

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

Licensed Cashers of Checks

I.D. No. BNK-31-05-00004-E

Filing No. 791

Filing date: July 14, 2005

Effective date: July 14, 2005

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

Action taken: Amendment of Part 400 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 37(3), 369, 371 and 372

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

Specific reasons underlying the finding of necessity: Chapter 432 of the Laws of 2004 amended art. 9-A of the Banking Law to provide an appropriate regulatory regime for entities engaged in cashing commercial checks. The amendments to Part 400 are necessary to conform the regulations governing check cashers to the changes in the law, which were approved on Sept. 14, 2004 and were effective immediately.

Subject: Licensed cashers of checks.

Purpose: To regulate commercial check cashing.

Text of emergency rule: The title of Part 400 is amended to read as follows:

Part 400

LICENSED CASHERS OF CHECKS

(Statutory authority: Banking Law, §§ 37[3], 367, 369, 371, 372)

Paragraphs (a) and (b) of Section 400.1 of the Superintendent's Regulations are amended to read as follows:

(a) Application [form]. *No person shall engage in the business of cashing checks, drafts or money orders, as principal, broker, agent or otherwise, for a consideration, without first obtaining a license from the superintendent. This licensing requirement applies whether such activities are conducted for customers who are natural persons or for any business, corporation, partnership, limited liability company or partnership, association, or sole proprietorship, or any other entity.* Application for a new license or for a change of control of a licensee shall be made upon forms issued by the superintendent. These forms may be obtained at Banking Department offices [located at Two Rector Street, 21st Fl., New York, NY 10006 and 194 Washington Ave., Albany, NY 12210.] *at the locations specified in Supervisory Policy G-1.* For purposes of this Part, the term person shall include a[n individual,] *natural person or a partnership, corporation, association or any other entity.* The term control shall mean having the power directly or indirectly to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of a licensee, the ownership of voting stock of any corporation which possesses such power or otherwise and shall be presumed to exist if any person, directly or indirectly, owns, controls, or holds with power to vote 10 percent or more of the voting stock of any licensee or any person owning, controlling or holding with power to vote 10 percent or more of the voting stock of any licensee.

(b) Application procedure. Completed applications should be delivered to the Licensed Financial Services Division of the Banking Department [, Two Rector Street, 21st Fl., New York, NY 10006.] *at the New York City office location specified in Supervisory Policy G-1.* An application for a new license for a fixed location or for a mobile unit must be accompanied by a check for the investigation and license fees specified in Banking Law, section 367. An application by a licensee to operate a limited station must be accompanied by a check for the license and investigation fees required by Banking Law, section 370. An application for change of control of a licensee must be accompanied by a check for the investigation fee specified in Banking Law, section 370-a. In each case, the check must be made payable to the order of "Superintendent of Banks of the State of New York". Applicants for a new license seeking to conduct business under a trade name must file a certificate in the office of the county clerk as required by General Business Law, section 130. A certificate of the county clerk stating that such a document has been filed must be submitted with an application for a new license.

A new Subsection (g) is added to Section 400.1 of the Superintendent's Regulations as follows:

(g) *The license of a restricted location authorized pursuant to subdivision 1 of the Banking Law shall not be affected by a change of control, pursuant to Section 370-a of the Banking Law, pertaining solely to such restricted location of such licensee, provided that the licensee continues thereafter to engage at that location in the cashing of checks, drafts or money orders only for payees that are other than natural persons and provided further that such license shall bear a legend stating that such location is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons.*

Paragraph (1) of Subsection (a) of Section 400.6 of the Superintendent's Regulation is amended to read as follows:

(a) Every licensee shall:

(1) Post and display at all times in a conspicuous place on the premises the license. [and also] *Every licensee that cashes one or more checks, drafts or money orders for any payees that are natural persons must post the schedule of rates to be charged with respect to such transactions involving payees that are natural persons.* The schedule shall be made of [plastic or metal] *durable material*, be no less than 30 inches wide and 36 inches high with letters at least $\frac{3}{4}$ inch in size and indicate the fee applicable to the full amount of the check to be cashed that corresponds to the amount of the check. *The schedule shall indicate the fee that corresponds to the amount of the check. The amount of the check shall be set forth on the schedule in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule shall also indicate the percentage charge imposed on all checks and the minimum charge of \$1.00 per check.* The schedule shall be in English and in Spanish and posted in the customer's area.

Section 400.12 of the Superintendent's Regulations is amended to read as follows:

[The] *Except with respect to the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons, [licensee] a licensee shall be permitted to charge or collect a fee for cashing a check, draft or money order not to exceed (a) 1.5 per centum of the amount of the check, draft or money order, or (b) \$1, whichever is greater. Effective January 1, 2005, and annually thereafter, the maximum percentum fee specified in clause (a) of this section, shall be increased by a percentum amount, based upon an increase in the annual consumer price index for the New York—Northern N.J.—Long Island, NY—NJ—CT—PA area for all urban consumers (annual CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum percentum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed percentum amount and the result added to such maximum percentum fee. The resulting sum shall be the revised maximum percentum fee, which shall be posted upon the internet site of the Banking Department (www.banking.state.ny.us) by the Superintendent not later than forty-five days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum percentum fee shall be calculated and posted to the nearest one-hundredth of a percentum. Such revised maximum percentum fee shall be effective not later than forty-five days after the Superintendent shall have notified the Majority Leader of the Senate, the Speaker of the Assembly, and the Chairperson of both the Senate and Assembly Committees on Banks of his/her intention to change the maximum percentum fee pursuant to the provisions of Section 372.3 of the Banking Law and shall continue in effect until revised and increased in the next succeeding year based upon an increase in such annual index. If such annual CPI-U does not increase in any one year, the maximum percentum fee in effect during the year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the Superintendent from setting, by regulation, a different maximum percentum fee at any time where the Superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers. *No maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.**

Paragraph (3) of Subsection (h) of Section 400.13 of the Superintendent's Regulations is amended to read as follows:

(3) that the check casher is licensed and regulated by the New York State Banking Department located at [Two Rector Street, New York, NY 10006] *the New York City office location specified in Supervisory Policy G-1; and*

Section 400.15 of the Superintendent's Regulations is amended to read as follows:

Background. Chapter 546 of the Laws of 1994 altered the licensing criteria applicable to check cashers by substantially amending section 369 of the Banking Law to require, among other things, that the superintendent determine whether there is a community need for a new licensee in the proposed area to be served and to prohibit entirely the granting of a license at a location which is less than three-tenths of a mile from an existing licensee. In so acting, the Legislature adopted a specific statutory finding of legislative intent, to wit, "The legislature hereby finds and declares that check cashers provide important and vital services to New York citizens; that the business of check cashers shall be supervised and regulated

through the Banking Department in such a manner as to maintain consumer confidence in such business and protect the public interest; that the licensing of check cashers shall be determined in accordance with the needs of the communities they are to serve; and that it is in the public interest to promote the stability of the check cashing business for the purpose of meeting the needs of the communities that are served by check cashers." However, the legislation left unamended Banking Law, section 370 which permits a licensee to apply to the superintendent for leave to change its place of business to any other location and which does not make explicit the standards to be applied by the superintendent in granting permission to relocate. A licensee must obtain a new license to conduct business at another location. In order to [preserve the bar against issuance of new licenses within three-tenths of a mile of existing licensees] *promote and maintain the stability of the check cashing business* while accommodating the reasonable needs of current licensees to relocate, [and to prevent evasions of the legislative intent behind chapter 546 of the Laws of 1994,] the following standards shall be applied by the superintendent in determining whether to approve applications for relocation to any site which is within three-tenths of a mile of another licensed location:

Paragraph (a) of Section 400.15 of the Superintendent's Regulations is amended to read as follows:

(a) No relocation shall be permitted to a site within three-tenths of a mile of another *existing licensee location* from a location greater than three-tenths of a mile from such *existing licensee location* [], *unless such other existing licensee engages in the cashing of checks, drafts or money orders only for payees of such checks, drafts or money orders that are other than natural persons at a restricted location authorized pursuant to subdivision 1 of Section 369 of the Banking Law or at any other licensed location whereat the licensee engages solely in the cashing of checks, drafts or money orders only for payees that are other than natural persons.*

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 11, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Banking Law Section 37[3] authorizes the Superintendent to require any licensed casher of checks to make such special reports to her at such times as she may prescribe. Section 369 describes the circumstances under which the Superintendent shall issue a license to permit the cashing of checks, drafts and money orders at a specified location or in a specified area. Section 371 authorizes the Superintendent to make such rules and regulations, and such specific rulings, demands and findings, not inconsistent with Article 9-A of the Banking Law, as she may deem necessary for the proper conduct of the business authorized and licensed under, and for the enforcement of, that Article. Section 372 authorizes the Superintendent to establish by regulation the maximum fees which may be charged by a licensed check casher for cashing a check, draft or money order.

2. Legislative objectives:

As more fully described in response to Item 3, "Needs and benefits" below, the amendments to Part 400 of the Superintendent's Regulations implement, or conform to the regulations of the Banking Department to, recently enacted legislation amending the provisions of the Banking Law governing check cashers. The objective of this legislation was to provide for the regulation of the business of check cashing regardless of whether such check cashing was performed for customers that are natural persons or business or other entities. The amendments to Part 400.6 regarding signage requirements for retail check cashing carry out the legislative objective of consumer protection embodied in the provisions of Section 372 of the Banking Law that require a schedule of the fees and charges permitted under that section to be conspicuously and continuously posted in every licensed location.

3. Needs and benefits:

While the Banking Department has had the authority to regulate check cashers under Article 9-A of the Banking Law, an interpretive policy dating back to the initial regulation of check cashers in 1944 applied such regulation only to the cashing of checks for payees that are natural persons (that is, retail or consumer check cashing). However, the Attorney General recently issued a formal opinion (#2004-F5) that commercial check cashers are subject to licensing and regulation under Article 9-A of the Banking Law. At about the same time, a grand jury impaneled by the New York County Supreme Court issued a report calling on the Legislature to

ensure that commercial check cashers are subject to licensing and regulation.

In response to these developments, Chapter 432 of the Laws of 2004, which was approved on September 14, 2004, amended the Banking Law in relation to the cashing of checks for payees who are other than natural persons. The new legislation provides for the regulation of the business of check cashing by the Banking Department, whether performed for customers who are natural persons or business entities.

The changes to Part 400 all implement, or conform the regulations of the Banking Department to, specific changes made by the Legislature in Chapter 432, except for certain of the amendments to Part 400.6, which incorporate the provisions of an existing emergency regulation amending the signage requirements of Part 400.6 (BNK-38-04-00001-E). Specifically:

Amendments to Section 400.1(a) make it clear that the requirement that any person engaging in the business of check cashing must first obtain a license from the Superintendent applies whether such activities are conducted for customers who are natural persons or for any business or entity.

New Section 400.1(g) relates to the requirement in Banking Law Section 369 that no license shall be issued for a location which is closer than three tenths of a mile from an existing licensee. Chapter 432 amended Section 369 to make it clear that the Superintendent may permit a location to be licensed which is closer than three tenths of a mile from an existing licensee, so long as the newly licensed location is a "restricted location" as described in subsection 1 of Section 369 of the Banking Law – that is, a location which is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons.

New Section 400.1(g) makes it clear that this exemption will not be affected by a change of control of such restricted location, provided that the licensee continues to engage only in commercial check cashing.

Amendments to Section 400.6(a)(1) deal with the requirement that licensees post a schedule of rates. These amendments make it clear that the signage requirement applies only to retail check cashers, and that the posted rate schedule need only cover transactions involving payees that are natural persons.

The amendments to Part 400.6 also incorporate the provisions of a current emergency regulation amending that section. Previously adopted amendments to Part 400.12 of the Superintendent's Regulations increased the maximum fee that licensed check cashers may charge and provide for an annual fee adjustment thereafter based on the increase in the consumer price index for the New York metropolitan area, if any. As a result of the amendments to Part 400.12, licensed check cashers need to revise their posted schedules of fees and charges.

In addition to amending the disclosure of the amount of the check cashing fee, the amendment changes the structure of the disclosure to provide more useful information. Previously under Part 400.6, the signage was required to disclose the fee charged in five cent increments. As a result, the corresponding check amounts were often atypical amounts. Under the amendment to Part 400.6, the disclosure will be governed by the amount of the check and the corresponding check cashing fee set forth on the signage according to the amount of the check in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule will also indicate the percentage charge imposed on all checks and the \$1.00 minimum.

