for approval of separate laboratories listed on a single application have been moved to Section 55-2.3 from Section 55-2.1.

Section 55-2.4 enumerates requirements to be met for laboratory approval: submission of an application; payment of fees, documentation of a qualified technical director and a quality system; successful on-site assessment and proficiency testing performance; and a finding of the director's and owner's good character and competence, including consideration of any criminal convictions or administrative actions related to environmen-

tal testing taken against the owner and/or director. The requisite for laboratory successful participation in proficiency testing prior to interim approval is also detailed. The revision provides for the timely transition of laboratories from interim approval to full approval within 12 months. The time period for analytical records retention is increased from three to five years, except for potable water analysis, which remains at ten years.

A new Section 55-2.5, Department approval of methods, is added, and subsequent sections are renumbered accordingly. Section 55-2.5(a) clarifies that Department approval of laboratory-developed methods is required and enumerates the information to be submitted in requesting such approval. Section 55-2.5 also sets forth conditions for approval of (performance-based) methods that have not undergone inter-laboratory comparison, and establishes the Department's authority to require on-site assessment prior to method approval. The section also codifies the Department's responsibility to respond to a laboratory's request for method approval with either approval or denial, and describes the process for requesting reconsideration whenever method approval is denied. Subdivision (g) defines the Department's authority to conduct a technical merit review of any analytical method, and to withdraw approval if such merit is found to be lacking. The proposal requires that records of method approval be retained for two (2) years following discontinuation of a method.

Section 55-2.6(a) is revised to detail the reasons for denial of Department approval, and new subdivisions (c) and (d) are added to address suspension and revocation of such approval. Criteria for Department administrative action have been clarified and made generally consistent with universally recognized compliance standards, such as an effective quality system. Conditions resulting in automatic suspension are specified, as is the Commissioner's authority to suspend a laboratory automatically under Section 16 of the Public Health Law. Section 55-2.6 also explains the processes for requesting reconsideration whenever the Department proposes to deny an application for a certificate of approval, suspend a laboratory in one or more areas of testing, or revoke a laboratory's approval in part or in its entirety. The revision requires the use of certified mail for Department notification of such administrative actions, and establishes a deadline for laboratories to request reconsideration or a hearing, as applicable. The amendment renders final the Department's proposed determinations of denial and revocation 30 days after notification if the laboratory fails to request reconsideration.

In Section 55-2.7, the term "inspection" has been replaced with "on-site assessment." Time frames for laboratories to respond to and notify the Department following various operational changes have been revised from business days to calendar days, in this section and in several other sections with similar references to timeframes. The section also clarifies that factors to be considered during an on-site assessment include use of approved methods and implementation of the laboratory's quality system.

Section 55-2.8, pertaining to proficiency testing (PT), affords laboratories the option of using samples supplied by PT providers other than the Department, and prescribes that laboratories participating in such other PT programs arrange for forwarding of PT results to the Department. Under the proposed amendment, PT Department challenges are scored as either satisfactory or unsatisfactory, and the score of "marginal performance" is eliminated. Department evaluation of PT performance is made consistent with evaluations of several other states' regulatory programs by prescribing various new scoring formulas, including use of linear regression equations to assess data sets. The proposal sets forth criteria for the Department to recognize PT providers' that offer and score PT samples for purposes of obtaining New York State certification. Section 55-2.8 requires laboratories to perform satisfactorily in two of three consecutive PT events, rather than the current two consecutive events. A provision has been deleted whereby technical director attestation of corrective action could avoid revocation proceedings proposed for reasons of unsatisfactory PT performance. The attestation requirement has been replaced with a provision allowing laboratories an opportunity for immediate remediation through access to commercial PT providers. The amendment also codifies the 30-day period required between PT challenges for laboratories to achieve remediation upon failure.

New Section 55-2.9 establishes criteria for allowing recognition by the Department of on-site assessments, personnel qualifications reviews, quality system reviews and proficiency testing scoring performed for other states environmental laboratory programs. The section stipulates that such recognition is conditional on those programs' standards meeting or exceeding New York State's standards. Section 55-2.9 also establishes the Department's authority to require participation by applicant laboratories in one or more compliance monitoring activities of New York's regulatory program.

Existing Sections 55-2.9 and 55-2.10 have been reorganized into a new Section 55-2.10. The term "director" has been changed to "technical director," and present director qualifications and responsibilities have been clarified. Section 55-2.10 specifies that the technical director is responsible for development and implementation of a quality system. The proposal allows temporary assumption of a technical director's duties without notice to the Department for up to 65 consecutive calendar days, replacing the current limit of 21 business days and eliminating the annual maximum of 40 consecutive days for temporary technical direction. Other amendments to Section 55-2.10 bolster technical directors' experience requirements in several areas from six months to one year for applicants with an earned doctoral degree, and relax technical director educational and experiential requisites for individuals engaged in examination of radon in air. Current regulatory requirements — a bachelor's degree and one year of experience in radiation measurement — have been replaced with an associate's degree or two years of equivalent successful college education, in addition to a requisite one year's experience. Under the proposed amendment, advanced degrees in the physical sciences and engineering would be recognized as qualifying applicants for technical direction of laboratories engaged in microbiological, radiochemical and certain types of chemical analyses. Specific college credit requirements in the corresponding science have been added. Section 55-2.10 also establishes educational and experiential requirements for technical directors of laboratories performing a wide range of biological tests. The amendment allows individuals with a high school diploma, certification of successful completion of a training course in instrument operation, and six months' experience, under supervision, in use of the relevant instruments, to serve as technical directors of environmental laboratories conducting radon testing only with direct continuous monitoring devices. The proposal also details the process for grandfathering persons employed as technical directors in laboratories newly subject to the proposed amendment upon its adoption.

Existing Section 55-2.10 has been re-titled, renumbered as 55-2.11, and revised in its entirety. The section now prescribes qualifications for the newly established personnel title of quality assurance officer, and includes a provision, applicable to facilities with limited staffing, for the technical director to be able to serve as quality assurance officer. Responsibilities of the quality assurance officer are described for quality system oversight, and objective and independent assessment of quality control processes.

Only editorial revisions for clarity, and enhanced readability and compliance have been made to Section 55-2.12, which sets forth contract laboratory personnel qualifications.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Section 502 authorizes the Commissioner of Health to issue certificates of approval to environmental laboratories, and prescribe the conditions under which such approvals will be granted. The Commissioner is also empowered to adopt and amend regulations to implement the provisions and intent of Section 502, and set forth laboratory director qualifications.

Legislative Objectives:

PHL Section 502 requires all laboratories performing environmental analysis on samples collected in New York State for which the Commissioner of Health issues certificates of approval to possess such certificates. The Department's regulatory oversight ensures that, whenever tests are performed for public health or personal health protection, or the protection of the environment or natural resources, such tests shall be performed in an accurate and reliable manner. To this end, the statute requires the Commissioner to establish conditions under which such approvals shall be granted, and the technical and educational qualifications of laboratory technical director(s) overseeing such examinations.

Needs and Benefits:

10 NYCRR Part 55 sets forth the criteria for environmental laboratory approval, including use of generally accepted analytical methods; qualifications of the technical director; on-site assessments; proficiency testing; and compliance with standards. This amendment revises and reorganizes Subpart 55-2 to update, standardize and clarify terminology related to Department oversight of environmental laboratories; modify existing re-

quirements to address new technology and practices, including requirements for personnel qualifications and recordkeeping; lessen the regulatory burden on laboratories that conduct business in more than one state by bringing New York's standards into general alignment with recently promulgated national consensus standards for environmental testing; codify criteria for performance-based method approval; and consolidate requirements on related topics in easily referenced sections.

One of the primary purposes of this amendment is to fully integrate elements of the national voluntary accreditation program known as the National Environmental Laboratory Accreditation Program (NELAP) into New York State's existing comprehensive regulatory program. The national standards were developed using New York State standards as a model for excellence and are intended to coordinate laboratory accreditation standards among state certification programs to ensure uniform analytical data quality regardless of laboratory location, and reduce regulatory replication and inconsistency. In July 1999, the Department's Environmental Laboratory Approval Program (ELAP) was officially designated as a NELAP accrediting authority by the U.S. Environmental Protection Agency based on New York State's standards fundamental equivalence to NELAP standards. However, to retain NELAP accrediting authority status and its resulting benefits to ELAP certified laboratories, the Department needs to integrate some elements of the national standards into New York's regulatory program. Since New York State's existing standards already incorporate many NELAP requirements, proposed provisions related to NELAP accreditation will have limited impact on ELAP-certified laboratories. However, these revisions will permit ELAP oversight functions to be recognized by other state programs, and may reduce costs to regulated parties.

Express terms have been re-organized in several sections to facilitate consumer understanding and simplify rule interpretation. Proposed revisions include:

1. Terminology and definitions. Terminology is changed for clarity, and consistency with nationally and internationally recognized terminology, *i.e.*, by the International Standards Organization (ISO), to enhance recognition throughout the environmental laboratory industry, which conducts both interstate and international business. The term "laboratory director" is changed to "technical director" with functional duties and responsibilities remaining unchanged and the industry practice of designating one individual to serve as lead technical director is incorporated. The definition of "approved method" is modified to reflect analytical method promulgation and/or recognition by federal and New York State environmental and health protection programs. "Quality systems" is defined by referencing ELAP's Quality Systems Standards, setting forth the minimum required standards for a comprehensive quality assurance program, and detailing the policies, objectives, principles, organizational authority, accountability, and quality control procedures necessary for ensuring quality in a laboratory's work processes, products and services.

2. Quality assurance officer. A new personnel title of quality assurance officer is established, requiring every laboratory to designate an employee responsible for monitoring its quality assurance practices. The presence of an independent quality assurance officer permits laboratories to separate effectively compliance-monitoring activities from laboratory management and marketing considerations. In facilities with limited staffing, the technical director may also serve as quality assurance officer.

3. Proficiency testing (PT) providers. Under the proposal, laboratories will be able to use samples supplied by other PT providers recognized by the Department. This option may permit regulated parties to meet other states' PT timeframes, and remediate any proficiency test failures in a timelier manner to allow resumption of testing in the category. Recognition by the Department is limited to PT providers with demonstrated sample design, production, testing, distribution, data analysis and quality control systems equivalent to, or more stringent than the Department's, and scoring systems identical to the Department's.

4. Proficiency testing scoring. These revisions would make ELAP's evaluation of laboratory PT performance consistent with national standards reflected in the federal Environmental Protection Agency's (EPA) scoring formulas. Scores for proficiency test challenges will be limited to either satisfactory or unsatisfactory, with the satisfactory score range being modified to include present "marginal" limits to accommodate an occasionally deviant result. The proposed amendment would require laboratories to perform satisfactorily in at least two of three consecutive proficiency test events, rather than two consecutive events as now required, and codify ELAP's requirement for a 30-day time span between remedial PT challenges. The present requisite of two consecutive events was found to be untenable, since it does not accommodate random failures that all

laboratories may experience. The proposed provision would render PT performance over time a better indicator of appropriate and effective remedial action to correct a systemic problem.