Moreover, since the fee may change in the future due to increases in the Consumer Price Index, the amendment allows signs to be made of durable material instead of specifying that the signs must be made of plastic or metal.

Chapter 432 amended Section 372(1) of the Banking Law to make it clear that while the Superintendent shall establish the maximum fees which may be charged by licensees for cashing checks, such maximum fees shall not apply to the cashing of checks for payees that are other than natural persons. The amendments to Part 400.12 provide for a comparable exception in the relevant regulation.

In addition to the foregoing, the amendments revise Part 400.1(a) and (b) and Part 400.15 to update references to the location of the New York City office of the Department.

4. Costs:

Except as noted below, the amendments to Part 400 of the Superintendent's Regulations are not projected to impose any costs on regulated persons or the state government.

As noted in "Needs and Benefits" above, licensed check cashers will be required periodically to revise their posted schedule of fees and charges as a consequence of previously adopted amendments to Part 400.12. No additional costs will be incurred in complying with the requirement that the new signs reflect the new disclosure structure. Indeed, the new regulations

may reduce the costs of compliance by specifying only that the signs be made of a durable material, rather than requiring that they be made of plastic or metal.

5. Local government mandates:

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

6. Paperwork:

Under Chapter 432 of the Laws of 2004, the existing licensing and regulatory requirements in Article 9-A apply to commercial check cashers, except insofar as they are specifically exempted. These requirements include certain reporting and examination requirements applicable to all check cashers. In addition, Chapter 432 added a new subsection (7) to Section 372 of the Banking Law, requiring a licensee to submit to the Superintendent a copy of any suspicious activity reports or currency transactions reports as are required to be submitted to the federal authorities.

7. Duplication:

The rule making will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments. While Chapter 432 of the Laws of 2004 added a new subsection (7) to Section 372 of the Banking Law, requiring a licensee to submit to the Superintendent a copy of any suspicious activity report or currency transactions report that is required to be submitted to the federal authorities, a licensee may submit a copy of the report filed with the federal authorities in satisfaction of this requirement.

8. Alternative approaches:

Except as noted with respect to certain of the changes in Part 400.6, the changes in Part 400 are necessary to conform the regulations to the changes in the Banking Law effected by Chapter 432 of the Laws of 2004. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative. The Banking Department did communicate with the commercial check cashing industry during the process of making recommendations during the legislative process leading to the adoption of Chapter 432.

Consideration was given to leaving the retail check cashing signage provisions Part 400.6 unchanged. However, as the schedule of permissible fees has changed, failing to require changes in the signage would result in inaccurate fee disclosure. Moreover, as noted in "Needs and Benefits" above, it was determined that the need for licensed check cashers to make signage changes to reflect the new fee schedule imposed by the previously adopted amendments to Part 400.12 meant that simultaneously promulgating the changes in the signage requirements contained in the proposed amendments to Part 400.6 would provide an opportunity to improve the quality of disclosure to customers and provide greater flexibility in signage materials without imposing additional costs on licensed entities.

9. Federal standards:

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendments to Part 400 of the Superintendent's Regulations. The federal government does not license or regulate check cashers.

10. Compliance schedule:

The amendments to Part 400 reflect changes to the Banking Law effected by Chapter 432 of the Laws of 2004. Section 6 of that Chapter contains certain transitional provisions for the licensing of commercial check cashers. Except as therein provided, check cashers are currently required to comply with the statutory changes, which have already come into effect.

Regulatory Flexibility Analysis

1. Effect of Rule

The amendments to Part 400 all implement the legislative determination, embodied in Chapter 432 of the Laws of 2004, that commercial check cashers, as well as retail check cashers, shall be subject to licensing and regulation.

The amendments make it clear that the existing regulatory requirements applicable to retail check cashers are generally also applicable to commercial check cashers. The amendments also reflect the statutory intent to modify the regulatory scheme applicable to retail check cashers to accommodate certain unique aspects of commercial check cashing.

Commercial check cashers service small business entities and are themselves small businesses. Customers of commercial check cashers typically are such small business entities as construction sub contractors, food and sundry suppliers, and garment industry vendors that receive payment in check for goods and services. These businesses many times operate on a cash basis, and the commercial check cashers facilitate the conduct of these businesses. This service enables owners of such busi-

nesses to forego the use of fixed banking facilities, which may be far removed from their place of business and operations, in order to convert payment checks to cash. There is no basis upon which to make a meaningful estimate of the number of small business entities serviced by commercial check cashers.

With respect to the commercial check cashing entities themselves, there exists no definitive list of such entities, essentially because such businesses have not heretofore been regulated. The most comprehensive list is provided by the Financial Crimes Enforcement Network (FinCEN), a federal regulatory entity within the Department of Treasury dedicated particularly to enforcement of federal anti-money laundering and related criminal statutes. Under the US PATRIOT Act requirements, money service businesses, such as check cashers, whether or not regulated by any federal or state government, must register with FinCEN. A list provided to the Department's Criminal Investigation Bureau shows 245 entities. This number includes numerous markets, pharmacies, and educational facilities in addition to a few entities already licensing as retail check cashers. The commercial and educational entities would not be subject to licensing and regulation under Part 400 if they cash checks incidental to their businesses and for a fee not exceeding \$1 per check. (It is noted, however, that if such retail vendors are engaging in commercial check cashers with supplier vendors that service these industries, and the activity is more than incidental and the fees charged in excess of the exempted maximum fee of \$1, these retail entities may be potentially subject to licensing by the Department.) Removing these entities from the FINCEN list leaves approximately 120 entities that indicate either by name they are engaged in check cashing or for which no description of the business activity is provided. (In certain instances, these entities may be payment agents for billers and would be exempt from the licensing requirements pursuant to Article 9-A.)

Based upon Department's experience from licensing retail check cashers, it may be assumed these commercial check cashing entities are virtually all small businesses, constituted as sole proprietorships, partnerships, Chapter S corporations or limited liability companies or partnerships. The Department does not believe any of these entities are publicly traded corporations.

In addition to this relatively identifiable universe, it is noted that historically in many instances commercial check cashers have not dealt directly with commercial customers, but rather operated through "agents" or series of agents. These agents engage in "intermediate" check cashing, taking checks from commercial entities in exchange for the face amounts minus a fee, subsequently aggregating the checks, and ultimately cashing the checks with a commercial check casher that deposits the checks in a bank account. At that moment, the checks first enter the formal bank payment and clearance process. How many of these "agents" exist is unknown and cannot be meaningfully estimated at this time. However, the Department assumes all such agents would be small businesses. Under the statutory requirements, these agents would either need to be licensed as check cashers or be employed by a licensed check casher.

The regulatory scheme set forth in the amendments to Part 400 will impose a burden upon commercial check cashers, since these entities have heretofore not been subject to licensing and regulation. However, these amendments all implement, or conform the regulations to, specific changes made by the Legislature in Chapter 432. Retail check cashers already operate under this same basic regulatory scheme, and the statutory amendments made by Chapter 432 included provisions intended to accommodate unique aspects of commercial check cashing.

Certain of the amendments to Part 400 also apply to retail check cashers, including the signage amendments in Part 400.6. However, these amendments will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on such entities. Indeed, by improving the structure of the required disclosures and providing additional flexibility regarding signage materials, these amendments provide an economic benefit and reduce regulatory burden.

The amendments to Part 400 will not impose any adverse economic impact, or reporting, recordkeeping or other compliance requirements on local governments.

2. Compliance Requirements

As noted above, under the amendments to Part 400, commercial check cashers will be subject to the same licensing and regulation as retail check cashers, except insofar as modifications in the regulatory scheme set forth in Chapter 432 are reflected in the Part 400 amendments. The compliance requirements thus imposed on commercial check cashers are entirely new.

3. Professional Services

Part 400 imposes extensive reporting and record keeping requirements upon check cashers. Commercial check cashers may need to obtain in-

creased services from accountants, attorneys and data processing entities in order to meet these requirements.

4. Compliance Costs

Since the compliance requirements imposed on commercial check cashers are entirely new, such commercial check cashers will experience increased compliance costs. The amount of such costs will depend on the ease with which the existing business operations and record keeping systems of each entity can be adapted to meeting the operational, recordkeeping and reporting requirements imposed by Article 9-A and Part 400. The amount of such costs cannot be estimated per entity or in the aggregate.

5. Economic and Technological Feasibility

Commercial check cashers presumably have in place a business operational infrastructure that includes an electronic data processing and record keeping capability sufficient to meet federal and state tax reporting requirements as well as US PATRIOT Act requirements. Thus, while compliance with the Part 400 regulatory scheme may require some modification of existing programs in order to meet the reporting and recordkeeping requirements, compliance is expected to be technologically and economically feasible.

6. Minimizing Adverse Impact

To the extent the amendments to Part 400 modify the current regulatory scheme, these modifications are made in recognition of certain peculiar operational characteristics of commercial checking that are not pertinent to retail check cashing or, in the case of the signage amendments to Part 400.6, do address regulatory standards whose modification is of interest to the retail check cashers.

The amendments affecting commercial check cashers conform Part 400 to the statutory modifications to Article 9-A contained in Chapter 432. The statutory amendments accomplish the following: (i) permits both existing and new commercial check cashing locations that are within 3/10s of a mile of an existing licensed check casher, provided such locations engage only in commercial check cashing; (ii) removes the maximum fee per check limitation upon the cashing of commercial checks, whether the cashing is performed by retail or commercial check cashers; (iii) removes the cap on the amount of a check that may be cashed with respect to commercial checks and increases the cap amount for retail checks from \$6,000 to \$15,000; and (iv) authorizes a temporary license for commercial check cashers upon initial application to permit such cashers to continue to operate as their applications are processed and prior to the issuance of a permanent license. Finally, since Chapter 432 excludes commercial checks from the maximum fee per check limitation, Part 400 is amended to limit the signage requirements relating to fees charged by licensed check cashers only to retail checks.

7. Small Business and Local Government Participation

The Department had numerous discussions with the Financial Service Centers of New York, Inc., the state check casher trade association, which primarily represents retail but also a certain number of commercial check cashers, during the development of the legislative proposal which became Chapter 432. There is no trade association which represents the commercial cashers as a group. The Department communicated with a number of identified commercial check cashers during the two (?) years in which it was developing the legislative proposal in order to determine how the industry operates. In addition, the Department has been contacted by individual commercial check cashers that were concerned about the potential recommendations of a Grand Jury empanelled by the New York County Supreme Court regarding commercial check cashing and the possible resulting enforced activities by the New York County District Attorney. These commercial check cashers expressed an interest in obtaining regulation by the Department.

Because of the need to impose the regulatory regime upon commercial check cashers immediately, the Department adopted the amendments to Part 400 as an emergency rule. The Department expects that the experience of check cashers under the emergency rule may lead to further input from the commercial check cashing industry during the rule making process.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted. The amendments to Part 400 will impose no additional regulatory requirements upon public entities in rural communities.

Upon an examination of the addresses of the commercial check cashing entities culled from the FinCEN list, it appears all such entities are located in either large metropolitan areas or small cities of this state. Based on the experience of the Department in licensing and regulating retail check cashers, in virtually all cases they operate in the same types of urban areas. Therefore, it is anticipated that the emergency rule will not impose

any additional regulatory requirements upon private entities in rural communities.

Job Impact Statement

A job impact statement is not submitted. The imposition of the regulatory regime for licensed check cashers upon currently non-regulated commercial check cashers can be expected to cause changes in the business operations of such cashers and this may affect employment within the industry. However, it is impossible to estimate the number of potential licensed commercial check cashers at this time, and therefore the size of the work force in this industry. Consequently, there is no way to meaningfully estimate the effect of any changes in business operations on employment within the industry.

A case in point is the “agent” population, discussed Section 1 of the Regulatory Flexibility Analysis relating to these amendments. The Department has no data at this time as to how many individuals are engaged in this intermediate check cashing activity between commercial customers and commercial check cashers. Under the amendments to Part 400, all such persons would either need to be licensed as check cashers or be employed by a licensed check casher. The extent to which such requirements may adversely affect the size of the agent population cannot be meaningfully estimated.

With respect to existing licensed retail check cashers, the proposed regulations should be economically beneficial and may induce business expansion and job growth.

exempts such services from uniform case recording requirements if a waiver is requested and granted by OCFS.

Section 432.2 (Responsibilities of the Child Protective Service)

The amendment clarifies that identifying information regarding the reporter and/or source of a report of suspected child abuse or maltreatment must only be documented in progress notes maintained by the child protective service. The amendment clarifies who may perform casework contacts in child protective services cases.

Section 441.7 (Records and Reports)

The amendment conforms retention standards for foster care cases, inspection of records and reports, and access to foster care records by former foster children with standards currently established in Part 428. The amendment establishes procedures for the transference, notification and plan requirements concerning foster care case records when a voluntary agency ceases operation.

Section 441.21 (Casework Contacts)

The amendment clarifies who may perform casework contacts in foster care cases.

Section 465.1 (Child Care Review Service)

The amendment conforms standards for retention and expungement of records with standards currently established in Part 428.

Section 466.4 (Confidentiality)

The amendment amends confidentiality standards to include access to foster care records in accordance with Part 428.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 423.2(b)(2), (3)(i), 423.4(c)(1)(ii), (ii)(d)(I) and (2); 428.2(g)(2)(i); 428.3(b)(2)(i); 428.5(c)(10); 428.8(b)(2)(i), (ii); 428.10; 432.2(b)(4)(vi); 441.21(b)(1), (3) and (4), (c)(1), (d)(1) and (e).

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

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

Although non-substantive changes were made to the proposed regulations concerning Uniform Case Records in child welfare cases, those changes do not require changes to the Regulatory Impact Statement or Summary, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, as originally published.

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received formal comments from one social services district and a joint letter from both the chairperson of the Administrative Regulations Review Commission and the chairperson of the Task Force on New Americans of the New York State Assembly.

1) One comment related to the requirement that in all foster care placement cases, information and documents in the Uniform Case Record (UCR) must include among other items, documentation of immigration status. Concern was raised that this could be interpreted to include documentation of the immigration status of family members other than the foster child.

Response: OCFS has revised the language to clarify that the requirement for documentation of immigration status applies only to the foster child.

This is a technical, non-substantive change to the regulations.

2) One comment related to the standard for mandated preventive services, as statutorily defined in 409-a of the Social Services Law (SSL), “. . . that the child is at risk of placement into foster care.” OCFS had added the qualifier “serious” to modify “risk.” The commenter was concerned that adding this qualifier might have been done in order to reduce the provision of mandated preventive services.

Response: OCFS did not intend to go beyond the current statutory framework and deleted the reference to “serious” but revised the language to more accurately reflect the applicable statutory provisions to avoid any confusion.

This is a technical, non-substantive change to the regulations.

3) One comment questioned the meaning of the definition of the new program choice “Non-LDSS Custody Relative/Resource Placement”, as to whether it related to both court ordered direct placements with a relative/resource and non-court ordered situations where a child resides with a relative. The commenter was concerned about the use of the term “placed” for both these situations. In neither case does the social services district have custody of the child.

Response: OCFS believes that the definition of the new program choice is sufficiently clear. It applies to both court ordered direct placements and

Office of Children and Family Services

NOTICE OF ADOPTION

Uniform Case Records in Child Welfare Cases

I.D. No. CFS-09-05-00011-A

Filing No. 788

Filing date: July 13, 2005

Effective date: Aug. 3, 2005

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

Action taken: Amendment of Parts 423 and 428; and sections 404.1(d)(2), 432.2(b)(3), 441.7, 465.1 and 466.4 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 153-k, 409-f(1), 427(1) and 446

Subject: Uniform case records in child welfare cases.

Purpose: To promote better child welfare practices directed toward child safety and expediting permanency outcomes in New York State; and support the Uniform Case Record (UCR) component of CONNECTIONS, New York’s Statewide Automated Child Welfare Information System (SACWIS).

Substance of final rule: Section 404.1 (Redeterminations of financial eligibility)

The amendment changes the time period of the financial redetermination for a child in receipt of foster care maintenance payments from every six months to every 12 months.

Part 423 (Preventive Services Regulations)

The amendment clarifies who may perform casework contacts in preventive services cases.

Part 428 (Standards for Uniform Case Records)

The amendment simplifies and streamlines recording standards for children in foster care, families receiving preventive services and families in indicated reports of child abuse/maltreatment. The amendment establishes a new provision to provide standards regarding access to foster care records by adults who were former foster children. The amendment provides for the waiver of authority granted pursuant to Social Services Law section 153-k to allow a more flexible approach for documenting preventive service cases purchased from a public agency or a private voluntary agency, using an alternative evidence-based model of practice, so long as the substitution contains legally required data and OCFS grants approval. The amendment defines “community optional preventive services” and

non-court ordered situations consistent with section 371.12 of the SSL, which defines the term “place out” to mean the arranging of “free care of a child in a family”. Explanatory materials have been provided to social services districts and voluntary authorized agencies, including in an OCFS administrative directive, 05-OCFS ADM-2.

Accordingly, the proposed regulations were not revised.

4) One commenter asked why “certified” was added to the requirement to obtain copies of the foster child’s birth certificate, as this is only needed for termination of parental rights (TPR) and adoptions.

Response: OCFS has a strong preference for the obtaining of certified copies of a foster child’s birth certificate as early as possible when a child comes into foster care so there is not a delay in a subsequent TPR or adoption proceedings. However, because it is not required in all cases, the word “certified” has been deleted from the final regulation. This change in no way precludes social services district staff from securing certified birth certificates on all foster children.

This is a technical, non-substantive change to the regulations.

5) One commenter asked for clarification of the term “alternative placement setting”, as that term relates to what must be documented in progress notes for this population and to clarify that certain of the documentation requirements only relate to children in foster care, i.e., in the custody of the commissioner of a social services district.

Response: OCFS has clarified in the final regulation that this section relates to “children who are not residing with a parent and who are in foster care or an alternative placement setting. . .”. This includes situations where the child is in a “Non-DSS Custody-Relative/Resource Placement.” For further clarification, OCFS has added the term “as applicable” in describing the progress notes documentation requirements, as some documentation requirements specifically only relate to foster care cases.

This is a technical, non-substantive change to the regulations.

6) One comment related to the language used to describe what records a former foster child may obtain. Concern was raised about granting access to the “clinical” records of the child’s parents. Questions were raised about whether current statutory provisions authorize access to the “Clinical” records of the child’s parents and whether the regulations provide enough information as to the definition of “social history.”

Response: OCFS has reviewed section 373-a of the SSL that expressly authorizes a foster child to obtain his or her birth parents’ medical history. Since the word “clinical” does not appear, OCFS has removed this term from the final regulation. OCFS has further clarified that educational records referenced in the regulations relate to the former foster child’s educational records.

These are technical, non-substantive changes to the regulations.

OCFS will provide additional guidance to the field about “social histories” in the form of an Informational Letter to assist social services districts and voluntary authorized agencies with implementing this provision.

7) One commenter asked that the regulations be amended to place the responsibility for providing foster care records to the former foster child on the voluntary authorized agency with case planning responsibility.

Response: OCFS feels that is an issue better addressed through the foster care purchase of services contract between a social services district and a voluntary authorized agency. The social services district, as the case manager, is responsible for meeting the applicable requirements set out in these regulations but may delegate those responsibilities to a voluntary authorized agency. The process will be increasingly simplified by the use of the CONNECTIONS system.

Accordingly, the proposed regulations were not revised.

8) One commenter asked that the regulations be amended to require voluntary authorized agencies that are ceasing operation to give the social services district a plan for the maintenance of foster care records regarding children who had previously been in that agency’s care. The regulations, as proposed, only provided for a plan to OCFS. The commenter additionally wants the social services district to have a role in reviewing the record maintenance plan provided to OCFS.

Response: OCFS feels that is an issue better addressed through the foster care purchase of services contract between a social services district and a voluntary authorized agency.

Accordingly, the proposed regulations were not revised.

In addition to the formal comments discussed above, OCFS also received some verbal and e-mail questions about various portions of the proposed regulations from staff from some social services districts. Based on these questions, the following additional technical non-substantive changes have been made to clarify the regulations, including conforming language in various other regulatory sections.

° Sections 423.2 and 423.4 regarding preventive cases, section 432.2 regarding child protective cases and section 441.21 regarding foster care cases were amended to conform with the single case planner requirement in section 428.2 (c) of the proposed regulations including clarifying the allowance of caseworkers (other than case planners) to perform required casework contacts under the direction of the case planner;

° Paragraph (2) of subdivision (b) of section 428.3 relating to Plan Amendment variations was repealed, as it is no longer applicable and was inconsistent with the requirements in section 428.3(b)(1) that all listed items making up the UCR, including the Plan Amendment, be in the form and manner prescribed by OCFS; and

° The newly renumbered paragraph (5) of subdivision (a) of the newly renumbered section 428.10 was revised to cross-reference the expungement standard for preventive only cases as referenced in 18 NYCRR 466.5, and the sealing standard for adoption records consistent with section 114 of the Domestic Relations Law.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Uniform Procedures

I.D. No. ENV-31-05-00006-P

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

Proposed action: Amendment of Parts 621, 622, 624, 663, 370 series and 380 series of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 70-0107.1

Subject: Uniform procedures.

Purpose: To clarify the permit application review process and incorporate relevant permit program requirements instituted by changes in regulations or statutes of other programs subject to uniform procedures since the last amendments; eliminate discrepancies between the uniform procedures regulations and program regulations and add the permits for discharge and disposal of radioactive material to the environment to those programs subject to uniform procedures.

Public hearing(s) will be held at: 1:00 p.m., Sept. 20, 2005, at the Department of Environmental Conservation, Region 9, Office Conference Rm., 270 Michigan Ave., Buffalo, NY; 1:00 p.m., Sept. 22, 2005, at the Department of Environmental Conservation Annex, Region 2, Hearing Rm. 106, 11-15 47th Ave., Long Island City, NY; 1:00 p.m., at the Department of Environmental Conservation, Public Assembly Rm. 129A, 625 Broadway, Albany, NY; 1:00 p.m. Sept. 28, 2005, at the Department of Environmental Conservation, Region 5, Office Conference Rm., 1115 Rt. 86, Ray Brook, NY; and 1:00 p.m., Sept. 29, 2005, at the Department of Environmental Conservation, Region 7, Conference Rm., 615 Erie Blvd., West Syracuse, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.state.ny.us/website/regs/proposed.html>): The proposed amendments to Part 621, Uniform Procedures, will change the order of the regulation to more closely follow the application review process, add needed definitions, clarify and update procedures for various programs that fall under the auspices of Uniform Procedures, clarify procedures for transferring a permit, clarify how to apply for variances, add several minor categories that will save applicants time and money without impacting the environment, clarify department and applicant responsibilities in various stages of the application review process, amend cross

references to Part 621 that appear in Parts 622, 624, 663, 370 series and 380 series, and update addresses and telephone numbers of regional offices including fax numbers and the department's website.

Text of proposed rule and any required statements and analyses may be obtained from: Charles B. Gardner, Department of Environmental Conservation, Division of Environmental Permits, 4th Fl., 625 Broadway, Albany, NY 12233, (518) 402-9154, e-mail: cbgardne@gw.dec.state.ny.us

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

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

Additional matter required by statute: The amendment of these regulations is an unlisted action pursuant to art. 8 of the Environmental Conservation Law. A negative declaration has been prepared.

Regulatory Impact Statement

1. Statutory authority:

The statutory authority for the Uniform Procedure regulations is derived from Article 70 of the Environmental Conservation Law. Specifically, Section 70-0107.1 directs: "The department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article."

2. Legislative objectives:

It was the intent of the legislature in adopting the Uniform Procedures Act (UPA) to: assure a fair, expeditious and thorough administrative review of applications for regulatory permits; make regulatory procedures uniform; establish reasonable time periods for administrative agency action on applications for permits; encourage public participation; and ensure a comprehensive project review.

3. Needs and benefits:

Through the many years of implementation of the Uniform Procedures regulation since its inception on November 1, 1977, it has been necessary to make updates and amendments to the regulation. The changes have been in response to developments in regulatory programs affected by UPA, amendments to department regulations associated with department review procedures other than UPA, and to update and clarify provisions of the regulation to make it easier for the regulated community to understand its responsibilities and process rights under the regulation. Updates and clarifying amendments also help to ensure that department staff implement the regulation consistent with its intent and in an appropriate and equitable fashion. Such is the case with this proposed rule making; proposed amendments more clearly articulate application requirements, department review procedures, and the department's responsibilities and authorities in reviewing applications for permit.

The last substantive amendments were made to Part 621 in 1996. Since that time other programs in the department have amended their regulations causing some provisions of the permit management system to be incompatible with these programs. Amendments to Part 621 became necessary to update the permit application procedures eliminating any conflicting language between the program's regulations and the application review regulations.