5. Technical director qualifications. The amendment would permit a degree in either physical science or engineering to qualify an applicant for technical direction of a laboratory engaged in chemical, microbiological or radiochemical analyses. This widened scope of acceptable credentials reflects the latest applications of environmental analysis, and recognizes a general trend toward course specialization and academic sub-disciplines, such as chemical engineering. For radiochemical analysis, 24 credit hours in chemistry have been specified because, unlike the currently acceptable doctoral degree in radiation or nuclear chemistry, the alternatives proposed – a doctoral degree in physics or engineering - often do not incorporate the essential coursework in chemistry.

The proposed amendment would bolster the experience requirements for technical director applicants with an earned doctoral degree from six months to one year. A minimum of one year's experience is the nationally recognized industry standard for other than entry-level positions, reflecting increasing emphasis on the importance of bench work experience for analytical quality.

The requirements for credentialing technical directors in microbiology have been increased to allow timely response to anticipated changes in federal Safe Drinking Water Act and Clean Water Act requirements and possible expansion of the Department's certification beyond the three microbiology analytes now included for sewage and water treatment plant operation. The increased educational and experiential requirements for technical directors are necessary for facilities performing a wide range of biological tests, such as identification of parasitic organisms in drinking water, determination of environmental contaminants in animal tissue by bio-assay methods, and potentially, testing of environmental samples for critical agents, *i.e.*, agents of bioterrorism. Credentialing requirements for facilities performing only fecal coliform, total coliform and standard plate count analyses remain unchanged.

The technical director requirements applicable to individuals engaged in examining radon in air have been relaxed to address new and often less complex technologies and practices inherent in such examinations. An individual with a high school diploma, certification of successful completion of a training course in instrument operation, and six months' experience in use of a self-contained, continuous monitoring device may serve as technical director of a laboratory using such devices. This change is necessary to facilitate compliance by the many individuals and small businesses currently conducting on-site radon screening in residential settings using portable, self-contained devices requiring minimal operator intervention and interpretation of data.

6. Temporary technical direction. Existing regulations provide for temporary assumption of technical director responsibilities by a qualified individual for up to 21 business days without notice to the Department, with a maximum allowable limit of 40 consecutive business days per permit year. This proposal would extend the notification timeframe to 65 consecutive calendar days as well as eliminate the maximum time allotment to accommodate routine exercise of management prerogative to hire and fire employees without imposing unnecessary paperwork burdens.

7. Responsibilities of ownership. The amendment will hold the laboratory owner responsible for laboratory operation, jointly and severally with the technical director(s). While this approach is prudent given the important role of ownership in laboratory operations, the existing regulation does not permit consideration of factors against the owner, such as sustained charges of administrative violations or conviction of a crime related to environmental laboratory services in the Department's determination to deny approval to an applicant laboratory. The Department's recent enforcement experience related to United States Justice Department federal fraud cases has underscored the need to correct this oversight.

8. Administrative action and enforcement. The criteria for denial, suspension and revocation have been expanded to be consistent with nationally recognized standards for enforcement actions. The proposed amendment also delineates the Department's and the laboratory's specific responsibilities in the administrative processes leading to denial, suspension and revocation of approval.

9. Laboratory approval. Currently, newly accredited laboratories are granted interim approval, with full approval pending satisfactory performance in two years of PT events and two annual on-site assessments. Under the proposed amendment, transition from interim approval to final approval would be reduced to one year. The new requisite for submission of a quality system will enable Department consultants (assessors) to preview and become familiar with the laboratory's policies and procedures, initiate

discussions with technical personnel, and target potential deficiencies during on-site assessments. This requirement will increase assessor effectiveness in the field and decrease laboratory downtime during assessments. The revisions also require a director to definitively demonstrate remediation following unsatisfactory PT through successful participation in PT to ensure adequate corrective action has been implemented.

10. Method approval. A new section on "approved method" codifies current criteria for method approval. The criteria ensures the reliability of performance-based procedures by requiring validation that the method is at least technically acceptable for the intended sample types and purpose. The new section also establishes the Department's authority to review the technical merit of any analytical method, and to withdraw its approval if such merit is found lacking.

11. Records retention. Retention time for records related to environmental analyses other than drinking water chemical analysis has been increased from three to five years. The five years' retention time corresponds directly with state and federal statutes of limitations for criminal offenses. Increasing records-maintenance periods would significantly enhance the ability of State and federal officials to conduct criminal investigations by ensuring access to potential evidence of wrongdoings. Records of the laboratory's determination of the technical merit of each approved method must be retained for two years following discontinuation of the approved method.

12. Notification and timeframes. The amendment removes a requirement that laboratory directors notify the Department 20 days prior to any remodeling that may affect the quality of analytical data, but requires laboratories to notify the Department of any change in major analytical instrumentation within 30 calendar days. This revision changes from business days to calendar days the time required for responding to and notifying the Department to facilitate compliance throughout the interstate and international environmental laboratories industry.

Costs:

Costs to Private Regulated Parties:

The adoption of this regulation is intended to reduce costs for environmental laboratories providing services in more than one state by allowing recognition of other state's programs. This should reduce the costs associated with overlapping proficiency test challenges and duplicative on-site assessments, as well as costs for paperwork and human resources for complying with duplicative submissions and/or different regulatory requirements.

Cost savings will vary amongst laboratories depending on the extent to which a laboratory operates in multiple states and the fees charged by other programs. Currently twelve states' environmental laboratory accreditation programs have adopted NELAP and the remaining programs are expected to follow suit. Consequently, laboratories certified in New York State, particularly those operating in up to 36 other states, may realize significant cost savings from a reduction in fees and downtime experienced during on-site assessments. Additionally, laboratories may no longer incur duplicative costs associated with multiple PT challenges purchased from commercial PT providers. Based upon the average charges for commercial PT programs, a large-size laboratory offering 500 analytes may experience an annual cost savings of approximately \$10,350; for a medium-size laboratory offering 250 analytes, the annual cost savings would be approximately \$6,400; and for a small-size laboratory offering 10 analytes the annual cost savings would be approximately \$550. It is not expected that laboratories would routinely use another PT provider, because doing so would result in added costs, whereas the costs of participation in the Department's PT program are included in the laboratories' certification fees. However, such an option would allow regulated parties the flexibility of complying with other programs' timeframes and, if necessary, of remediating any PT failures in a more timely manner.

The proposed requirement for a quality assurance officer recognizes a functional capacity already in place in the vast majority of ELAP-certified environmental laboratories. It is expected that existing staff (*i.e.*, the technical director) would continue to perform quality assurance monitoring as proposed in this amendment, precluding additional labor costs.

The Department has contacted numerous laboratories representing various types of ELAP-approved facilities, including commercial, industrial and government laboratories, to ascertain records retention practices and estimate costs associated with the proposal to increase retention times. All ELAP-certified laboratories are now required to maintain a records retention system, and most are already doing so for periods well in excess of five years. Any additional costs incurred by laboratories not already retaining records in accordance with the proposed requirement are expected to be minimal, since the vast majority of laboratories employ a computerized

system with capacity for expanded storage (*i.e.*, disks) at minimal cost. If hard copies are retained, compliance with the requirement may entail purchase of one or more file cabinets, depending on the laboratory's test volume, at an average cost of about \$400 per file cabinet based upon current office supply catalog prices.

Laboratories may incur some minimal costs to document compliance with various requirements including the development and execution of ethics attestations, competency assessments of technical personnel and acceptable quality systems. Costs incurred by a laboratory for the development and submission of such documentation would depend on the nature of the material developed and mailed (disk or hardcopy), and, for hardcopy, duplication, collation and binder costs may be directly related to the scope of the laboratory's testing services. Duplication costs range from \$1.00 for disk copies to an average of five cents per printed page, assuming the information is in word processing files. Duplication and collation of a 100-page quality systems manual should cost approximately \$5.00 per copy and take no more than five person-hours with existing staff. Since documentation of quality systems procedures and other requirements would be expected to be conducted by existing staff, no additional labor costs should be incurred. Mailing costs for submission to the Department will range from \$1.25 for a disk to \$20.00 for a quality systems manual assembled in a four-inch ring binder.

The Department believes that laboratories certified by New York State will incur no new costs of compliance related to technical requirements incorporated by reference because the referenced Quality Systems Standards have been applied during on-site assessments for approximately two years and all laboratories have been found to be in substantial compliance. The vast majority of these standards focus on quality assurance activities, such as instrument calibration, use of control materials, and data verification, which are a routine part of laboratory procedures and established analytical methods and have been mandated by clients such as EPA. Consequently, proper implementation of such activities would be carried out by existing laboratory personnel and the costs associated with the proper performance of analytical methods cannot be assessed separately from routine laboratory operations. Furthermore, to the extent laboratories may incur any costs related to continued compliance, such costs will depend directly on the type, scope and volume of testing services which varies significantly from laboratory to laboratory.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

State government would incur no new costs, except that State government-operated facilities providing regulated services would incur the costs and savings described for regulated parties.

Costs to the Department:

The Department would incur minimal administrative paperwork costs as a result of these regulations, specifically for revision of on-site assessment checklists and distribution of updated materials to regulated parties. Paperwork, duplication and mailing costs for distribution of the new standards to the 779 environmental laboratories certified by the Department at a cost of \$3.00 per document would be less than \$2,500.

Costs to Local Government:

Local government would incur no new costs, except that local government-operated facilities providing regulated laboratory services would incur the costs and savings described for regulated parties.

Paperwork:

While laboratories need to submit documentation of an acceptable quality system as part of the initial application process, this provision should result in minimal paperwork because facilities are already required to maintain documentation of quality assurance and quality control policies and procedures. Such paperwork may require revision of written protocols and forms for recording requisite documentation, specifically, ethics attestations and competency assessments of technical personnel. Laboratories experiencing a temporary change in technical direction may realize a reduction in paperwork from the proposed relaxation of requirements related to Department notification. An existing requirement that the Department be notified of any laboratory remodeling that may affect analytical data quality has been replaced with a notification requirement applicable only whenever major analytical instrumentation is changed.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government, or school, fire or other special district, unless a county, city, town or village government, or school, fire or other special district operates an environmental laboratory, and, therefore, is subject to these regulations to the same extent as a private regulated party.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternative Approaches:

The alternative to adopting the proposed amendments would be to retain the requirements and language currently in regulation. Continued use of outdated terminology, failure to clarify and standardize definitions of terms, and failure to recognize changes in technology and industry-wide practices would diminish the Department's effectiveness in carrying out its responsibilities for regulatory education, oversight and enforcement. Additionally, retention of existing requirements or adoption of different standards would jeopardize New York State's participation in the National Environmental Laboratory Accreditation Program (NELAP). Furthermore, failure to codify the relatively minor regulatory changes that would align New York's standards with NELAP standards would imperil the Department's status as a NELAP accrediting authority.

Federal Standards:

Since there is no federal certification program in place for environmental laboratories, these regulations do not duplicate any federal standards. NELAP standards are voluntary and not legally binding unless they are incorporated into State regulatory programs. These regulations are consistent with and complement any U.S. Environmental Protection Agency standards affecting environmental laboratory tests for evaluation of air, soil and water quality.