The enabling statutes for Part 380, Permits for Discharge and Disposal of Radioactive Material to the Environment, subject this program to Uniform Procedures. Although permit applications for the radiation program are administered pursuant to Uniform Procedures, the program has not specifically been listed as a Uniform Procedures Program in Part 621. This rule making will add the radiation program to the listing of those programs subject to Uniform Procedures.

When first adopted Part 621 separated applications for various activities into major and minor categories. The primary basis for the decision to have two categories of permits was the likelihood that an activity would adversely impact the environment and the amount of public concern anticipated for certain activities. Those activities with little or no adverse impact potential and of little public interest were categorized as minor projects, all others were major. Years of experience with permitting these various categories of activities has shown that certain projects are of little interest to the public and few environmental problems are experienced when these projects are undertaken in conformance with standard permit conditions established for such activities. After careful evaluation by the programs responsible for the permitted activities it was decided that the administrative assignments of major on some activities could now be classified as minor. The reassignment of categories will facilitate the application process for these types of activities without compromising the environmental review.

The overall numbering of the regulation has been changed. This numbering change was done to allow the various sections of the regulation to more closely represent the flow of the application review and permitting

process. It will make the regulations easier to read and use. Amendments to the regulations also clarify various procedural principles and the due process rights of applicants and parties with an interest in a pending application or current permit.

4. Costs:

a. Costs to regulated parties: In most instances costs to regulated parties will not increase. The procedural framework and time frames contained in the Uniform Procedures regulations have not changed. Clarification of the requirements may in fact help to reduce costs. Applicants will better understand the elements of a complete application and have an improved awareness of department review and decision making procedures. This should enhance the ability of regulated parties to submit complete applications and to participate in the application review process. Changing some of the major categories to minor will reduce the requirements for public notification thereby saving the applicant publication fees. Any additional cost incurred by an applicant for expanded public participation in the review of an application will be a very small fraction of the overall costs for preparing an application and completing review procedures.

b. Costs to the agency: There are no substantive changes to the procedures utilized in the review of applications for permit or in the decision making responsibilities of the department. There may be some cost savings to the department as received applications may be of a higher quality requiring fewer incomplete notices and the review of subsequent re-submissions. Further cost savings may be realized with fewer procedural anomalies occurring that require a redress of the department's review process for individual applications. Costs to the state: There will be no increased costs to the state as a result of amending the Uniform Procedures regulations. Those state agencies that are required to obtain permits from the department are not required to undertake any additional burdens beyond those required of any other applicant. Some savings can be realized with the clarifications provided in the regulation making the procedures easier to follow.

c. Costs to local governments: There will be no increase in costs to local governments when they have to apply for a permit from the department for reasons similar to that for state agencies seeking permits.

d. There are no quantifiable costs associated with this rule making. It is anticipated that some time will be saved by having clarified the regulations and thereby reducing the number of deficient applications and delays in review and decision making. Programs and activities governed by Uniform Procedures vary widely in their nature and complexity. The median number of days from receipt of a permit application to a decision on a major project was 169 days over a one year period. The median number of days for a decision on a minor project from receipt of the application during the same period was 36 days. This time includes the number of days that an application was in the hands of the applicant to provide information requested in a department Notice of Incomplete Application.

5. Local government mandates:

There are no local government, school district or fire district mandates associated with this rule making. Local governments must obtain permits from the department for certain activities that they undertake. No changes have been made to the existing permitting procedures nor have any additional mandates been placed on local governments by this rule making.

6. Paperwork:

This rule making does not incorporate any new reporting requirements, forms or other paperwork. The rule making will reduce the number of incomplete notice and newspaper notices for activities that do not generate public comment.

7. Duplication:

Other state administrative agencies have similar Uniform Procedures regulations, based on their enabling statutes, that apply to that agency's permit application review. Where the department has overlapping jurisdiction with other state agencies, protocols have been implemented to facilitate the administration and review of permit applications. The department has also developed protocols with federal agencies having similar jurisdictions in program areas subject to Uniform Procedures. This rule making will not change any of the existing procedures or protocols that serve to resolve any duplication that exist between the department and other state or federal agencies nor does it implement any new duplicate functions.

8. Alternatives:

The only other alternative considered was not to do this rule making. This alternative was not selected since Part 621 would remain in conflict with other program regulations that had been changed previously. Failing to update and clarify the regulations will maintain the present status of incomplete information and ambiguity that impedes users of the regulation both inside and outside the agency.

9. Federal standards:

There are no federal standards involved in this rule making.

10. Compliance schedule:

This regulation will require full compliance immediately upon becoming effective. However, existing applications for permits issued by the department are currently in compliance with this regulation. This rule making will not impose any additional or different compliance requirements.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will affect small businesses such as contractors, farmers, certain commercial operations and other small businesses who must obtain permits from the Department of Environmental Conservation (department) for activities regulated under the Environmental Conservation Law. It will also effect local governments involved in activities requiring a permit from the department. The changes to the regulations are intended to facilitate the application process by clarification of the regulations. Certain categories of activities that were designated major have now been categorized as minor since years of experience have shown that these activities do not generate public comment or result in significant environmental impacts. These category changes will reduce the time period between application and final decision for a permit, it will also eliminate the need for the applicant to publish notice of these activities in a newspaper thereby saving small businesses and local governments time and money. The department will also be adding Radiation Control Permits to the Uniform Procedure regulations. These permits have been processed pursuant to the Uniform Procedures regulations but have not been incorporated into the text of the regulation. The department receives between three and four new applications for Radiation Control Permits a year. Currently, there are four active permits for radiation control held by small businesses in New York State.

The department received applications for 14,317 permits under the purview of Uniform Procedures state-wide in the year 2003. These permits were for 10,234 projects, some projects requiring several permits. The department's permit tracking system doesn't allow for small business or local governments to be broken out of this total number of permits. Individuals and large businesses are also included in this figure.

2. Compliance requirements:

In the event that the department requires expanded public participation for a particular application, the small business or local government would have to comply by reaching out to the public. If there is reason to hold a hearing on such permit applications, the applicant would have to bear the cost of the hearing.

3. Professional services:

These amendments do not require any professional services for small business or local government compliance.

4. Compliance costs:

There are no new compliance costs associated with this rule making. As in the past applicants must notice major projects in local newspaper(s) and if a hearing is necessary the applicant must bear the cost of the hearing.

5. Economic and technological feasibility:

There are no economic or technological barriers that would prohibit small businesses or local governments from complying with this rule making. This regulation does not require any type of technical compliance. The regulation governs the processing of an application once it has been received by the department. The existing requirements that an applicant provide public notice of major projects and bear the cost of a hearing, if one is necessary, have not been changed by this rule making.

6. Minimizing adverse impact:

This rule making will have no adverse impact on small businesses or local government. It serves to clarify the existing regulation and in certain instances will reduce the compliance requirements for those activities that were classified as major but will now be classified as minor. These major to minor classification changes affect stream disturbance, freshwater wetlands, and Radiation Control permits. Small businesses and municipalities often obtain these permits for road improvement, stream bank stabilization and other activities. Minor activities generally do not require public notice to be printed in a local newspaper and can be administered in a shorter time period than and activity classified as major.

7. Small business and local government participation:

The department has posted these amendments on its web site at <http://www.dec.state.ny.us/website/regs/proposed.html> and provided copies to the Association of Towns, the New York State Builders Association and the New York State Business Council, among others, for comment.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

These amendments will apply to all rural areas in New York State. There are no requirements or provisions that are unique to rural areas or that place more responsibilities on applicants in rural areas as compared to those in other parts of the state with differing land use and population characteristics.

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

The proposed amendments to the Uniform Procedures regulations do not require any reporting, recordkeeping or other compliance requirements specific to rural areas. The amendments do not require the services of professionals for compliance beyond those that might currently be needed for preparation of an application for a permit. In fact, clarification of the regulations and changing some activities from the major to minor category will benefit applicants in rural areas as numerous activities involving regulated streams and freshwater wetlands are located in rural areas.

3. Costs:

This rule making imposes no capitol costs nor any annual costs to the public or private sectors in the rural areas of New York State.

4. Minimizing adverse impact:

The amendments to this regulation will not have any adverse impacts on the rural areas of the state. The amendments will clarify the regulations to facilitate application preparation and permit application review. Specific natural resource permits, that are common in rural areas, have been designated as minor. This re-designation will benefit some applicants in rural areas.

5. Rural area participation:

The department has posted this regulation on its web site at <http://www.dec.state.ny.us/website/regs/proposed.html> and copies were distributed to the Farm Bureau, The Association of Towns, the Homebuilders' Association, and the New York State Business Council for comment.

Job Impact Statement

Changes to be made to the regulations affect the review and processing of applications for permits, some of which are required for activities associated with siting and undertaking business endeavors that provide jobs. Procedures related to the processing of permit applications by the department have been clarified. There are no changes that affect the procedural framework under which applications for permit are reviewed and no adjustment to time frames under which department decisions are to be made. Additionally, there are no infringements on the due process rights of applicants and permittees with respect to department administrative procedures related to application review, permit issuance decision making and permit content. Therefore, the ability of entities to seek, obtain, and retain permits associated with business establishment, expansion or modification are not further burdened by the proposed amendments and there will be no impacts on jobs or employment opportunities in the state.

Office of General Services

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of General Services publishes a new notice of proposed rule making in the *NYS Register*.

Parking Regulations for Office of General Services Parking Facilities

I.D. No.	Proposed	Expiration Date
GNS-03-05-00007-P	January 19, 2005	July 18, 2005

Department of Health

EMERGENCY RULE MAKING

Health Provider Network Access and Reporting Requirements for Articles 28, 36 and 40 Facilities

I.D. No. HLT-27-05-00001-E

Filing No. 786

Filing date: July 13, 2005

Effective date: July 13, 2005

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

Action taken: Amendment of sections 400.10, 763.11, 766.9 and 793.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800, 2803, 3612 and 4010

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare of the citizens of the State of New York. Compliance with State Administrative Procedure Act, section 202(1) would be contrary to the public interest. This regulation would add a new Section 400.10 of 10 NYCRR and amend Sections 763.11, 766.9, and 793.1 of 10 NYCRR to require all facilities defined as a hospital within Public Health Law (PHL) Article 28, home care facilities within Article 36 of the Public Health Law and hospices within Article 40 of the Public Health Law to establish and maintain a Health Provider Network (HPN) account with the Department of Health.

The HPN is a secure web-based application that can be utilized by these facilities to receive current and up-to-date information as well as to submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, it is imperative that these facilities receive from the department and submit to the department information in a rapid, efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information. Current methods of accessing and distributing information utilizing telephone, fax and e-mail have yielded sporadic results.

This problem was recently highlighted by the current and ongoing influenza crisis as the department was determining the availability and the need for influenza vaccine throughout the State. There will be a need for frequent updates to the State to quickly determine where the need is and where the vaccine is available. The vaccine shortage is only one reason that this regulation is needed. Any emergency affecting these facilities whether locally, regionally, or Statewide will need to be evaluated as soon as possible to permit the department to allocate resources and direct them to where they are most needed. New York has experienced various emergencies affecting these facilities in the recent past. The September 11, 2001 terrorist attacks, the August 2003 blackout and any weather related situations such as snow and ice storms, hurricanes and heat waves have all had an impact on the State's health care facilities. The HPN will be the best means for the department to communicate with these facilities to determine the best approach for handling such emergencies in the future.

Subject: Health provider network (HPN) access and reporting requirements for arts. 28, 36 and 40 facilities.

Purpose: To require arts. 28, 36 and 40 facilities to establish and maintain HPN accounts with the Department of Health, for the purpose of exchanging information with the DOH in a rapid, efficient manner in times of emergencies or urgent matters.

Text of emergency rule: The table of contents for Part 400 is amended to read as follows:

PART 400

ALL FACILITIES—GENERAL REQUIREMENTS

(Statutory authority: Public Health Law, Sections 2800, 2803)

Sec.

400.1 Title and applicability

* * *

400.10 [RESERVED] *Health Provider Network Access and Reporting Requirements*

* * *

A new section 400.10 is added to read as follows:
Section 400.10 Health Provider Network Access and Reporting Requirements

The operator of a facility shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each facility he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven day a week contacts for emergency communication and alerts must be designated by each facility in the HPN Communications Directory. A policy defining the facility's HPN coverage consistent with the facility's hours of operation, shall be created and reviewed by the facility no less than annually. Maintenance of each facility's HPN accounts shall consist of, at a minimum, the following:

(a) sufficient designation of the facility's HPN coordinator(s) to allow for HPN individual user application;

(b) designation by the facility operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(c) adherence to the requirements of the HPN user contract; and

(d) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (f) is added to Section 763.11 to read as follows:

(f) Health Provider Network Access and Reporting Requirements. The governing authority of an agency shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each agency it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each agency in the HPN Communications Directory. A policy defining the agency's HPN coverage consistent with the agency's hours of operation shall be created and reviewed by the agency no less than annually. Maintenance of each agency's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the facility's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority of an agency of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (o) is added to Section 766.9 to read as follows:

(o) Health Provider Network Access and Reporting Requirements. The governing authority or operator of an agency shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each agency that it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each agency in the HPN Communications Directory. A policy defining the agency's HPN coverage consistent with the agency's hours of operation shall be created and reviewed by the agency no less than annually. Maintenance of each agency's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the agency's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority or operator of an agency of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (n) is added to Section 793.1 to read as follows:

(n) Health Provider Network Access Reporting Requirements. The governing authority of a hospice shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each hospice it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts,

must be designated by each hospice in the HPN Communications Directory. A policy defining the hospice's HPN coverage consistent with the hospice's hours of operation shall be created and reviewed by the hospice no less than annually. Maintenance of each hospice's HPN accounts shall consist of, at a minimum, the following:

- (1) sufficient designation of the hospice's HPN coordinator(s) to allow for HPN individual user application;
- (2) designation by the governing authority of the hospice of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;
- (3) adherence to the requirements of the HPN user contract; and
- (4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

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-27-05-00001-P, Issue of July 6, 2005. The emergency rule will expire September 10, 2005.

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:

The authority for the promulgation of these regulations is contained in Sections 2800, 2803(2), 3612 and 4010 (4) of the Public Health Law (PHL). PHL Article 28 (Hospitals), Section 2800 specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Article 36 (Home Care Services), Section 3612 authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, providers of long term home health care programs and providers of AIDS home care programs. PHL Article 40 (Hospice), Section 4010(4) authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospices.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 intends that there be a public commitment to the appropriate provision and expansion of services rendered to the residents of the State by certified home health agencies, to the maintenance of a consistently high level of services by all home care services agencies, to the central collection and public accessibility of information concerning all organized home care services, and to the adequate regulation and coordination of existing home care services. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for those afflicted by terminal illness. In recognition of the value of hospice and consistent with State policy to encourage the expansion of health care service options available to New York State residents, it is the intention of the Legislature that hospice be available to all who seek such care and that it become a permanent component of the State's health care system. Consistent with this legislative intent, these provisions seek to require Article 28, Article 36 and Article 40 healthcare providers to be enrolled and connected electronically to the Department's Health Provider Network (HPN).

The HPN is a secure web-based application that can be utilized by these facilities to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that these facilities receive from and submit to the Department information in a rapid efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information.

Needs and Benefits:

In 1996 the New York State Department of Health (NYSDOH) established the Health Information Network (HIN) for local health departments and the Health Provider Network (HPN) for all other health care partners. The Health Alert Network (HAN) is designed to post rapid alerts, updates and information regarding current threats, developments, advisories or references for all HIN/HPN users.

These systems are housed within the NYSDOH Commerce System, a secure web-based application that allows healthcare providers and local health departments to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In order to access this secure application, users must obtain and maintain HPN accounts. It enables electronic connectivity in real time to partners who have HPN accounts. Hospitals and long term care facilities currently submit information for purposes of reporting. For example, hospitals submit information to the New York Patient Occurrence Reporting and Tracking System (NYPORTS), financial reports and Health Emergency Response Data System Reports (HERDS) and information by their HPN accounts. Due to the specificity of those programs, and lack of any HPN activity by some facilities such as Diagnostic and Treatment Centers, the Department has encountered difficulty in reaching out in a rapid and efficient manner to multiple key contacts at health care facilities and agencies in times of emergencies or urgent matters.

In order to enhance overall emergency preparedness in New York State, it is imperative that all health care facilities and agencies be enrolled and connected electronically to this system with enough depth and scope to connect and respond on a 24 hour, 7 day a week basis.

Costs:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required. The cost of a computer and internet access can vary depending on the sophistication of the equipment and the connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately \$500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately \$44.00/month. Internet service costs as little as \$10.00/month up to \$45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Cost to State and Local Government:

None.

Cost to the Department of Health:

None.

Local Government Mandates:

None.

Paperwork:

There will be minimal paperwork required for enrolling in the HPN for each facility and each user.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

Emergency communications with many health care providers have been difficult as many times only phone, fax, and in some cases, e-mail is available. No other alternatives were identified that would enable rapid communication bidirectionally. Experience over the past 24 month period has shown poor voluntary response from most facilities to requests that they obtain HPN accounts.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Regulatory Flexibility Analysis**Effect of Rule:**

Any facility defined as a hospital pursuant to PHL Article 28, home care agency within PHL Article 36, or Hospice within PHL Article 40 will be required to comply. Small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule will include: 3 hospitals, 237 diagnostic and treatment centers, approximately 100 nursing homes, and approximately 200 home care services agencies. There are 52 certified hospices in New York State. Most of them would fit into the category of a small business, but definitive data concerning their small business status was not available.

Local governments are not affected by this rule.

Compliance Requirements:

In order to comply with these requirements, a facility must enroll in the NYSDOH HPN and be able to maintain the account as prescribed with sufficient depth and scope of staff. A computer and internet connectivity will be required.

Professional Services:

All facilities required to enroll in the HPN program must have trained staff to participate. No other professional staff are required.

Compliance Costs:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required to participate in the HPN program. The cost of a computer and internet access can vary depending on the sophistication of the equipment and the connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately \$500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately \$44.00/month. Internet service costs as little as \$10.00/month up to \$45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses to comply with the regulations. Regulated parties will not incur any costs to establish an HPN account. Existing staff will need training to participate. Such training and technical support will be provided free of charge by the Department. A computer and internet connectivity will be required.

Minimizing Adverse Impact:

A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Small Business and Local Government Participation:

Outreach to the affected parties, some of whom are small businesses, is being conducted. Organizations who represent the affected parties have been given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council. The public, including any affected party is invited to comment during the Codes and Regulations Committee meeting.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined as within Articles 28, 36, or 40 of the Public Health Law, nor will it impose any additional recordkeeping, reporting and other compliance requirements.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment activities.

EMERGENCY RULE MAKING

Health Provider Network Access and Reporting Requirements

I.D. No. HLT-27-05-00002-E

Filing No. 785

Filing date: July 13, 2005

Effective date: July 13, 2005

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

Action taken: Amendment of sections 487.12, 488.12 and 490.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 460 and 461; and L. 1997, ch. 436

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare of the citizens of the State of New York. Compliance with State Administrative Procedure Act, section 202(1) would be contrary to the public interest. This regulation would amend Sections 487.12, 488.12, and 490.12 of 18 NYCRR to require all adult care facilities (ACFs) to establish and maintain a Health Provider Network (HPN) account with the Department of Health.

The HPN is a secure web-based application that can be utilized by these facilities to receive current and up-to-date information as well as to submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, it is imperative that these facilities receive from the department and submit to the department information in a rapid, efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information. Current methods of accessing and distributing information utilizing telephone, fax and e-mail have yielded sporadic results.

This problem was recently evident with the current and ongoing influenza crisis as the department was determining the availability and the need for influenza vaccine throughout the State. There will be a need for frequent updates to the State to quickly determine where the need is and where the vaccine is available. The vaccine shortage is only one reason that this regulation is needed. Any emergency affecting these facilities whether locally, regionally, or Statewide will need to be evaluated as soon as possible to permit the department to allocate resources and direct them to where they are most needed. New York has experienced various emergencies affecting these facilities in the recent past. The September 11, 2001 terrorist attacks, the August 2003 blackout and any weather related situations such as snow and ice storms, hurricanes and heat waves have all had an impact on the State's adult care facilities. The HPN will be the best means for the Department to communicate with these facilities to determine the best approach for handling such emergencies in the future.

Subject: Health provider network (HPN) access and reporting requirements.

Purpose: To require adult homes, enriched housing programs and residences for adults to establish and maintain HPN accounts with the Department of Health for the purpose of exchanging information with the DOH in a rapid, efficient manner in times of emergencies or urgent matters.

Text of emergency rule: A new subdivision (k) is added to Section 487.12 to read as follows:

(k) *The operator of an adult home shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each adult home he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each home in the HPN Communications Directory. A policy defining the adult home's HPN coverage consistent with the home's hours of operation shall be created and reviewed by the adult home no less than annually. Maintenance of each adult home's HPN accounts shall consist of, at a minimum, the following:*

(1) *sufficient designation of the home's HPN coordinator(s) to allow for HPN individual user application;*

(2) *designation by the adult home operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;*

(3) *adherence to the requirements of the HPN user contract; and*

(4) *current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.*

A new subdivision (m) is added to Section 488.12 to read as follows:

(m) *The operator of an enriched housing program shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each program he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each program in the HPN Communications Directory. A policy defining the enriched housing program's HPN coverage consistent with the enriched housing program's*

hours of operation shall be created and reviewed by the enriched housing program no less than annually. Maintenance of each enriched housing program's HPN accounts shall consist of, at a minimum, the following:

- (1) sufficient designation of the enriched housing program's HPN coordinator(s) to allow for HPN individual user application;
- (2) designation by the enriched housing program operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;
- (3) adherence to the requirements of the HPN user contract; and
- (4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (k) is added to Section 490.12 to read as follows:

(k) The operator of a residence for adults shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each residence he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each residence for adults' in the HPN Communications Directory. A policy defining the residence for adults' HPN coverage consistent with the residence for adults' hours of operation, shall be created and reviewed by the residence for adults no less than annually. Maintenance of each residence for adults' HPN accounts shall consist of, at a minimum, the following:

- (1) sufficient designation of the residence's HPN coordinator(s) to allow for HPN individual user application;
- (2) designation by the residence for adults operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;
- (3) adherence to the requirements of the HPN user contract; and
- (4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

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-27-05-00002-P, Issue of July 6, 2005. The emergency rule will expire September 10, 2005.

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:

The authority for the promulgation of these regulations is contained in Sections 460 and 461 of the Social Services Law (SSL) and Chapter 436 of the Laws of 1997. SSL Section 460 delegates the comprehensive responsibility for the development and administration of programs, standards and methods of operation of residential care programs to the Department of Social Services (DSS) directly or through social services districts, and with the cooperation of other state agencies to protect and assure the life, health, safety and comfort of individuals who must be cared for away from their own homes. SSL Section 461 requires DSS to promulgate regulations for adult care facilities subject to its inspection and supervision only after consultation with the board of social welfare, departments of health and mental hygiene and office for the aging. Section 122(c) of Chapter 436 of the Laws of 1997 provides that effective April 1, 1997, the functions, powers, duties and obligations of the former Department of Social Services concerning adult homes, enriched housing programs, residences for adults, and assisted living programs are transferred to the New York State Department of Health.

Legislative Objectives:

The legislative objective of SSL Residential Care Program provisions is to provide services of the highest quality, efficiently and properly utilized at a reasonable cost. It also intends to effectively protect and assure the life, health, safety and comfort of residents who must be cared for away from their own homes. Consistent with this legislative intent, these provisions seek to require adult home, enriched housing and residence for adults providers to be enrolled and connected electronically to the Department's Health Provider Network (HPN).

The HPN is a secure web-based application that can be utilized by these entities to receive current and up-to-date information as well as submit data

to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that these entities receive from and submit to the Department information in a rapid efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information.

Needs and Benefits:

In 1996 the New York State Department of Health (NYSDOH) established the Health Information Network (HIN) for local health departments and the Health Provider Network (HPN) for all other health care partners. The Health Alert Network (HAN) is designed to post rapid alerts, updates and information regarding current threats, developments, advisories or references for all HIN/HPN users.

These systems are housed within the NYSDOH Commerce System, a secure web-based application that allows healthcare providers and local health departments to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In order to access this secure application, users must obtain and maintain HPN accounts. It enables electronic connectivity in real time to partners who have HPN accounts. Hospitals and long term care facilities currently submit information for purposes of reporting. For example, hospitals submitting information to the New York Patient Occurrence Reporting and Tracking System (NYPORTS), financial reports and Health Emergency Response Data System Reports (HERDS) and information by their HPN accounts. Due to the specificity of those programs, and lack of any HPN activity by some providers, the Department has encountered difficulty in reaching out in a rapid and efficient manner to multiple key contacts at health care facilities, agencies and residences in times of emergencies or urgent matters.