Compliance Schedule:

Requirements for an acceptable quality system were provided to laboratories in late 1999 as an update to the ELAP Certification Manual. Laboratory compliance has been assessed applying standards addressed in this revision, and New York State-certified laboratories were afforded ample opportunity to come into compliance with all anticipated amended requirements for more than two years. Consequently, regulated parties should be able to comply with these regulations as of their effective date, upon publication of a Notice of Adoption.

Regulatory Flexibility Analysis

Effect of Rule:

The Environmental Laboratory Approval Program (ELAP) certifies 779 laboratories at present. Of these, 227 are out-of-state facilities and do not qualify as small businesses. Of the remaining 552 laboratories, 275 are governmental laboratories, and 277 are commercial entities, of which 170 are estimated to be small businesses. Governmental laboratories include primarily drinking water and sewage treatment plant laboratories operated by counties, municipalities and townships. These amendments would not extend regulatory oversight to any parties not presently regulated. Most facilities approved by the Department to analyze environmental samples would be affected by some of the provisions of the proposal, including enhanced recordkeeping requirements, but not in an adverse manner.

Compliance Requirements:

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements for operation of an environmental laboratory, as full compliance would require minimal, if any, changes to present technical, reporting or recordkeeping practices. Compliance with newly codified requirements incorporated by reference to ELAP's Quality Systems Standards is expected to require minimal modifications, since all laboratories certified by New York State (NYS) have been evaluated using standards consistent with the quality systems requirements as a major component of on-site assessment protocols, and found to be already in substantial compliance.

The proposed regulation increases records retention time for analytical data from the present three years to five years. The Department has determined that many small businesses and governmental laboratories are already well in substantial compliance with this requisite, *i.e.*, they retain records for periods well in excess of five years. Overall, some paperwork requirements are minimally increased, while in other areas paperwork has been eliminated. It will be necessary for applicant laboratories to assemble and submit a quality systems manual as documentation of an acceptable quality system. Since such systems are a universal component of the operation of all laboratories, this should not prove a burdensome requirement, especially since most regulated parties retain requisite documentation information in word processing files. Laboratories may need to revise written protocols and forms for recording the documentation, specifically, ethics attestations and competency assessments of technical personnel. Collation of a 100-page quality systems manual should take no more than five person-hours, and the Department anticipates that no new staff will be required for this activity. No new reporting requirements are imposed, and several existing ones have been relaxed.

Laboratories will need to ensure that newly hired technical directors have the proposed one-year's, rather than the existing six months' experi-

ence in the relevant areas, in addition to an earned doctoral degree, and, for a technical director in radiochemical analysis, 24 credit hours in chemistry regardless of degree. Those few laboratories employing directors who would not qualify under the above revisions may take advantage of a grandfathering clause included in the amendment. The Department has no reason to believe that a shortage of qualified applicants exists.

A change in technical director qualifications for radon testing is proposed to facilitate compliance by the many small businesses and local government programs currently conducting on-site radon screening at residential settings in NYS without Department certification. The proposal offers flexibility as it establishes new, less stringent personnel requirements for laboratories engaged solely in radon testing using portable, self-contained devices that require minimal operator intervention.

Other changes in proficiency testing (PT) scoring and technical director educational credentials, as well as method approval criteria, will have no direct impact on regulated parties' ability to comply with this proposed revision.

Professional Services:

No need for additional professional services is anticipated.

Compliance Costs:

The adoption of this regulation is intended to reduce costs for environmental laboratories providing services in more than one state by allowing recognition of other state's programs. For small business laboratories which provide services in other states, this should reduce the costs associated with overlapping proficiency test challenges and duplicative on-site assessments, as well as costs for paperwork and human resources for complying with duplicative submissions and/or different regulatory requirements.

Cost savings will vary amongst laboratories depending on the extent to which a laboratory operates in multiple states and the fees charged by other programs. Currently twelve states' environmental laboratory accreditation programs have adopted NELAP and the remaining programs are expected to follow suit. Consequently, laboratories certified in New York State, particularly those operating in up to 36 other states, may realize significant cost savings from a reduction in fees and downtime experienced during on-site assessments. Additionally, laboratories may no longer incur duplicative costs associated with multiple PT challenges purchased from commercial PT providers. Based upon the average charges for commercial PT programs, and a large-size laboratory offering 500 analytes may experience an annual cost savings of approximately \$10,350; for a medium-size laboratory offering 250 analytes, the annual cost savings would be approximately \$6,400; and for a small-size laboratory offering 10 analytes the annual cost savings would be approximately \$550. It is not expected that laboratories would routinely use another PT provider, because doing so would result in added costs, whereas the costs of participation in the Department's PT program are included in the laboratories' certification fees. However, such an option would allow regulated parties the flexibility of complying with other programs' timeframes and, if necessary, of remediating any PT failures in a more timely manner. Since most governmental laboratories limit operations to within their New York State jurisdictions, they are not likely to incur savings from the elimination of duplicative regulatory requirements.

The proposed requirement for a quality assurance officer recognizes a functional capacity already in place in the vast majority of ELAP-certified environmental laboratories. It is expected that existing staff (*i.e.*, the technical director) would continue to perform quality assurance monitoring as proposed in this amendment, precluding additional labor costs.

The Department has contacted numerous laboratories representing various types of ELAP-approved facilities, including commercial, industrial and government laboratories, to ascertain records retention practices and estimate costs associated with the proposal to increase retention times. All ELAP-certified laboratories are now required to maintain a records retention system, and most are already doing so for periods well in excess of five years. Any additional costs incurred by laboratories not already retaining records in accordance with the proposed requirement are expected to be minimal, since the vast majority of laboratories employ a computerized system with capacity for expanded storage (*i.e.*, disks) at minimal cost. If hard copies are retained, compliance with the requirement may entail purchase of one or more file cabinets, depending on the laboratory's test volume, at an average cost of about \$400 per file cabinet based upon current office supply catalog prices.

Laboratories may incur some minimal costs to document compliance with various requirements including the development and execution of ethics attestations, competency assessments of technical personnel and acceptable quality systems. Costs incurred by a laboratory for the develop-

ment and submission of such documentation would depend on the nature of the material developed and mailed (disk or hardcopy), and, for hardcopy, duplication, collation and binder costs may be directly related to the scope of the laboratory's testing services. Duplication costs range from \$1.00 for disk copies to an average of five cents per printed page, assuming the information is in word processing files. Duplication and collation of a 100-page quality systems manual should cost approximately \$5.00 per copy and take no more than five person-hours with existing staff. Since documentation of quality systems procedures and other requirements would be expected to be conducted by existing staff, no additional labor costs should be incurred. Mailing costs for submission to the Department will range from \$1.25 for a disk to \$20.00 for a quality systems manual assembled in a four-inch ring binder.

The Department believes that laboratories certified by New York State will incur no new costs of compliance related to technical requirements incorporated by reference because the referenced Quality Systems Standards have been applied during on-site assessments for approximately two years and all laboratories have been found to be in substantial compliance. The vast majority of these standards focus on quality assurance activities, such as instrument calibration, use of control materials, and data verification, which are a routine part of laboratory procedures and established analytical methods and have been mandated by clients such as EPA. Consequently, proper implementation of such activities would be carried out by existing laboratory personnel and the costs associated with the proper performance of analytical methods cannot be assessed separately from routine laboratory operations. Furthermore, to the extent laboratories may incur any costs related to continued compliance, such costs will depend directly on the type, scope and volume of testing services which varies significantly from laboratory to laboratory. Compliance costs for small businesses and local governments are not expected to vary significantly from all other environmental laboratories except to the extent these same factors may cause variations in costs associated with compliance.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to small businesses and local governments. The vast majority of the proposed provisions clarify existing requirements, and are intended to address specific concerns expressed by regulated and affected parties through their participation in development of National Environmental Laboratory Accreditation Program (NELAP) consensus standards. The proposal revises and reorganizes Subpart 55-2: to standardize and clarify terminology related to Department oversight of environmental laboratories; modify existing requirements to address new technology and practices, including requirements for personnel credentials and recordkeeping, as well as criteria for enforcement actions; lessen regulatory burdens on laboratories that conduct business in more than one state by bringing New York State's standards into general alignment with recently promulgated NELAP consensus standards; and consolidate requirements on related topics into more easily referenced sections. By relaxing technical director educational and experiential requirements for examination of radon in air, the amendment specifically addresses the needs of small business operators wishing to use new testing technologies.

Minimizing Adverse Impact:

The proposed revisions would have no adverse impact on small businesses and local governments for the reasons indicated above. The integration of the National Laboratory Accreditation Program Standards into these regulations and provisions for recognition of other PT programs should reduce the effects of potentially duplicative and inconsistent standards of different State certification programs on small businesses and local governments operating environmental laboratories. Incorporation by reference to ELAP's Quality Systems Standards sets minimum standards for ensuring testing result quality and accuracy that have been already universally implemented throughout the industry, regardless of business size or scope of testing. The proposal includes several provisions to eliminate or reduce paperwork, costs and personnel workload. For example, the proposed amendment provides that, in facilities with limited staffing, the technical director may also serve as quality assurance officer. The proposal also accommodates routine exercise of the management prerogative to hire and fire employees without imposing on regulated laboratories unnecessary paperwork burdens to file notifications of short-term personnel changes with the Department. The submission of a quality systems manual at the time of application for approval is expected to reduce down time associated with assessors' on-site evaluation of each laboratory's operations. Currently employed technical directors may be grandfathered; therefore, small businesses and governmental laboratories will not be adversely impacted by the proposed technical director qualifications.

Small Business and Local Government Participation:

The Environmental Laboratory Advisory Board, mandated by Chapter 685, Section 2 of the Laws of 1989 and consisting of representatives of the approved laboratory community, including laboratories operating as small businesses, or owned or operated by a local government, was provided with an earlier draft and this version of the proposed rule for comment. No adverse comments were received in response. All regulated parties, some of which are small businesses and laboratories operated by local governments, were also directly advised of these regulations' requirements by letter, dated June 19, 2000, soliciting informal comments on the draft proposed regulation. The single comment received reflected misinterpretation of a proposed provision, and has been since resolved.

During the last year, ELAP staff made several presentations on the proposed amendments to: the Greater Buffalo Environmental Conference; the joint meeting of the New York and Pennsylvania Associations of Approved Environmental Laboratories; a NYS Department of Environmental Conservation meeting of regulated laboratories in Yorktown, New York; and a NYS Association of County Health Officers meeting. Outreach was also conducted to discuss the pending regulatory changes. ELAP held two workshops for accredited laboratories in Albany and Rochester, and, while all regulated parties were invited to attend, the program was specifically tailored to the concerns of small laboratories and government-owned laboratories. ELAP staff has continued to provide information and respond to questions about the proposed rulemaking at quarterly meetings of the New York Association of Approved Environmental Laboratories.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

Rural areas are defined as counties with a population under 200,000, and, for counties with a population larger than 200,000, rural areas are defined as towns with population densities of 150 persons or fewer per square mile. Forty-four counties in New York State with a population under 200,000 are classified as rural, and nine additional counties include townships with population densities characteristic of rural areas.