In order to enhance overall emergency preparedness in New York State, it is imperative that all health care facilities, agencies and residences be enrolled and connected electronically to this system with enough depth and scope to connect and respond on a 24 hour, 7 day a week basis.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required. The cost of a computer and internet access can vary depending on the sophistication of the equipment and connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately \$500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately \$44.00/month. Internet service costs as little as \$10.00/month up to \$45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Cost to State and Local Government:

None.

Cost to the Department of Health:

None.

Local Government Mandates:

None.

Paperwork:

There will be minimal paperwork required for enrolling in the HPN for each facility and each user.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

Emergency communications with many health care providers have been difficult as many times only phone, fax, and in some cases, e-mail is available. No other alternatives were identified that would enable rapid communication bidirectionally. Experience over the past 24 month period has shown poor voluntary response from most facilities to requests that they obtain HPN accounts.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Regulatory Flexibility Analysis

Effect of Rule:

There are 514 existing adult care facilities (ACFs) in New York State. Of those, 384 have been identified as being certified for 100 or fewer beds and considered a small business.

Local governments are not affected by this rule.

Compliance Requirements:

In order to comply with these requirements, an ACF must enroll in the NYSDOH HPN and be able to maintain the account as prescribed with sufficient depth and scope of staff. A computer and internet connectivity will be required.

Professional Services:

All facilities required to enroll in the HPN program must have trained staff to participate. No other professional staff is required.

Compliance Costs:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required to participate in the HPN program. The cost of a computer and internet access can vary depending on the sophistication of the equipment and connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately \$500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately \$44.00/month. Internet service costs as little as \$10.00/month up to \$45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses to comply with the regulations. Regulated parties will not incur any costs to establish an HPN account. Existing staff will need training to participate. Such training and technical support will be provided free of charge by the Department. A computer and internet connectivity will be required.

Minimizing Adverse Impact:

A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Small Business and Local Government Participation:

Outreach to the affected parties, some of whom are small businesses, is being conducted.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural adult care facilities, nor will it impose any additional recordkeeping, reporting and other compliance requirements.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment activities.

**EMERGENCY
RULE MAKING**

Nursing Home Pharmacy Regulations

I.D. No. HLT-31-05-00001-E

Filing No. 784

Filing date: July 13, 2005

Effective date: July 13, 2005

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

Action taken: Amendment of section 415.18(g) and (i) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

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

Specific reasons underlying the finding of necessity: There is an increasing need to have available to nursing home residents a wider number of antibiotic and pain management medications to respond quickly in the event of a health crisis to these medically fragile residents. Presently, emergency medication kits are limited as to their content and facilities are not permitted to have certain medications including controlled substances in the emergency kits. Delay in responding to resident needs because a medication is not immediately available in the facility, and has to be

secured from the pharmacy, is resulting in needless suffering on the part of nursing home residents.

Subject: Nursing home pharmacy regulations.

Purpose: To make available in nursing home emergency medication kits, a wider variety of medications to respond to the needs of residents and allow verbal orders from a legally authorized practitioner.

Text of emergency rule: Subdivisions (g) and (i) of Section 415.18 are amended to read as follows:

Section 415.18 Pharmacy Services.

(g) Emergency medications. The facility shall ensure the provision of (an) emergency medication kit(s) as follows:

(1) The contents of each kit shall be approved by the medical director, pharmacist and director of nursing.

(2) [Controlled Substances shall be prohibited in emergency kits.] *Limited supplies of controlled substances for use in emergency situations may be stocked in sealed emergency medication kits.*

(i) *Each such kit may contain up to a 24 hour supply of a maximum of ten different controlled substances in unit dose packaging, three of which may be injectable drugs.*

(ii) *Controlled substances contained in emergency medication kits may be administered by authorized personnel pursuant to an order of an authorized practitioner to meet the immediate need of a resident. Personnel authorized to administer controlled substances shall include registered professional nurses, licensed practical nurses or other practitioners, licensed/registered under Title VIII of the Education Law and authorized to administer controlled substances.*

(iii) *The facility shall maintain all records of controlled substances furnished or transferred from the pharmacy and the disposition of all controlled substances in emergency kits, as required by article 33 of the Public Health Law and corresponding regulations.*

(3) *For medications other than controlled substances [The] the medication contents of each kit shall be limited to injectables except that the kit may also include:*

(i) sublingual nitroglycerine; and

(ii) up to five noninjectable, prepackaged medications not to exceed a 24-hour supply; [which are the same noninjectable, prepackaged medications in all emergency kits throughout the facility.] *The total number of noninjectables may not exceed 25 medications for the entire facility;*

(4) Each kit shall be kept and secured within or near the nurses' station.

(i) *Verbal orders.* All medications administered to residents shall be ordered in writing by a legally authorized practitioner unless unusual circumstances justify a verbal order, in which case the verbal order shall be given to a licensed nurse, or to a licensed pharmacist, immediately reduced to writing, authenticated by the nurse or registered pharmacist and countersigned by the prescriber within 48 hours. In the event a verbal order is not signed by the prescriber or a legally designated alternate [physician] practitioner within 48 hours, the order shall be terminated and the facility shall ensure that the resident's medication needs are promptly evaluated by the medical director or another legally authorized prescribing practitioner.

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 October 10, 2005.

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:

These regulation revisions of 10 NYCRR Section 415.18, Pharmacy Services, in nursing homes, are proposed under the authority granted to the Commissioner of Health under PHL Section 2803. The PHL outlines the responsibility to conduct inspections of health care facilities to determine compliance with statutes and regulations promulgated under the provisions of those statutes and authorizes the commissioner to propose rules, regulations and amendments thereto for consideration by the State Hospital Review and Planning Council "the Council". The Council, by a majority vote of its members, shall amend rules and regulations, subject to the approval of the commissioner, to effectuate the provisions and purposes as stated in the PHL.

Legislative Objectives:

The Department of Health possesses the comprehensive responsibility for the development and administration of programs, standards and methods of operation, and all other matters of policy with respect to nursing home services. Furthermore, through the Social Security Act, the federal government authorizes the State to administer programs and services through Medical Assistance (*i.e.*, Medicaid). This includes responsibility for standards of care within those settings, in order to ensure the health needs of recipients are met. These amended regulations will enable nursing homes to respond more quickly and efficiently to the health care needs of residents requiring emergency medications. The regulation will ensure the protection of the nursing home resident and promote the highest quality of care.

Needs and Benefits:

This proposal to amend 10 NYCRR sections 415.18(g) and 415.18(i) responds to the fact that current regulations for nursing home emergency medication kits and verbal orders are outdated and not in keeping with actual practice.

The State’s nursing homes provide a variety of clinical services which were not anticipated when the current pharmacy services regulations were promulgated. The Rug-II case mix reimbursement methodology which began in 1986, has allowed nursing homes to open their doors to residents who require resources which were previously unavailable. Currently, nursing homes accept residents whose clinical needs at one time were met in a hospital. In addition, some nursing homes have units that address the unique needs of special populations such as HIV, traumatic brain injury (TBI), or ventilator residents.

The present regulation, section 415.18(g), provides for emergency medication kits but limits the contents to injectables. It also provides for the kit to contain sublingual nitroglycerine and up to five noninjectable prepackaged medications. At the time this regulation was promulgated, the extensive array of oral medications currently available did not exist and emergency medications were primarily viewed in terms of injectable medications. With the greater complexity of clinical conditions often seen in today’s nursing home, resident issues of pain management have taken on greater significance. The availability of oral medications for pain and the wide range of antibiotics that did not exist at the time the regulations were written would significantly affect how nursing homes could respond to an emergency need of a resident.

The present regulations call for the contents of the emergency medication kits to be identical on every unit throughout the facility. At a time when the needs of residents were similar in terms of clinical management, this made sense. However, with nursing homes providing care to special populations including HIV, TBI and ventilator care, this requirement inhibits the most efficient use of emergency medications kits to best meet the unique clinical needs of special populations. When promulgated, these regulations were seeking to address concerns that facilities would establish “mini” pharmacies by having a wide range of noninjectables in the emergency medication kit and that the presence of a high number of medications may result in administration errors. With safe product packaging that is present today, safety concerns have been significantly reduced. In addition, the proposed regulation changes would limit the total number of noninjectables that would be available in emergency kits to no more than twenty-five. This would further ensure resident safety and eliminate the concern that nursing homes might stock an unlimited amount of noninjectables in the emergency kits. The proposed revisions would also allow for the presence of controlled substances in nursing home emergency kits. This would allow for the nursing home to respond quickly to pain management concerns that are a major issue for some residents.

Regulations at 415.18 (i) provide that all medications administered to residents shall be ordered in writing by a legally authorized practitioner unless unusual circumstances justify a verbal order. At the time the original regulations were promulgated only physicians could order medications. The proposed changes would insert the phrase designated alternate practitioner in place of designated alternate physician. This change would be reflective of current practices in which other prescribers, such as a nurse practitioner can order medications.

Costs:

Costs to Regulated Parties:

There will be no additional costs to regulated parties.

Costs to State and Local Government:

There will be no additional costs to State or local governments.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed regulation imposes no program, duty, service, or other responsibility upon any city, town, village, school, fire or other special district.

Paperwork:

The regulation imposes no additional reporting requirements, forms or other paperwork.

Duplication:

The regulation does not duplicate any federal or state regulation.

Alternative Approaches:

No alternative approaches were considered, since all nursing homes would be allowed flexibility in determining the contents of the emergency medication kit in their facility.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

The proposed regulation will be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

For the purposes of this Regulatory Flexibility Analysis, small businesses are considered any nursing home within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes would therefore be considered “small businesses”.

Compliance Requirements:

The regulation would impose no additional recordkeeping or other affirmative acts.

Professional Services:

The regulation would impose no additional professional services.

Compliance Costs:

The regulation would impose no additional costs.

Economic and Technical Feasibility Assessment:

The proposed regulation would impose no compliance requirements which would raise technological or feasibility issues.

Minimizing Adverse Impact:

The agency considered the approaches listed in section 202-b(1) of SAPA and found them inapplicable. The regulation would impose no adverse impact on small businesses or local governments.

Small Business and Local Government Input:

The regulation would have no impact on small businesses and local governments. The regulation is supported by provider and consumer groups and feedback from these groups have been gathered. The proposed revisions have been sent to the Codes and Regulations Committee of the Council and have appeared on the agenda of the Codes and Regulations Committee which is made up of representatives of groups that have as their members representatives of small business and local government.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and for counties with a population greater than 200,000, which include towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:
 The regulation would impose no additional reporting, recordkeeping or other affirmative acts.
 Professional Services:
 The regulation would not require additional professional services.
 Compliance Costs:
 The regulation would not impose additional costs.
 Minimizing Adverse Impact:
 The regulation would not result in any adverse economic impact on providers. The agency considered the approaches listed in section 202-bb(2) of SAPA and found them inapplicable.
 Opportunity for Rural Area Participation:
 The following groups are in support of the modification of 10 NYCRR 415.18:
 New York Association of Homes and Services for the Aging
 Nursing Home Community Coalition
 New York State Health Facilities Association
 New York State Office for Aging Long Term Care Ombudsman
 Health Facility Association of New York
 New York State Board of Pharmacy
 New York Chapter of the American Society of Consulting Pharmacists
 The proposed revisions will be sent to the Code Committee of the Council and appear on the agenda of the Code Committee which is made up of representatives of groups that have as their members representatives of rural areas.

Job Impact Statement

A Job Impact Statement is not necessary because it is apparent from the nature and purpose of the proposed regulation that it will not have a substantial adverse impact on jobs or employment opportunities. The proposal simply clarifies what drugs can be stocked in emergency medication kits, as well as who may sign verbal orders.

**EMERGENCY
 RULE MAKING**

Controlled Substances in Emergency Kits

I.D. No. HLT-31-05-00002-E
Filing No. 787
Filing date: July 13, 2005
Effective date: July 13, 2005

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

Action taken: Amendment of sections 80.11, 80.47, 80.49 and 80.50 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3308(2)

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 is necessary to protect the public health and safety. Having consulted closely with administrators, nursing personnel and consultant pharmacists of Class 3a health care facilities (nursing homes, and other long-term facilities), the Department has determined that the current Part 80 and Part 400 regulations do not ensure timely access to controlled substances by practitioners and patients when immediate administration is medically necessary. However, for purposes of this emergency justification, Class 3a institutional dispenser, Class 3a facility, and Class 3a health-care facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490. The proposed regulations exempt such adult care facilities from its provisions.

Current regulations require controlled substances to be administered to patients in Class 3a facilities only pursuant to a prescription. On urgent occasions, such as when a patient suffers a sudden seizure or onset of acute pain, the severity of the situation may make it impossible for a practitioner to first issue a prescription to promptly treat the condition. Even if a practitioner is able to first issue a prescription in an emergency, the prescription may not immediately be dispensed by a pharmacy. In these situations, a patient is deprived of timely relief from severe symptoms and suffering.

The proposed amendments will allow controlled substances to be maintained in an emergency medication kit in a Class 3a facility and administered to a patient in an emergency situation. To simultaneously protect the public health against the potential for diversion of such drugs, the amendments also specify limitations on their quantities, recordkeeping requirements for their administration, and security requirements for their

safeguarding. Immediate adoption of these regulations is necessary to enhance and ensure the quality of health care of every patient in a long-term care facility. Ensuring timely access to controlled substances for immediate administration during medical emergencies will result in substantial benefit to the public health and safety.

Subject: Controlled substances in emergency kits.

Purpose: To allow class 3A facilities to obtain, possess and administer controlled substances in emergency kits.

Text of emergency rule: Paragraph (6) of subdivision (b) of Section 80.11 is amended to read as follows:

(6) [be] not *be*, and not have been, a habitual user of narcotics or any other habit-forming drugs.

Paragraph (6) of subdivision (c), of Section 80.11 is amended to read as follows:

(6) [be] not *be*, and not have been, an habitual user of narcotics or other habit-forming drugs; and

Subdivision (f) of Section 80.11 is amended to read as follows:

(f) Persons conducting distributing activities of controlled substances within the State of New York shall obtain a class 2 license from the department, *except that*;

(1) *Except in an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490, a pharmacy may distribute a controlled substance to a practitioner in a Class 3a institutional dispenser limited solely for stocking in sealed emergency medication kits. Such distribution shall be pursuant only to a written request by the Class 3a facility indicating the name and address of the facility, the name and address of the pharmacy, the date of the request, the type and quantity of the drug requested and the signature of the authorized person making the request. With each distribution, the pharmacy shall provide the Class 3a facility with an itemized list indicating the name and address of the pharmacy, the name and address of the Class 3a facility, the date of the distribution, the type and quantity of the drug distributed, and the signature of the pharmacist.*

Section 80.47 is amended by creating subdivisions (a), (b) and (c) and new subdivision (b) is amended to read as follows:

Section 80.47 Institutional dispenser, limited. (a) Nursing homes, convalescent homes, health-related facilities, *adult care facilities subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490* [homes for the aged], dispensaries or clinics not qualifying as institutional dispensers in license class 3 shall apply for an institutional dispenser, limited license. Such institutional dispensers qualifying for controlled substances privileges shall obtain a class 3a license from the department.

(b) An institutional dispenser licensed in class 3a may administer controlled substances to patients only pursuant to a prescription issued by an authorized physician or other authorized practitioner and filled by a registered pharmacy; except that [an] *controlled substances in emergency medication kits may be administered to patients as provided in Section 80.49(d) of this Part, except in an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.*

(c) An institutional dispenser, limited, licensed in class 3a, which is operated as an integral and physical part of a facility licensed as a class 3 institutional dispenser may be provided with bulk stocks of controlled substances obtained pursuant to such class 3 institutional dispenser license. Records of distribution and administration of such bulk stocks of controlled substances shall be kept as provided in section 80.48(a) of this Part.

Subdivision (c) of section 80.49 is amended and a new subdivision (d) is added to read as follows:

(c) A separate record shall be maintained of the administration of prescribed controlled substances indicating the date and hour of administration, name and quantity of controlled substances, name of the prescriber, patient's name, signature of person administering and the balance of the controlled substances on hand after such administration.

(d) *In an emergency situation, a controlled substance from a sealed emergency medication kit may be administered to a patient by an order of an authorized practitioner. An oral order for such controlled substance shall be immediately reduced to writing and a notation made of the condition which required the administration of the drug. Such oral order shall be signed by the practitioner within 48 hours.*

(1) *For purposes of this subdivision, emergency means that the immediate administration of the drug is necessary and that no alternative treatment is available.*

(2) *A separate record shall be maintained of the administration of controlled substances from an emergency medication kit. Such record shall indicate the date and hour of administration, name and quantity of controlled substances, name of the practitioner ordering the administra-*

tion of the controlled substance, patient's name, signature of the person administering and the balance of the controlled substances in the emergency medication kit after such administration.

(3) The institutional dispenser limited shall notify the pharmacy furnishing controlled substances for the emergency medication kit within 24 hours of each time the emergency kit is unsealed, opened, or shows evidence of tampering.

Subdivision (e) of section 80.50 is amended and a new paragraph (1) is added to read as follows:

(e) Except as provided in paragraph (1) of this subdivision, [I] institutional dispensers limited may only possess controlled substances prescribed for individual patient use, pursuant to prescriptions filled in a registered pharmacy. These controlled substances shall be safeguarded as provided in subdivision (d) of this section.

(1) Except for adult care facilities subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490, institutional dispensers limited may possess limited supplies of controlled substances in sealed emergency medication kits for use as provided in section 80.49 (d) of this Part. Each kit may contain up to a 24-hour supply of a maximum of ten different controlled substances in unit dose packaging, no more than three of which may be in an injectable form. Each kit shall be secured in a stationary, double-locked system or other secure method approved by the Department.

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 October 10, 2005.

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:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purposes and intent.

Section 3321(1)(b) authorizes the commissioner to make regulations that exempt a pharmacy from the licensing requirements of article 33 for the sale of controlled substances to a practitioner for the immediate needs of the practitioner receiving such substances.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering, and distribution of licit controlled substances within New York. Section 3300-a expressly states that one of the statute's purposes is to allow the legitimate use of controlled substances in health care.

Needs and Benefits:

This regulation effectuates the above stated legislative purpose of section 3300-a of the New York State Controlled Substances Act. It will ensure timely access to controlled substances by practitioners and patients for emergency situations in extended care facilities and other health care facilities licensed by the Department as Class 3a, institutional dispenser limited. (See section 3302(18) of the Public Health Law for the definition of "institutional dispenser".) However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Section 80.47 of Title 10 regulations requires that controlled substances be administered to patients in healthcare facilities licensed by the Department as Class 3a institutional dispensers limited (*i.e.*; nursing homes, convalescent homes, health-related facilities, adult homes, homes for the aged, correctional facilities) *only* pursuant to a prescription issued by an authorized practitioner. The regulation also requires that such prescriptions must be dispensed by a registered pharmacy.

Administrators, nursing personnel, and consultant pharmacists of Class 3a facilities have expressed their concern to the Department that the prescription requirements of Section 80.47 are a restriction to timely access to controlled substances by practitioners and patients when immediate administration is medically necessary. On urgent occasions such as a sudden seizure or onset of intractable pain, the severity of the situation may make it impossible for a practitioner to first issue a prescription for the drug in order to promptly treat the condition. Further, Class 3a facilities do

not have onsite pharmacies. Even if a practitioner is able to first issue a prescription for a controlled substance to treat a patient in an emergency, that prescription may not immediately be dispensed by an outside pharmacy because the pharmacy may be too distant from the Class 3a facility or the emergency may have occurred during the pharmacy's non-business hours. These situations can, and do, result in needed medications not being administered in a timely fashion to relieve a patient's severe symptoms or suffering.

The proposed amendment to Section 80.47 of the regulations authorizes the administration of a controlled substance from an emergency medication kit to a patient in an emergency situation in a Class 3a health-care facility. Necessary complements to this amendment are the proposed amendments to Sections 80.11(f), 80.49 and 80.50(e) of Title 10 regulations. The proposed change to Section 80.11(b)(6) is merely grammatical.

The amendment to Section 80.11(f) authorizes a licensed pharmacy to supply controlled substances to a practitioner in a Class 3a facility for stocking in emergency medication kits. The amendments to Section 80.50(e) authorize a Class 3a healthcare facility to possess a limited supply of controlled substances in an emergency medication kit and specify limitations on the quantities of such substances and requirements for their safeguarding. The amendment to Section 80.49 specifies recordkeeping requirements for controlled substances administered from emergency kits. When instituted together, these amendments will provide for timely access to controlled substances by practitioners and patients in the long-term care facility environment while simultaneously requiring adequate measures to ensure the security of such substances.

The federal Drug Enforcement Administration (DEA) also recognizes the need for storing controlled substances in emergency kits for administration to patients during urgent situations in long-term care facilities that are not eligible to hold a DEA registration. Since 1980, the DEA has issued a Statement of Policy containing guidelines for state regulatory agencies to follow when authorizing long-term care facilities to maintain such kits. Such guidelines have been incorporated in the proposed regulatory amendments.

The proposed regulatory amendments will enhance the quality of care of every patient in a long-term care facility licensed by the Department of Health. Such regulation will result in substantial benefit to the public health, which the Department has both a civic and legislative responsibility to ensure.

Costs:

Costs to Regulated Parties

Healthcare facilities licensed as Class 3a institutional dispensers limited already possess required secure cabinets for safeguarding controlled substances. Such secure cabinets can also safeguard emergency kits containing controlled substances. Those facilities choosing to maintain such emergency kits will incur minimal costs to do so. These costs will be reflected in the purchase of the limited supplies of controlled substances and the sealable emergency kits required to secure and store them.

Costs to State and Local Government

There will be no costs to state or local government.

Costs to the Department of Health

There will be no additional costs to the Department.

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:

Class 3a healthcare facilities are currently required by regulations to keep records of the receipt of all controlled substances prescribed for individual patients. Such facilities are also required to record all controlled substances dispensed and administered to such patients. These recordkeeping requirements would include the requisition and receipt of controlled substances for stocking in emergency medication kits.

Practitioners authorized to prescribe controlled substances are required by regulations to make a notation in a patient record of all controlled substances prescribed for that patient. The amendment to Section 80.47 requires that the administration of a controlled substance to a patient from an emergency kit in a Class 3a facility be pursuant to the written or oral medical order of a practitioner.

The Department anticipates a minimal increase in paperwork documenting the requisition, distribution, medical order, and administration of controlled substances contained in emergency medication kits. Such increase will be more than offset by the enhancement of healthcare for patients in the long term care environment.

Duplication:

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

Alternatives:

The intent of the proposed regulation is to ensure access to controlled substance medications when urgently needed. The department believes it is in the best interest of the public health to authorize such accessibility to relieve pain or suffering. There are no alternatives that would ensure accessibility to controlled substances by practitioners and patients for emergency situations in long term care facilities and other health care facilities licensed as Class 3a, institutional dispenser limited.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government. This amendment achieves consistency with existing federal and New York State laws and regulations promulgated to authorize the legitimate use of controlled substances in health care.

Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State. At that time, in order that the public health derive maximum benefit from this regulatory amendment, all Class 3a license holders will be authorized to possess and administer controlled substances in an emergency medication kit to meet the immediate, legitimate need of a patient.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, and nursing homes and other healthcare facilities licensed by the Department as Class 3a institutional dispenser limited. Local government will only be affected if it operates one of the above facilities.

According to the New York State Department of Education, Office of the Professions, as of April, 2003, there were 113,666 licensed and registered practitioners authorized to prescribe and order the administration of controlled substances. However, this rule will affect only those practitioners who prescribe or order the administration of controlled substances for patients and residents of long term care facilities or supply such facilities with controlled substances for emergency medication kits.

According to the New York State Board of Pharmacy, as of June 30, 2003, there were a total of 4,521 pharmacies in New York State. Of these, 60 are sole proprietorship, 297 are partnerships, 73 are small chains (fewer than 3 pharmacies per chain) and the rest are large chains or other corporations (some of which may be small businesses) or located in public institutions. According to the New York State Education Department's Office of the Professions, as of April 1, 2003, there were 18,950 licensed and registered pharmacists in New York. However, this rule will affect only those pharmacies and pharmacists that dispense prescriptions for controlled substances to patients and residents of long term care facilities or supply such facilities with controlled substances for emergency medication kits.

Of the 1,282 healthcare facilities licensed by the department as Class 3a institutional dispensers limited, the rule will affect only those facilities that choose to maintain controlled substances in emergency medication kits. However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Compliance Requirements:

There are no compliance requirements. While the proposed amendment authorizes Class 3a facilities to possess and administer controlled substances from emergency medication kits, the regulation does not require such facilities to do so.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Other than the cost of the controlled substances and sealable emergency medication kits for those Class 3a facilities choosing to possess such kits, there are no compliance costs associated with the proposed regulation.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Class 3a healthcare facilities that choose to possess and administer controlled substances from emergency medication kits will use existing equipment for security and recordkeeping requirements.