This proposed rule would apply to all environmental laboratories operating in New York State, including laboratories located or performing environmental analyses in rural areas. The Department's Wadsworth Center Environmental Laboratory Approval Program (ELAP) currently certifies 779 laboratories. Of these, 201 are located in rural areas of New York State.

Reporting, Recordkeeping or Other Compliance Requirements:

These amendments will not have an adverse impact on the ability of rural laboratories to comply with Department requirements for operation of an environmental laboratory, as full compliance would require minimal, if any, changes to current technical, reporting or recordkeeping practices. Adherence to newly codified requirements incorporated by reference to ELAP's Quality Systems Standards is expected to entail minimal modifications, since all laboratories certified by New York State have been evaluated applying standards consistent with the Quality Systems Standards as a major component of on-site assessment protocols, and were found to be in substantial compliance with the proposed requisites.

The amendment increases records retention time for analytical data from the present three years to five years. The Department has determined that most laboratories, including facilities in rural areas, are already in substantial compliance, *i.e.*, currently retain records for periods well in excess of five years. Overall, some paperwork is minimally increased, while in other areas, the paperwork burden has been eliminated. It will be necessary for applicant laboratories to assemble and submit to the Department a quality systems manual as documentation of an acceptable quality system. Since such a system is a universal component of the operation of all laboratories, this should not prove a burdensome requirement, especially since most regulated parties already retain requisite information in word processing files. Laboratories may need to revise written protocols and forms for recording requisite documentation, specifically, ethics attestations and competency assessments of technical personnel. Collation of a 100-page quality systems manual should entail no more than five person-hours, and the Department anticipates that no new staff will be required to effect the proposed revisions. No new reporting requirements are imposed, and several existing such requirements have been relaxed.

Laboratories will need to ensure that newly hired technical directors have the proposed one year's, rather than the existing six month's experience, in addition to an earned doctoral degree; and, for a technical director in radiochemical analysis, have earned 24 credit hours in chemistry regardless of degree. Those few laboratories employing directors who would not qualify under the new requisites may take advantage of the amendment's

grandfathering clause. The Department has no reason to believe that a shortage of qualified individuals exists.

A change to director qualifications is proposed for radon testing to facilitate compliance by entities currently conducting on-site radon screening in residential settings of the State's rural areas without certification. The proposal offers flexibility as it establishes new, less stringent personnel qualifications for laboratories engaged in radon testing solely using portable, self-contained devices that require minimal operator intervention.

The rule's other changes in proficiency testing (PT) result scoring and director educational requisites, as well as method approval criteria, will have no direct impact on regulated parties' ability to comply with this proposed amendment.

Costs:

The adoption of this regulation is intended to reduce costs for environmental laboratories providing services in more than one state by allowing recognition of other state's programs. For rural area laboratories which provide services in other states, this should reduce the costs associated with overlapping proficiency test challenges and duplicative on-site assessments, as well as costs for paperwork and human resources for complying with duplicative submissions and/or different regulatory requirements.

Cost savings will vary amongst laboratories depending on the extent to which a laboratory operates in multiple states and the fees charged by other programs. Currently twelve states' environmental laboratory accreditation programs have adopted NELAP and the remaining programs are expected to follow suit. Consequently, laboratories certified in New York State, particularly those operating in up to 36 other states, may realize significant cost savings from a reduction in fees and downtime experienced during on-site assessments. Additionally, laboratories may no longer incur duplicative costs associated with multiple PT challenges purchased from commercial PT providers. Based upon the average charges for commercial PT programs, and a large-size laboratory offering 500 analytes may experience an annual cost savings of approximately \$10,350; for a medium-size laboratory offering 250 analytes, the annual cost savings would be approximately \$6,400; and for a small-size laboratory offering 10 analytes the annual cost savings would be approximately \$550. It is not expected that laboratories would routinely use another PT provider, because doing so would result in added costs, whereas the costs of participation in the Department's PT program are included in the laboratories' certification fees. However, such an option would allow regulated parties the flexibility of complying with other programs' timeframes and, if necessary, of remediating any PT failures in a more timely manner.

The proposed requirement for a quality assurance officer recognizes a functional capacity already in place in the vast majority of ELAP-certified environmental laboratories. It is expected that existing staff (*i.e.*, the technical director) would continue to perform quality assurance monitoring as proposed in this amendment, precluding additional labor costs.

The Department has contacted numerous laboratories representing various types of ELAP-approved facilities, including commercial, industrial and government laboratories, to ascertain records retention practices and estimate costs associated with the proposal to increase retention times. All ELAP-certified laboratories are now required to maintain a records retention system, and most are already doing so for periods well in excess of five years. Any additional costs incurred by laboratories not already retaining records in accordance with the proposed requirement are expected to be minimal, since the vast majority of laboratories employ a computerized system with capacity for expanded storage (*i.e.*, disks) at minimal cost. If hard copies are retained, compliance with the requirement may entail purchase of one or more file cabinets, depending on the laboratory's test volume, at an average cost of about \$400 per file cabinet based upon current office supply catalog prices.

Laboratories may incur some minimal costs to document compliance with various requirements including the development and execution of ethics attestations, competency assessments of technical personnel and acceptable quality systems. Costs incurred by a laboratory for the development and submission of such documentation would depend on the nature of the material developed and mailed (disk or hardcopy), and, for hardcopy, duplication, collation and binder costs may be directly related to the scope of the laboratory's testing services. Duplication costs range from \$1.00 for disk copies to an average of five cents per printed page, assuming the information is in word processing files. Duplication and collation of a 100-page quality systems manual should cost approximately \$5.00 per copy and take no more than five person-hours with existing staff. Since documentation of quality systems procedures and other requirements

would be expected to be conducted by existing staff, no additional labor costs should be incurred. Mailing costs for submission to the Department will range from \$1.25 for a disk to \$20.00 for a quality systems manual assembled in a four-inch ring binder.

The Department believes that laboratories certified by New York State will incur no new costs of compliance related to technical requirements incorporated by reference because the referenced Quality Systems Standards have been applied during on-site assessments for approximately two years and all laboratories have been found to be in substantial compliance. The vast majority of these standards focus on quality assurance activities, such as instrument calibration, use of control materials, and data verification, which are a routine part of laboratory procedures and established analytical methods and have been mandated by clients such as EPA. Consequently, proper implementation of such activities would be carried out by existing laboratory personnel and the costs associated with the proper performance of analytical methods cannot be assessed separately from routine laboratory operations. Furthermore, to the extent laboratories may incur any costs related to continued compliance, such costs will depend directly on the type, scope and volume of testing services which varies significantly from laboratory to laboratory. Compliance costs for laboratories located in rural areas are not expected to vary significantly from all other environmental laboratories, except to the extent these same factors may cause variations in costs associated with compliance.

Minimizing Adverse Impact:

The proposed regulation would have no adverse impact on environmental laboratories operating in rural areas. The vast majority of the proposed amendments' provisions clarify existing requirements, and are intended to address specific concerns expressed by regulated and affected parties through participation in the development of national (NELAP) consensus standards. The standards set forth by incorporation by reference to ELAP's Standards are minimum standards for ensuring work product quality that have been already universally implemented throughout the industry and are applicable regardless of business location. The proposal includes several provisions to eliminate or reduce required paperwork, costs and personnel workloads. For example, the proposed amendment allows that, in facilities with limited staffing, the technical director may also serve as quality assurance officer. The proposal also seeks to accommodate routine exercise of the management prerogative to hire and fire employees without imposing on regulated laboratories unnecessary paperwork burdens related to notifications of short-term personnel changes. Submission of a quality manual at the time of application for approval is expected to reduce downtime associated with acquainting on-site assessors with each laboratory's operations. Currently employed technical directors may be grandfathered; therefore laboratories, including those located in rural areas, will not be adversely impacted by the proposed director qualifications.

Opportunity for Rural Participation:

The Environmental Laboratory Advisory Board, mandated by Chapter 685 of the Laws of 1989 and consisting of representatives of the approved laboratory community, including those operating as small businesses, or owned or operated by a local government, was provided with an earlier draft and this version of the proposed rule for comment. Regulated parties, including laboratories located or operating in rural areas, were also directly advised of these regulations' proposed requirements by letter dated June 19, 2000, soliciting informal comments on the draft regulation. The single comment received as a result reflected a misinterpretation of a proposed requirement, and has been since resolved. Within the last year, ELAP staff made several presentations on the proposed amendments to: the Greater Buffalo Environmental Conference, a joint meeting of the New York and Pennsylvania Associations of Approval Environmental Laboratories; a New York State Department of Environmental Conservation meeting of regulated laboratories in Yorktown, New York; and a New York State Association of County Health Officers meeting. Outreach was also conducted to discuss pending changes. ELAP held two workshops for accredited laboratories in Albany and Rochester, tailored to public and private sector small laboratories, many of which operate in rural areas. ELAP staff has continued to provide information and respond to questions about the proposed rulemaking at quarterly meetings of the New York Association of Approved Environmental Laboratories.

Job Impact Statement

It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charges for Professional Health Services

I.D. No. INS-12-04-00016-P

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

Proposed action: Amendment of section 68.1 and Appendix 17C (Regulation 83) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5221 and art. 51

Subject: Charges for professional health services.

Purpose: To establish charges for professional health care services provided in no-fault claims.

Text of proposed rule: Section 68.1(b) of Part 68 is hereby amended to read as follows:

(b)(1) The charges for services specified in paragraph one of subsection (a) of section 5102 of the Insurance Law and any further health service charges which are incurred as a result of the injury and which are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chair of the Workers' Compensation Board for industrial accidents. However, references to workers' compensation reporting and procedural requirements in such schedules do not apply, e.g., requirements that provide for authorization to perform surgical procedures, is not applicable to no-fault. The general instructions and ground rules in the workers' compensation fee schedules apply, but those rules which refer to workers' compensation claim forms, pre-authorization approval and dispute resolution guidelines do not apply, unless specified in this Part.

(2) *If a fee schedule has been adopted for a treating provider, the fee for services provided shall be the fee adopted or established for that treating provider (for example, the fee for chiropractic services performed by a chiropractor employed by a physician would be the fee applicable for chiropractic services as contained in the Chiropractic Fee Schedule).*

(3)(i) *Where more than one health care provider treats a patient for the same condition during the same period of time, payment shall be limited solely to the health care provider whose specialty is most relevant to the diagnosis. For example, if claims are received from both an orthopedist and a surgeon for the treatment of a back disorder, or, alternatively, from both a chiropractor and a massage therapist for such treatment, payment is due only to the orthopedist and the chiropractor, respectively. Where the concurrent care involves overlapping or common services, the fees payable shall not be increased but prorated. Each provider shall submit separate bills but shall indicate if agreement has been reached on the proration.*

(ii) *When the condition of the patient requires the disparate skills of two or more providers to treat different conditions which do not fall within the scope of other physicians treating the patient at the same time (e.g., management of diabetes mellitus in a surgical case), payment is due each provider who plays an active role in the treatment program. The services rendered by each provider shall be distinct, in different disciplines, identifiable and adequately documented in the records and reports.*

(4) *Those who provide billed services under the active and personal supervision of a treating provider must:*

(i) *be in compliance with any licensing, training, qualification and experience requirements mandated and specified under the New York State Education Law, or, if the treatment is provided outside of New York State, any other state law;*

(ii) *unless specifically authorized by law, be supervised by the treating provider at the location where the service is provided;*

(iii) *number no more than four under active and personal supervision of any one provider at any one time, subject to any further limitations provided by law.*

Part E of Appendix 17-C is amended to read as follows:

Part E. [Drugs, medical equipment and supplies] *Prescription drugs.*

[(a)(1)]The maximum permissible charge for drugs, [medical equipment and supplies] *which are provided by a licensed pharmacist [is: (i) for drugs requiring] and require a doctor's prescription, is the actual cost of*

the drug to the druggist (not to exceed the cost shown in the American Druggist Blue Book or Drug Topic Red Book) plus a dispensing fee of [\$4.85] \$5.00, except that for a compounded prescription a [\$1.95] \$2.00 compounding fee shall be added to the dispensing fee[.].

Note: In order to minimize the administrative cost, insurers need not verify the maximum permissible charge for the first \$50 of prescription drug bills received per person, per accident.

(ii) for medicines not requiring a doctor's prescription, the prevailing charge;

(iii) for medical equipment and supplies, 150 percent of the actual cost of the equipment or supplies to the pharmacist.

(2) The maximum permissible monthly rental charge for medical equipment and supplies provided by a licensed pharmacist on a rental basis is one sixth of the actual cost of the equipment or supplies to the pharmacist, provided further that the maximum total charge is 12 times the maximum permissible monthly rental charge.

(b)(1) For medical equipment and supplies (e.g., TENS units, soft cervical collars) provided by physician or medical equipment supplier, the maximum permissible charge is 150 percent of the documented cost of the equipment to the provider.

(2) The maximum permissible monthly rental charge for medical equipment and supplies provided on a rental basis is one ninth of the maximum permissible charge for purchase of the equipment or supplies, provided further that the maximum total charge is 12 times the maximum permissible monthly rental charge.]

Part F of Appendix 17-C is amended to read as follows:

Part F. [Prosthetic and orthotic appliance supplies and services] *Durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances* fee schedule.

(a) The maximum permissible charge for [prosthetic and orthotic appliance supplies and services is the product of the Statewide Maximum Fee and the conversion factor set forth herein] *the purchase of durable medical equipment, medical/surgical supplies, orthopedic footwear and orthotic and prosthetic appliances is the fee payable for such equipment and supplies under the New York State Medicaid program. Such fees are contained in the Medicaid Management Information System's Provider Manual for Durable Medical Equipment, Medical/Surgical Supplies, Orthopedic Footwear, and Orthotic and Prosthetic Appliances. Such provider manual may be obtained by writing to the Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl Street, Albany NY 12243. If the item is not listed in such manual or if no price is listed in the manual, the fee payable, in accordance with Medicaid rules, shall be the lesser of:*

(1) *the acquisition cost (i.e. the line item cost from a manufacturer or wholesaler net of any rebates, discounts or other valuable considerations, mailing, shipping, handling, insurance costs or any sales tax) to the provider plus 50%; or*

(2) *the usual and customary price charged to the general public.*

(b) [The conversion factor applicable to prosthetic and orthotic appliance supplies and services is 1.55.

(c) The Statewide Maximum Fee is as set forth in the New York State Orthotics, Prosthetics and Stock Orthoses Fee Schedules published and amended by the Bureau of Medicaid, State of New York Department of Health.

(d) [The maximum permissible monthly rental charge for [prosthetic and orthotic appliance] *such equipment, [and] supplies and services provided on a rental basis [is one ninth of the maximum permissible charge for purchase of the appliance or supplies, provided further that the maximum total charge is 12 times the maximum permissible monthly rental charge] must not exceed the lower of the monthly rental charge to the general public or the price determined by the New York State Department of Health area office. The total accumulated monthly rental charges may not exceed the fee amount allowed under the Medicaid fee schedule.*

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.

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 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and

implement reasonable standards for the prompt investigation of claims arising under insurance policies. Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation (MVAIC) in the payment of no-fault benefits to qualified persons. Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents and Section 5108 specifically authorizes the Superintendent to adopt or promulgate fee schedules for health care benefits payable under the no-fault system.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits in order to contain the costs of no-fault insurance. In order to contain costs, the Superintendent is required to adopt those fee schedules that are promulgated by the Chair of the Workers' Compensation Board. In addition, the Superintendent may, after consulting with the Chairman of the Workers' Compensation Board and the Commissioner of Health, establish fee schedules for those services for which schedules have not been prepared and established by the Workers' Compensation Board.

3. Needs and benefits: The Workers' Compensation Board fee schedules were initially adopted in 1977 and have been revised regularly since that time in order to reflect inflationary increases and to incorporate other necessary enhancements. Periodic revision to these fee schedules is a part of the ongoing process of keeping the fee schedules current and reflective of changes in the health care industry, thereby facilitating access to health care for motor vehicle accident victims while controlling costs. Similar modifications and improvements have also been applied to those fee schedules established by the Insurance Department for various health care services that are not covered in any fee schedule established by the Workers' Compensation Board.

The current rule for payment of durable medical equipment and supplies contained in the Appendix to Regulation 83 fails to definitively establish consistent and reasonable values for the cost of durable medical equipment and supplies. This has produced numerous disputes between providers and insurers as to the price of the prescribed item, resulting in more claims proceeding to no-fault arbitration and the courts for resolution. In fact, of the 77,556 arbitration requests filed in 2002, 22,268 involved disputes regarding durable medical equipment. The current rule also lends itself to abusive billing practices since it permits health providers to prescribe higher priced items that are not medically justified in order to generate higher fees and profits rather than lower priced items of equal medical efficacy.

The adoption by the Superintendent of an established fee schedule that is updated as necessary to reflect increased costs and to include newer products as they are developed will provide for more timely payment of health care provider charges and result in a significant reduction in litigation costs that are being incurred due to the variable nature of the current fee schedule rule used to establish these costs. Utilization of the established New York State Medicaid fee schedules for durable medical equipment, medical/surgical supplies, orthopedic footwear and orthotic and prosthetic appliances should significantly reduce the number of disputes between insurers and health care providers, resulting in more uniform, efficient and cost effective processing and payment of no-fault claims.

A cost comparison, utilizing the data of a major New York insurer, demonstrated that during a one year period, of the top 25 most frequently prescribed and billed items, an annual cost savings of over \$1,000,000 would be realized for that insurer if the Medicaid fee schedule was used in place of the fee schedule that is currently in use for the reimbursement of durable medical equipment. That savings would be in addition to reduced litigation costs for both providers and insurers that are being incurred due to the inconsistent fees that are being charged under the current rule. These savings can contribute to a stabilization of no-fault claim costs resulting in lower premiums for policyholders. Cost savings aside, use of an established fee schedule with which DME providers are already familiar and accustomed to should result in fair and consistent billings and quicker payment, with fewer disputes over the amount charged.

Accordingly, the Department is proposing the adoption of the fee schedule set forth in the New York State Medicaid Management Information System Provider Manual for durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances as the schedule that would be utilized for fees payable for the purchase and rental of durable medical equipment, medical/surgical supplies, orthotic footwear and orthotic and prosthetic appliances.

Too often, no-fault patients are being subjected to unnecessary treatment and testing by various health care specialists operating within a clinic

structure. These clinics employ health care providers in a multi-specialty setting. In some instances, lay persons control the clinics in order to engage in fraudulent or abusive practices. In others, the employment of health care providers from various specialties provides the clinic with an incentive to maximize its revenues at the expense of the no-fault system. At times, treatment and testing is provided, not for the benefit of the patient, but to increase the profitability of the practice providing the care. The amendment would base the fee upon the specialty of the treating provider rather than the billing provider, establishing parity between the independent provider and the multi-specialty practice and reducing the financial incentive for multi-specialty practices to employ various health care providers in order to charge higher fees for services rendered.

Abuses by these types of clinics would also be addressed by defining the term "active and personal supervision" in order to limit the number of individuals a health provider can supervise. This will help to curtail the amount of unnecessary treatments and diagnostic testing that is currently being provided to no-fault patients that results from the practice of having a physician supervising an excessive number of actual treating providers in order to generate billings at higher fee rates.

This amendment also conforms the payment provision for prescription drugs with section 5102 of the Insurance Law by expressly disallowing reimbursement for "over the counter" medications; and slightly increases the fee for dispensing prescription drugs.

The amendment also clarifies and expands the use of the Concurrent Care rule, derived from General Ground Rule Six of the Workers' Compensation Board fee schedule, as also being applicable to health services provided by non-physicians. This will help to eliminate exploitation of fee schedule rules by certain providers who refer patients to other health care providers in order to circumvent fee schedule provisions that limit their fees. These referrals often inconvenience patients unnecessarily and result in increased costs for the no-fault system.

4. Costs: This rule imposes no compliance costs upon state or local governments unless they are self-insured for no-fault insurance.

Insurers, self-insurers and health care providers who provide services under the no-fault system must acquire a New York State Medicaid fee schedule from the New York State Department of Health, currently at a cost of \$20, if they do not possess such schedules.

Health care providers and medical supply companies that are subject to the provisions of this Part will be required to use the New York State Medicaid fee schedule for durable medical equipment, medical/surgical supplies, orthopedic footwear and orthotic and prosthetic devices. This may result in a reduction in revenue for some of those providers and companies to the extent that they provide services to motor vehicle accident victims and charge fees in excess of those allowed by the Medicaid schedule. However the use of this schedule should result in their incurring lower costs in processing claims by eliminating disputes as to the value of claims thereby reducing litigation costs and resulting in more timely payment of bills.

5. Local government mandates: Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of this part.

6. Paperwork: There are no additional paperwork requirements generated by the amendment to this part.

7. Duplication: The provisions of this Part will not duplicate any existing federal or state rule.

8. Alternatives: The alternative of allowing the current rule for the reimbursement of durable medical equipment and supplies to remain in effect is no longer a viable option. The current rule fails to establish definitive values for the cost of durable medical equipment and supplies, resulting in frequent fee disputes that proceed to no-fault arbitration or the courts for resolution where rulings have been inconsistent and fail to provide guidance with regard to proper billing. The current fee schedule also lends itself to abusive billing practices since it encourages health providers to seek the most expensive items to prescribe in order to generate higher fees and profits.

Chapter 892 of the Laws of 1977 recognized the viability of establishing schedules of maximum permissible charges for professional health services payable under the no-fault insurance system in order to contain the cost of no-fault insurance. The Superintendent is required to adopt the fee schedules promulgated by the Chair of the Workers' Compensation Board for various medical procedures. The Chair has not created a fee schedule for durable medical equipment. Under the workers' compensation system, the amount payable by an insurer is the cost of an item, which can vary depending upon the supplier. While this procedure has proven its effectiveness in the workers' compensation system, it is important to note that the

workers' compensation system provides for direct control and review of patient care and billing procedures. In contrast, statutory no-fault health care services are provided in an unmanaged environment. Adopting that approach would continue to produce inconsistent charges and continued disputes over the amount to be charged. Therefore, the Department is proposing the adoption of the New York State Medicaid Schedule, a widely used schedule that is applicable to durable medical equipment and supplies. By using the durable medical equipment and supply fee schedule developed for the New York State Medicaid program, the processing of no-fault claims should become more uniform, cost-effective and efficient.

The provision that bases the fee to be charged upon the specialty of the treating provider rather than the specialty of the billing provider will address billing abuses and discourage the establishment of multi-specialty practices solely for the purpose of engaging in abusive billing practices. It assures that charges are consistent with those charged by providers who operate independently of multi-specialty practices. The alternative is maintenance of the status quo, which encourages abusive practices, including the establishment of medical "mills".

Similarly, defining the term "active and personal supervision" will establish reasonable limits that will serve to improve the quality of care that is provided to accident victims and will discourage abusive practices designed solely to generate income without regard to patient care and thereby to exploit the no-fault system. Again, the alternative is maintenance of the status quo, which has resulted in minimally supervised health care providers, who are often deployed in order to maximize the profits of the medical practice with little regard for the quality of care provided.

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

10. Compliance schedule: The implementation date of this amendment provides enough lead time for insurers, self-insurers and health care providers to obtain copies of the New York State Medicaid fee schedule for medical equipment and familiarize themselves with the fees contained therein. This proposal becomes effective upon the publication of adoption in the *State Register*. The self-insurers, insurers, and health-care providers should now be obtaining copies of the New York State Medicaid fee schedule for medical equipment and to familiarize themselves with the fees contained therein.

Regulatory Flexibility Analysis

This rule applies 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" contained in section 102(8) of the State Administrative Procedure Act, because there are none which are both independently owned and have under 100 employees.

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 business.

Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of this part.

There are also some health care providers and medical supply companies who are subject to the provisions of this Part and who may be considered small businesses. They will be required to use the New York State Medicaid fee schedule for durable medical equipment, medical/surgical supplies, orthopedic footwear and orthotic and prosthetic devices. This may result in a reduction in revenue for some of those providers and companies to the extent that they provide services to motor vehicle accident victims and charge fees in excess of those allowed by the Medicaid schedule. However the use of this schedule should result in their incurring lower costs in processing claims by eliminating disputes as to the value of claims thereby reducing litigation costs and resulting in more timely payment of bills.

Health care providers who are considered small businesses will also be subject to the provision which bases the fee to be charged upon the specialty of the treating provider rather than the specialty of the billing provider and to the new definition of "active and personal supervision". These amendments are intended to reduce the financial incentive to establish "medical mills" which engage in abusive billing practices. These businesses are often established to generate income without regard to patient care, thereby exploiting the no-fault system. While they will potentially lose jobs and revenue because of these changes, that lost revenue for the "medical mills" will result in premiums savings for insureds.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and self-insurers subject to this Part do business in every county in this state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no additional reporting, recordkeeping or other compliance requirements generated by the amendment to this part. It is not expected that professional services will be required to comply with the provisions of this Part.

3. Costs: This rule imposes no compliance costs upon state or local governments unless they are self-insured for no-fault insurance.

Insurers, self-insurers and health care providers who provide services under the no-fault system must acquire a New York State Medicaid fee schedule from the New York State Department of Health. However, all entities affected by this part should incur lower costs in processing claims since the use of the fee schedule should eliminate disputes as to the value of claims reducing litigation costs and resulting in more timely payment of health care provider charges.

4. Minimizing adverse impact: The provisions of this Part apply to insurers, self-insurers and health care providers that do business throughout New York State, including rural areas and it does not impose any adverse impact on rural areas.

5. Rural area participation: Notice of the Department's intention to amend this Part was included in the Department's Regulatory Agenda which was published in the January, 2003 and June, 2003 issues of the *State Register*. The rule is being proposed as a result of suggestions made by insurers and No-Fault arbitrators and in recognition of the need to address abusive practices. The changes contained in the proposal have been discussed with the New York State Medical Society.

Job Impact Statement

The proposed amendment should have minimal adverse impact on jobs or economic opportunities in New York State since it simply establishes the use of the New York State Medicaid fee schedule for durable medical equipment, medical/surgical supplies, orthopedic footwear and orthotic and prosthetic devices in the payment of no-fault claims and establishes reasonable rules for compensation for the treatment of motor vehicle accident victims. However, those who have engaged in fraudulent or abusive practices resulting from the treatment of motor vehicle accident victims might lose their jobs as the ability to profit from the operation of "medical mills" or dishonest medical supply firms is diminished. The savings that will result from these changes will generate premium savings for New York policyholders.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Work Study, Internships, Externships, or Work Replacements for Non-Graduate Students Receiving Public Assistance

I.D. No. LAB-12-04-00001-P

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

Proposed action: Amendment of section 1300.9 of Title 12 NYCRR.

Statutory authority: Social Services Law, sections 336-c as amd. by L. 2002, ch. 100 and 337 as amd. by L. 1997, ch. 436; and Labor Law, section 21 as amd. by L. 1997, ch. 436

Subject: Work study, internships, externships, or work placements that are part of a school curriculum for non-graduate students receiving public assistance.

Purpose: To incorporate the provision of the amendments to section 336-c of the Social Services Law contained in L. 2002, ch. 100 into Labor Department regulations.

Text of proposed rule: Paragraphs (4) through (7) of subdivision (b) of section 1300.9 of 12 NYCRR are renumbered paragraphs (7) through (10) and new paragraphs (4), (5), and (6) are added to read as follows:

(4) *A non-graduate degree student who is participating in a work-study, internship, externship, or other work placement that is part of the curriculum of a student approved for participation by the City University of New York (CUNY), the State University of New York (SUNY), another degree granting institution, or any other education, training or vocational rehabilitation agency approved by the state or social services district,*

shall not be unreasonably denied the ability to participate in such program as a work activity assignment made in accordance with the provisions of this Part. A social services district may deny such participation based upon consideration of factors including, but not limited to:

(a) *the determination that the student voluntarily quit a job or reduced earnings to qualify for initial or increased public assistance as determined in accordance with section 1300.13 of this Part;*

(b) *that a job or on-the-job training position that is comparable to the work-study, internship, externship or other work placement cannot reasonably be expected to exist in the private, public, or not-for-profit sector;*

(c) *that the student is not maintaining a cumulative C average (or its equivalent), which may be waived by the district for cases of undue hardship based on the death of a relative, the personal injury or illness of the student or other extenuating circumstances as determined appropriate by the district;*

(d) *failure of the institution or student to monitor and report to the social services district monthly, or as otherwise reasonably required by the district, information regarding the student's attendance and performance related to the work placement. Failure of the institution to monitor and report student attendance and performance shall be cause for the district to reasonably deny approval of the student's participation in such programs as a work activity;*

(e) *failure of the student to progress toward the completion of a course of study without good cause as determined by the social services district; and,*

(f) *that the student had previously enrolled in a work-study, internship, or other work placement and failed to complete the work placement without good cause as determined by the social services district.*

(5) *When a social services district assigns a non-graduate student participating in a social services district approved work-study, internship, externship or other work placement to work activities in accordance with the provisions of this Part, the district shall make reasonable efforts to assign the student to such activities during hours that do not conflict with his or her academic schedule.*

(6) *The hours of participation by an individual in a work-study, internship, externship or other work placement that is part of the student's curriculum that has been approved by the social services district shall be included as a work activity within the definition of unsubsidized employment, subsidized private sector employment, subsidized public sector employment or on-the-job training pursuant to subdivision (a) of this section.*

Paragraph (5) of subdivision (d) of 1300.9 of 12 NYCRR is amended to read as follows:

(5) In assigning to work experience a recipient who is a *non-graduate* student attending CUNY, SUNY or other approved nonprofit education, training or vocational rehabilitation agency, the social services district [must] *shall:*

(i) after consultation with officials of CUNY, SUNY or other nonprofit education, training or vocational rehabilitation agency, assign the student to a work experience site on campus where the recipient is enrolled, if a work experience assignment approved by the social services official is available. Where such work experience assignment is not available, the social services district shall, to the extent possible, assign the student to a work experience site within reasonable proximity to the campus where the recipient is enrolled. Provided, however, in order to qualify for a work experience assignment on-campus, or in close proximity to campus, a student must have a cumulative C average, or its equivalent. The social services district may waive the requirement that the student have a cumulative C average or its equivalent for undue hardship based on:

- (a) the death of a relative of the student;
- (b) the personal injury or illness of the student; or
- (c) any other extenuating circumstances;

(ii) *not unreasonably assign the student to participate in work experience during hours that conflict with the student's academic schedule.*

Text of proposed rule and any required statements and analyses may be obtained from: Stephanie Pardo, Senior Attorney, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: usbsep@labor.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority

The New York State Department of Labor (the Department) supervises the welfare to work programs authorized by the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1997" section 407 of P.L. 104-193 (PRWORA). Section 407 of PRWORA requires the state to meet federal participation rates by placing recipients of public assistance in work activities.

Section 21 of the Labor Law authorizes the Department to supervise social services districts in the administration of the work programs created under title nine-B of the Social Services Law (SSL) including those authorized by the federal statute. Section 337 of the SSL vests responsibility for the operation and administration of the work, employment, and training programs in the Department. Section 146 of Part B of Chapter 436 of the Laws of 1997 (The Welfare Reform Act) transferred the work programs under title nine-B of the SSL to the Department. Section 335-b of the Social Services Law as amended by section 148 of the Welfare Reform Act requires social services districts to meet participation rates for recipients of federal assistance and for recipients of the state assistance programs.

The proposed amendments to the regulations of the Department are authorized by section 5 of Chapter 534 of the Laws of 2000 which amended Social Services Law § 335-b, § 336, and § 336-c to require social services districts to consider certain non-graduate work-study programs, internships, externships and other work placements as qualifying to meet the work requirements for public assistance recipients, and to assign certain non-graduate students to work experience during hours that do not conflict with the student's academic schedule. Social Service Districts must consider a student's academic schedule and strive to avoid work placement conflicts. The statutory amendments to Social Services Law § 335-b, § 336, and § 336-c were extended until June 30, 2004 by the provisions of Chapter 100 of the Laws of 2002.

2. Legislative objectives

It was the intent of the legislation to facilitate participation by welfare recipients in certain education activities while still allowing them to fulfill their public assistance work activity requirements. The revised regulations should enable many participants to continue in their educational programs while maintaining their eligibility for public assistance.

3. Needs and benefits

The amendments to the Social Services Law require social services districts to allow a public assistance recipient to participate in non-graduate work-study, internship, externship or other work placement as an approved work activity that counts toward the recipient's work requirement. Additionally, the proposed regulations require a social services district to make reasonable efforts to assign certain non-graduate students to public assistance work activities that do not conflict with the student's academic schedule. The regulatory amendments are necessary to ensure that, where appropriate, social services districts permit public assistance recipients attending certain non-graduate work-study programs to count those programs as work activities, and to assure that, when feasible, students are not assigned to work activities that conflict with their academic schedule. This will enable participants to continue in their educational program rather than having to choose between obtaining their educational goals and participating in public assistance work programs. The proposed regulation clarifies for social services districts, fair hearings and other affected individuals when these provisions must be followed and will facilitate appropriate compliance with the statute. It will eliminate some of the uncertainty of public assistance recipients who are unsure of whether they will be able to continue in their educational programs.

4. Costs

There are no significant additional costs that will be incurred as a result of this regulation. The legislation may have resulted in a small increase in administrative hearings by individuals who challenge the social services district's decision to deny approval of a work-study placement as a public assistance work activity. The regulations should ultimately minimize the number of fair hearings by making it clear that social services districts have the authority to deny such assignments based on the consideration of the factors enumerated in statute and included in the regulations, such as failure of the student or institution to report information regarding the student's attendance at the work placement.

5. Local government mandates

These regulations impose an additional mandate on social services districts by establishing a requirement that the district not unreasonably deny a non-graduate student's participation in a work-study program as counting toward that student's public assistance work requirement. Additionally, districts are now required to make reasonable efforts to assign certain students to work activities during hours that do not conflict with the student's academic schedule. These requirements of the proposed regula-

tions are not inconsistent with the previous policy of many social services districts and are currently mandated by state statute.

6. Paperwork

The proposed amendment will not require any additional paperwork. Local social services districts and program participants are currently required to monitor attendance at work activities; therefore, the proposed rule does not impose additional requirements.

7. Duplication

The proposed rule does not duplicate any regulatory provisions.

8. Alternatives

The alternative considered was to implement the statutory changes through a policy guidance issued to the social services districts. The proposed regulations provide guidance to fair hearing officers on the scope of authority and discretion given to the social services districts. Regulations are also more compelling than policy guidance alone and would help to ensure compliance by the local social services districts.

9. Federal standards

Federal regulations require each state to engage a minimum percentage of its total public assistance caseload in certain work activities. While the federal statute and regulations list allowable work activities, they afford states the flexibility to define those activities. This flexibility is intended to permit states to choose work activities that are most effective in moving the members of its caseload to self-sufficiency. The statute and proposed regulations, in keeping with this flexibility, provide that a definition of "work activities" includes certain non-graduate work-study, internship, externship and work placement programs.

10. Compliance schedule

Social services districts will be able to comply with the regulations immediately. The governing statute was effective December 4, 2000, and on December 21, 2000 the Department sent the social services districts a policy guidance with instructions for implementing the provisions of the statute. The Department received no comments from the social services districts regarding the policy guidance. The rule will be effective upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule

The proposed action does not affect small businesses. All social services districts will be affected by the rule which places some limits on district discretion in making work activity assignments for certain public assistance recipients. The proposed action requires social services districts to consider certain non-graduate work-study programs, internships, externships and other work placements as qualifying to meet the work requirements for public assistance recipients, and to not assign certain non-graduate students to work experience during hours that conflict with the student's academic schedule.

2. Compliance requirements

The proposed rule has no effect on small businesses. Social services districts will be required to record and monitor certain public assistance recipients' participation in work-study programs if the work-study is approved as a work activity. Districts are currently required to monitor participation in work activities; therefore, the proposed rule does not impose additional or unique compliance requirements. SUNY and CUNY, as well as other education providers, will be required to verify attendance by affected program participants, but this burden should be primarily absorbed by the participants. In addition, the total number of participants at any single institution is likely to be small.

3. Professional services

The proposed rule has no effect on small businesses. Social services districts will require no additional professional services to comply with the rule.

4. Compliance costs

The proposed rule has no effect on small businesses. Social services districts will experience no additional costs as a result of compliance with the rule.

5. Economic and technological feasibility of compliance

The proposed rule has no effect on small businesses. Compliance with the proposed rule will be technologically feasible for social services districts because it will not require changes to existing reporting, tracking or other systems to accommodate. Additionally, on December 21, 2000 the Department sent the social services districts a policy guidance with instructions for implementing the provisions of the statute.

6. Minimizing adverse impact

The proposed rule has no effect on small businesses. Social services districts will experience no significant economic impact as a result of compliance with the proposed rule.

7. Small business and local government participation

The proposed rule has no effect on small businesses. Local governments have an opportunity to participate in rulemaking during the state rulemaking process. Copies of the proposed rule will be made available to social services districts and the New York Public Welfare Association for comment.

Rural Area Flexibility Analysis

1. Types and estimates of rural areas

The proposed regulations will affect the 44 rural social services districts in the State.

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

There are no additional reporting or recordkeeping requirements. Local social services districts are currently required to monitor participation in work activities; therefore the proposed rule does not impose additional or unique compliance requirements on rural areas. There are no additional needs for professional services.

3. Costs

There are no significant additional costs that will be incurred by rural areas as a result of this regulation. The proposed regulations may result in a small increase in administrative hearings by individuals who challenge the social services district's decision not to approve a work-study placement as a public assistance work activity. The regulations should ultimately minimize the number of fair hearings by making it clear that social services districts have the authority to deny such assignments based on the consideration of the factors enumerated in statute and included in the regulations such as failure of the student or institution to report information regarding the student's attendance at the work placement.

4. Minimizing adverse impact

The proposed amendment will not have an adverse economic impact on social services districts that serve rural areas.

5. Rural area participation

On December 21, 2000 the Department sent the social services districts policy guidance with instructions for implementing the provisions of the statute. The Department received no comments for changes to the policy from rural areas.

Job Impact Statement

1. Nature of impact

These regulations will have no effect on jobs and employment opportunities. The regulations specify the treatment of certain activities to the extent they are considered a work activity for public assistance recipients.

2. Categories and numbers affected

These regulations should have no effect on jobs or employment opportunities.

3. Regions of adverse impact

There will be no adverse effect on jobs or employment opportunities as a result of these regulations in any region of the state.

4. Minimizing adverse impact

There will be no adverse effect on employment opportunities as a result of these regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-02-04-00002-P, Issue of January 14, 2004.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Driving Privileges After License Suspension or Revocation

I.D. No. MTV-12-04-00002-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 134.7, 135.7 and 140.4 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 530, 1196(7)(a) and 1198

Subject: Driving privileges after license suspension or revocation.

Purpose: To ensure that inexperienced drivers whose license has been suspended or revoked do not enjoy the same privileges as more experienced drivers.

Text of proposed rule: Subdivision (a) of Part 134.7 is amended by adding a new paragraph (12) to read as follows:

(12) *The person was the holder of a limited DJ or limited MJ license at the time of the violation which resulted in the suspension or revocation.*

Subdivision (a) of Part 135.7 is amended by adding a new paragraph (11) to read as follows:

(11) *The person was the holder of a limited DJ or limited MJ license at the time of the violation which resulted in the suspension or revocation.*

Subdivision (c) of Part 140.4 is amended by adding a new paragraph (11) to read as follows:

(11) *The person was the holder of a limited DJ or limited MJ license at the time of the violation which resulted in the revocation.*

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: Sean J. Martin, Assistant 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.

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law authorizes the Commissioner of Motor Vehicles to enact, amend and repeal rules and regulations which shall regulate and control the exercise of the powers of the Department and the performance of the duties of the officers, agents and other employees thereof.

2. Legislative objectives: The Legislature enacted Chapter 644 of the Laws of 2002 to institute a graduated license system for new drivers. Among the many provisions of that law was the creation of a new class of driver's license called a limited class DJ or MJ (*i.e.*, "junior") license. This class was created to insure that young license applicants are able to acquire driving practice and experience while observing certain restrictions in their driving privileges. The restrictions imposed on limited use junior licensees, and some new restrictions imposed on full junior licensees by the new law, are intended to keep a check on the newest, least experienced drivers, while allowing them some freedom to drive and obtain behind the wheel experience so they can learn proper, safe driving techniques. Given this intent, it would be incongruous to enable these new drivers to be eligible for the conditional and restricted use licenses available to more experienced drivers under current Commissioner's Regulations. If these new licensees were able to obtain such licenses, there would be no "teeth" in the new sanctions enacted in the law for traffic violations by new drivers. The new licensee would not learn that there are serious consequences for violating the law, including temporary loss of driving privileges, if he/she were able to simply obtain a conditional or restricted license during the suspension or revocation period of the limited use license.

Department of Motor Vehicles

NOTICE OF ADOPTION

Putnam County Motor Vehicle Use Tax

I.D. No. MTV-02-04-00002-A

Filing No. 277

Filing date: March 9, 2004

Effective date: March 24, 2004

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

Action taken: Amendment of section 29.12 of Title 15 NYCRR.

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

Subject: Putnam County motor vehicle use tax.

Purpose: To impose the tax.

3. Needs and benefits: Currently, senior license holders may obtain a conditional or restricted use license, if they are otherwise eligible under criteria set forth in the Regulations. This allows them to continue to have driving privileges, albeit restricted ones, permitting them to drive to work, school and medical appointments. Permitting the newest, least experienced drivers to have these same temporary driving privileges could result in the anomaly of providing them with more such privileges during a sanctioned period than they would have if they had not violated the law. Prohibiting these drivers from enjoying the conditional and restricted privileges during their term of sanction will result in emphasizing the punitive consequences of violating the law.

- 4. Cost: a. regulated parties: None.
- b. the agency: None.
- c. source: DMV Program Analysis.
- 5. Local government mandates: None.
- 6. Paperwork: There shall be no additional paperwork requirements generated by this amendment.
- 7. Duplication: This rule does not conflict with or duplicate any State or Federal rule.
- 8. Alternatives: The Department did not consider other alternatives. A no action alternative was not considered.
- 9. Federal standards: The rule does not affect any federal standards.
- 10. Compliance schedule: Immediately upon adoption of the rule.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this proposed rule because it will have no impact on Small Businesses or Local Governments. The rule concerns driving privileges during periods of license suspension or revocation.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposed rule because it will have no adverse or disproportionate impact on rural areas of the State. This rule concerns driving privileges during periods of license suspension or revocation.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it will have no impact on job creation or development within the State. The rule concerns driving privileges during periods of license suspension or revocation.

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-V-1473, approving the transfer of RCN Telecom Services, Inc.'s (RCN) cable television franchises, certificates and facilities to Carmel Cable Television, Inc. (Carmel).

Statutory authority: Public Service Law, section 222

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

Purpose: To allow Carmel to acquire cable system facilities, franchises and State certificates of confirmation from RCN.

Substance of final rule: The Commission authorized the transfer of certain cable system facilities, franchises and State Certificates of Confirmation owned by RCN Telecom Services, Inc. to Carmel Cable Television, Inc., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-V-1473SA1)

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

Charges for Audits of Pole Attachments by The Cable Telecommunication Association of New York, Inc.

I.D. No. PSC-12-04-00003-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 Cable Telecommunication Association of New York, Inc. seeking an order directing Niagara Mohawk Power Corporation not to charge pole attachers for certain pole audits.

Statutory authority: Public Service Law, sections 119-a and 66(1)

Subject: Charges for audits of pole attachments.

Purpose: To consider audit charges.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Cable Telecommunication Association of New York, Inc. seeking an order directing Niagara Mohawk Power Corporation not to charge pole attachers for certain pole audits.

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.

(04-C-0177SA1)

**Office of Parks, Recreation and
Historic Preservation**

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Parks, Recreation and Historic Preservation publishes a new notice of proposed rule making in the NYS Register.

Snowmobile Trail Development and Maintenance

I.D. No.	Proposed	Expiration Date
PKR-36-03-00005-P	September 10, 2003	March 8, 2004

Public Service Commission

NOTICE OF ADOPTION

Transfer of Certain Cable System Facilities by RCN Telecom Services, Inc.

I.D. No. PSC-49-03-00011-A

Filing date: March 4, 2004

Effective date: March 4, 2004

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

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

Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and KMC Telecom V, Inc.

I.D. No. PSC-12-04-00004-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and KMC Telecom V, Inc. for approval of a mutual traffic exchange agreement executed on Jan. 7, 2004.

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

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

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

Substance of proposed rule: Citizens Telecommunications Company of New York, Inc. and KMC Telecom V, Inc. have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and KMC Telecom V, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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-C-0240SA1)

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

Pension Settlement Loss by Niagara Mohawk Power Corporation

I.D. No. PSC-12-04-00005-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the memorandum of agreement between Niagara Mohawk Power Corporation and the Department of Public Service staff resolving all outstanding pension settlement loss issues.

Statutory authority: Public Service Law, section 66

Subject: Pension settlement.

Purpose: To resolve the ratemaking of the pension settlement loss.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, the proposed Memorandum of Agreement (MOA) between Niagara Mohawk Power Corporation and the Department of Public Service Staff filed February 11, 2004. The MOA proposes to (a) allow the Company to defer and recover \$14.5 million of the \$29.4 million pension settlement loss related to fiscal year 2003; (b) require the Company to fund the disallowed portions of the pension settlement loss into its pension or OPEB trusts; (c) allow the Company to pre-fund the portion of the pension settlement loss that is deferred for later recovery from customers into its pension or OPEB trusts, and earn a return on the pre-funded amounts; and (d) resolve all outstanding issues associated with Niagara Mohawk's fiscal year 2003 pension settlement loss petition.

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

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

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

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

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

(03-M-0651SA2)

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

Basic Rates for Cable Television Service by Time Warner Cable

I.D. No. PSC-12-04-00006-P

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

Proposed action: The commission is considering filings for initial rates and charges set Jan. 1, 2004 for basic cable television service by Time Warner Cable in various municipalities in the Syracuse Division.

Statutory authority: Public Service Law, section 225.5

Subject: Time Warner Cable basic rates for cable television service.

Purpose: To review the rates.

Substance of proposed rule: The Commission is considering filings for initial rates and charges set January 1, 2004 for basic cable television service by Time Warner Cable -Syracuse Division, including the Cities of Oswego, Tompkins, St. Lawrence, Herkimer, Oneida, Madison, and Oneida; the Towns of Brutus, Camillus, Cato, Cicero, Clay, Elbridge, Geddes, Ira, Lafayette, Lysander, Manlius, Marcellus, Onondaga, Otisco, Pompey, Salina, Skaneateles, Tully, Vanburen, Schroepfel, Lysander, Van Buren, Cazenovia, Nelson, Fenner, Granby, Hannibal, New Haven, Palermo, Sterling, Volney, Minetto, New Haven, Oswego, Scriba, Hastings, Parish, Sandy Creek, Richland, Mexico, Caroline, Covert, Danby, Dryden, Groton, Lansing, Newfield, Ulysses, Lansing, Ithaca, Candor, Altona, Champlain, Chazy, Ellenburg, Mooers, Canton, Colton, Dekalb, Hermon, Hopkinton, Lawrence, Madrid, Norfolk, Parishville, Pierrepont, Potsdam, Russell, Fowler, Gouverneur, Diana, Pitcairn, Lisbon, Morristown, Oswegatchie, Waddington, Bangor, Bombay, Burke, Chateaugay, Constable, Fort Covington, Malone, Moira, Westville, Brasher, Lawrence, Louisville, Massena, Norfolk, Stockholm, Waddington, Champion, Croghan, Denmark, New Bremen, Wilna, Antwerp, Leray, Philadelphia, Theresa, Adams, Rodman, Ellisburgh, Lowville, Greig, Watson, Martinsburg, New Bremen, Henderson, Brownville, Cape Vincent, Clayton, Hounsfield, Lyme, Orleans, Alexandria, Watertown, Brownville, Hounsfield, Le Ray, Pamela, Rutland, Watertown, Bridgewater, Plainfield, Winfield, Frankfort, German Flatts, Herkimer, Little Falls, Litchfield, Manheim, Columbia, Danube, Salisbury, Eaton, Lebanon, Madison, Smyrna, Earlville, Earlville, Hamilton, Sherburne, Lewis, Boonville, Lyonsdale, West Turin, Ava, Annsville, Floyd, Lee, Marcy, Trenton, Western, Westmoreland, Whitestown, Sullivan, Fenner, Vernon, Stockbridge, Lincoln, Verona, Camden, Vienna, West Monroe, Constantia, and Cleveland; and the Villages of Camillus, Cato, East Syracuse, Elbridge, Fayetteville, Jordan, Liverpool, Manlius, Marcellus, Meridian, Minoa, North Syracuse, Phoenix, Port Byron, Solvay, Tully, Weedsport, Baldwinsville, Cazenovia, Hannibal, Hannibal, Central Square, Pulaski, Parish, Lacona, Mexico, Sandy Creek, Dryden, Freeville, Groton, Trumansburg, Cayuga Heights, Candor, Champlain, Mooers, Rouses Point, Canton, Hermon, Norwood, Potsdam, Gouverneur, Richville, Harrisville, Heuvelton, Morristown, Rensselaer Falls, Waddington, Brushton, Burke, Chateaugay, Malone, Massena, Castorland, Copenhagen, Croghan, Deferiet, Herrings, Carthage, West Carthage, Antwerp, Evans Mills, Philadelphia, Theresa, Mannsville, Ellisburgh, Adams, Lowville, Cape Vincent, Cape Vincent, Chaumont, Clayton, Dexter, Sackets Harbor, Black River, Brownville, Glen Park, Bridgewater, Dolgeville, Frankfort, Herkimer, Ilion, Mohawk, West Winfield, Hamilton, Sherburne, Morrisville, Smyrna, Constableville, Boonville, Port Leyden, Lyons Falls, Dolgeville, Holland-Patent, Chittenango, Munnsville, Wampsville, Oneida Castle, Canastota, Camden, and Vernon.

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

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

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

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

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

(03-V-1407SA1)

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

Basic Rates for Cable Television Service by Time Warner Cable

I.D. No. PSC-12-04-00007-P

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

Proposed action: The commission is considering filings for initial rates and charges set Jan. 1, 2004 for basic cable television service by Time Warner Cable in various municipalities in the Albany Division.

Statutory authority: Public Service Law, section 225.5

Subject: Time Warner Cable basic rates for cable television service.

Purpose: To review the rates.

Substance of proposed rule: The Commission is considering filings for initial rates and charges set January 1, 2004 for basic cable television service by Time Warner Cable—Albany Division, including the Cities of Cohoes and Mechanicville; Towns of Brunswick, Waterford, Clifton Park, Halfmoon, Schaghticoke, Stillwater, Saratoga, and Pittstown; and the Villages of Waterford, Stillwater, and Valley Falls.

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

Data, views or arguments may be submitted to: Jaelyn A. 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-V-1454SA1)

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

Basic Rates for Cable Television Service by Time Warner Cable

I.D. No. PSC-12-04-00008-P

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

Proposed action: The commission is considering filings for initial rates and charges set Jan. 1, 2004 for basic cable television service by Time Warner Cable in various municipalities in the Albany Division.

Statutory authority: Public Service Law, section 225.5

Subject: Time Warner Cable basic rates for cable television service.

Purpose: To review the rates.

Substance of proposed rule: The Commission is considering filings for initial rates and charges set January 1, 2004 for basic cable television service by Time Warner Cable—Albany Division, including the City of Rensselaer; the Towns of Schoharie, Cobleskill, Richmondville, Cherry Valley, Esperance, Seward, Middleburgh, Sand Lake, Kinderhook, New Scotland, Stuyvesant, Tusten Town, and Bethlehem; and the Villages of Middleburgh, Schoharie, Cobleskill, Richmondville, Cherry Valley, Sharon Springs, Esperance, Voorheesville, Castleton On Hudson, Kinderhook, and Nassau.

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

Data, views or arguments may be submitted to: Jaelyn A. 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-V-1455SA1)

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

Basic Rates for Cable Television Service by Time Warner Cable

I.D. No. PSC-12-04-00009-P

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

Proposed action: The commission is considering filings for initial rates and charges set Jan. 1, 2004 for basic cable television service by Time Warner Cable in various municipalities in the Albany Division.

Statutory authority: Public Service Law, section 225.5

Subject: Time Warner Cable basic rates for cable television service.

Purpose: To review the rates.

Substance of proposed rule: The Commission is considering filing for initial rates and charges set January 1, 2004 for basic cable television service by Time Warner Cable—Albany Division, including the City of Amsterdam; the Towns of Niskayuna, Rotterdam, Mohawk, Perth, Mayfield, Florida, Amsterdam, Broadalbin, Root, Galway, and Glen; and the Villages of Scotia, Fort Johnson, Hagaman, Fultonville, Fonda, Broadalbin, and Galway.

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

Data, views or arguments may be submitted to: Jaelyn A. 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-V-1457SA1)

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

Basic Rates for Cable Television Service by Time Warner Cable

I.D. No. PSC-12-04-00010-P

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

Proposed action: The commission is considering filings for initial rates and charges set Jan. 1, 2004 for basic cable television service by Time Warner Cable in various municipalities in the Albany Division.

Statutory authority: Public Service Law, section 225.5

Subject: Time Warner Cable basic rates for cable television service.

Purpose: To review the rates.

Substance of proposed rule: The Commission is considering filings for initial rates and charges set January 1, 2004 for basic cable television service by Time Warner Cable—Albany Division, including the Cities of Saratoga Springs, Albany, Schenectady, and Glens Falls; the Towns of Wilton, Glenville, Colonie, Guilderland, Knox, Berne, Wright, Milton, Malta, Ballston, Charlton, Greenwich, Jackson, Easton, Cambridge, Saratoga, Northumberland, Ticonderoga, Putnam, Hague, Whitehall, Moriah, Bolton, Horicon, St. Armand, Warrensburg, and Lake George; and the Villages of Colonie, Green Island, Altamont, Ballston Spa, Round Lake, Greenwich, Cambridge, Salem, Schuylerville, Victory Mills, Ticonderoga, Whitehall, Port Henry, Fort Ann, Lake George, and South Glens Falls.

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

Data, views or arguments may be submitted to: Jaelyn A. 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-V-1458SA1)