The Department anticipates that these facilities will incur minimal expenditures for limited supplies of controlled substances and the sealable emergency kits in which to store them. Such expenditures will be more than offset by the enhancement of medical care for patients in Class 3a healthcare facilities.

Minimize Adverse Impact:

The agency considered the approaches in section 202-b(1) of SAPA and found them inapplicable. The proposed regulation minimizes any adverse impact by not requiring pharmacies to supply controlled substances to Class 3a facilities for emergency medication kits. Pharmacies are authorized to engage in such activity strictly on a voluntary basis.

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.

During the drafting of this regulation, the Department met with the Pharmaceutical Society of the State of New York (PSSNY), the Chain Pharmacy Association of New York State, the New York Council of Health Systems Pharmacists, and the New York State Chapter of American Society of Consultant Pharmacists.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to participating pharmacies and Class 3a healthcare facilities located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain widespread rural areas. These can range in extent from small towns and villages, and their surrounding areas, to locations that are very sparsely populated.

Compliance Requirements:

There are no compliance requirements. The proposed amendment authorizes pharmacies to distribute limited supplies of controlled substances to Class 3a facilities for maintaining in emergency medication kits. The regulation also authorizes those healthcare facilities to possess and administer controlled substances to patients from such kits in an emergency situation. However, these actions are undertaken on a voluntary basis by both pharmacy and healthcare facility. The regulation does not require either party to participate.

Present regulations require pharmacies and Class 3a facilities to maintain specified records of dispensing, receipt, and administration of controlled substances. The proposed regulation requires a minimum of additional record-keeping to ensure limited access to emergency medication kits and safeguarding of the controlled substances contained therein. However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Professional Services:

Pharmacies already employ the professional services of licensed and registered pharmacists. Class 3a healthcare facilities employ the services of practitioners, nurses, and consultant pharmacists. The proposed regulation would require no additional professional services, either public or private, in rural areas.

Compliance Costs:

Compliance costs to pharmacies opting to distribute limited supplies of controlled substances to Class 3a facilities will be negligible, since these pharmacies already maintain an existing inventory of such controlled substances. Other than the cost of the controlled substances and the sealable medication kits in which to store them, the compliance cost to Class 3a facilities choosing to possess such kits will be minimal.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Class 3a healthcare facilities that choose to possess and administer controlled substances from emergency medication kits will use existing equipment for security and recordkeeping requirements.

The Department anticipates that these facilities will incur minimal expenditures for limited supplies of controlled substances and the sealable emergency kits in which to store them. Such expenditures will be more than offset by the enhancement of medical care for patients in Class 3a healthcare facilities.

Minimizing Adverse Impact:

The agency considered the approaches in Section 202-bb(2) of SAPA and found them inapplicable.

In ensuring access to controlled substances for legitimate medical treatment by practitioners and patients in Class 3a healthcare facilities, the proposed amendment does not impose any adverse impact upon rural areas. In fact, because in a rural setting pharmacies supplying prescriptions for controlled substances may be located at increased distances from long term care facilities, it is anticipated that these healthcare facilities would derive maximum benefit for their patients by being authorized to maintain

limited supplies of controlled substances in sealed medication kits for use in emergency situations.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comment from consultant pharmacists to Class 3a facilities, many of which are located in rural areas. It was the overwhelming consensus that pharmacists could better meet and greatly enhance the healthcare of the patients they serve in such facilities by being authorized to supply controlled substances for emergency medication kits. Administrative and nursing personnel in such facilities have also voiced to the Agency their need for emergency access to controlled substances for administration to patients to alleviate suffering in urgent situations. The agency addressed many of these concerns in the proposed regulation.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring access to controlled substances for legitimate healthcare needs, the proposed amendment is not expected to either increase or decrease jobs overall.

Insurance Department

EMERGENCY RULE MAKING

Physicians and Surgeons Professional Insurance Merit Rating Plans

I.D. No. INS-31-05-00003-E

Filing No. 790

Filing date: July 14, 2005

Effective date: July 14, 2005

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

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

Statutory authority: Insurance Law, sections 201, 301 and 2343(d) and (e); and L. 2002, ch. 1, part A, section 42 as amd. by L. 2002, ch. 82, part J, section 16

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

Specific reasons underlying the finding of necessity: Section 42 of Part A of Chapter 1 of the Laws of 2002, requires that any physician, surgeon or dentist who wants to participate in the excess medical malpractice insurance program established by the Legislature in 1986 must participate in a proactive risk management course. Section 42 authorized the Superintendent to promulgate regulations that provide for the establishment and administration of such plans. Section 42, as originally enacted on January 25, 2002, established an effective date of July 1, 2003 for participation in these courses. However, on May 29, 2002, Section 16 of Part J of Chapter 82 of the Laws of 2002 was enacted and the effective date was amended to July 1, 2002.

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

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

Subject: Physicians and surgeons professional insurance merit rating plans.

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

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

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

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

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

Section 152.8 is renumbered to be Section 152.12 and a new Section 152.8 is added to provide the standards for proactive risk management programs which are provided for insureds who wish to qualify for the excess medical malpractice insurance programs established by the Legislature.

A new Section 152.9 is added to provide eligibility requirements for participation in the excess medical malpractice insurance program.

A new Section 152.10 is added to provide coordination of the excess medical malpractice risk management courses with risk management courses that are offered for the purpose of providing premium credits.

A new Section 152.11 is added to provide guidelines for insurers in implementing risk management programs administered for insureds who wish to qualify for participation in the excess medical malpractice insurance program established by the Legislature.

Section 152.12 is amended to provide requirements for insurers conducting audits of insureds or for insureds to conduct self-review surveys. A new provision is added requiring insurers to report, by territory and medical specialty, the number of insureds participating in risk management programs who qualify for the excess medical malpractice insurance program.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 11, 2005.

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

Regulatory Impact Statement

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

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

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

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

An effective risk management program would provide insureds with an overview of the causes of malpractice claims, emphasize communication skills and improved patient rapport skills, and focus on improving proce-

dures. This should reduce the frequency and severity of medical malpractice claims. The intent of this amendment is to effectuate that objective.

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

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

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

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

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

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

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

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

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

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

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

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

Although the statute does not permit insurers to assess any fees against insureds for participating in these courses, insureds may have to schedule time away from their practice to participate in these risk management

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

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

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

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

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

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

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

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

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

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

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

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

10. Compliance schedule: The provisions of this amendment will apply immediately. As required by statute, insurers must have a proactive risk management course available for their insureds in order for insureds to

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

Although they are not regulated parties, an insured physician might be subject to minimal paperwork requirements. If an insured physician takes an internet-based risk management course, he or she must affirm that they were the person who actually took the course and that they are aware that any premium credit granted by the insurer is based on this affirmation. Any

additional costs associated with the completion of this affirmation will be offset by the fact that the insured does not have to travel to and from a setting where any risk management course is offered in the lecture format. It should also be noted that it is a voluntary decision by the insured to participate in any risk management course.

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

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

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

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

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

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

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

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

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

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

Job Impact Statement

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

EMERGENCY RULE MAKING

Rules Governing Individual and Group Accident and Health Insurance Reserves

I.D. No. INS-31-05-00005-E

Filing No. 792

Filing date: July 15, 2005

Effective date: July 15, 2005

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

Action taken: Repeal of Part 94 and addition of new Part 94 (Regulation 56) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517

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

Specific reasons underlying the finding of necessity: Regulation No. 56 was originally effective August 18, 1971 in its present form and has not been substantively amended since that time. In the intervening 31 years, the National Association of Insurance Commissioners has adopted new reserving tables for individual and group disability income insurance policies, popularly referred to as the Commissioners' Disability Tables ("CDT"). The current CDT was adopted in 1986 and is used widely across the country as the standard for holding reserves for individual and group disability insurance policies. It reflects both modern morbidity and claims experience and the judgement of actuaries and regulators who are knowledgeable about the current state of the disability insurance market.

However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, e.g., 11 NYCRR Part 94.1(a)(4)(iii)(A)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the more recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to consumers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standards will help to ensure that such insurers remain financially capable of paying claims as they come due.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on December 31, 2004. The filing date for the September 30, 2005 quarterly statement is November 15, 2005. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

Subject: Rules governing individual and group accident and health insurance reserves.

Purpose: To prescribe rules and regulations for valuation of minimum individual and group accident and health insurance reserves including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

Substance of emergency rule: Section 94.1 lists the main purposes of the regulation including implementation of sections 1303, 4117, 4217(d), 4517(d) and 4517(f) of the Insurance Law and prescribing rules for valuing certain accident and health benefits in the life insurance policies.

Section 94.2 is the applicability section. This section applies to both individual policies and group certificates. The regulation applies to all insurers, fraternal benefit societies, and accredited reinsurers doing business in the State of New York. It applies to all statutory financial statements filed after its effective date.

Section 94.3 is the definitions section.

Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

Section 94.5 sets forth the general requirements and minimum standards for unearned premium reserves.

Section 94.6 sets forth the general requirements and minimum standards for contract reserves.

Section 94.7 concerns increases to, or credits against reserves carried, arising from reinsurance agreements.

Section 94.8 prescribes the methodology of adequately calculating the reserves for waiver of premium benefit on accident and health policies.

Section 94.9 provides that a company shall maintain adequate reserves for all individual and group accident and health insurance policies that reflect a sound value being placed on its liabilities under those policies.

Section 94.10 provides the specific standards for morbidity, interest and mortality.

Section 94.11 allows for a four-year period for grading into the higher reserves beginning with year-end 2003 for insurers for which higher reserves are required because of this Part.

Section 94.12 establishes the severability provision of the regulation.

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 October 12, 2005.

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

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the adoption of Regulation No. 56 (11 NYCRR 94) is derived from sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1303 covers loss or claim reserves for insurers.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1305 covers unearned premium reserves for insurers.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4117 covers loss reserves for Property and Casualty (P&C) insurers.

Section 4217(d) provides that reserves for all individual and group accident and health policies shall reflect a sound value placed on the liabilities of such policies and permits the superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for these types of policies.

Section 4310 covers investments, financial conditions, and reserves for non-profit health plans.

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the superintendent to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers licensed to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of insurers doing business in New York. The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the current regulation,

absent the emergency regulation, provides no guidance related to certain coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

Additionally, the current regulation, absent the emergency regulation, requires higher reserves than necessary for certain individual accident and health insurance policies. This emergency regulation, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

The only significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this emergency regulation, which would result in different reserve requirements for those insurers licensed in New York.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

Beginning with year-end 2003, where the requirements of this regulation produce reserves higher than those calculated at year-end 2002, the insurer may linearly interpolate, over a four year period, between the higher reserves and those calculated based on the year-end 2002 standards. Insurers must be in full compliance with this Part by year-end 2006. This allows insurers subject to the regulation ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small Businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurance companies licensed to do business in New York State, none of which fall within the definition of "small business" as found in Section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local Governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

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

The regulation establishes reserve requirements for individual and group accident and health policies and establishes standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with member companies of the Life Insurance Council of New York (LICONY). A copy of the draft was distributed to LICONY in November, 2002. Additional changes were made to the text of the regulation based on changes made to the NAIC's Health Insurance Reserves Model Regulation in December 2003 and a revised draft of the regulation was distributed to LICONY in January 2004. The draft was sent to American Insurance Association (AIA), Property Casualty Insurers Association of America (PCI) and National Association of Mutual Insurance Companies (NAMIC) for property and casualty insurers and to selected health insurers during late 2004 and early 2005. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the June 29, 2005 issue of the *State Register*.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting reserves for insurers. Most insurers will be able to reduce reserves and a few may need to increase reserves but this is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Assistance to Records

I.D. No. OMH-31-05-00007-P

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

Proposed action: This is a consensus rule making to amend section 510.6(c)(3) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.104

Subject: Public access to records of the Office of Mental Health.

Purpose: To comply with statutory changes to the Freedom of Information Law.

Text of proposed rule: § 510.6(c)(3) of Part 510 is hereby amended to read as follows:

(3) provide a written acknowledgement of the receipt of the request and a statement of the approximate date, *which shall be reasonable under the circumstances of the request*, when the request will be granted or denied. *If the records access officer determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the records access officer shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. Failure by the records access officer to conform to the provisions of this paragraph shall constitute a denial.*

§ 510.10(b)(2) of Part 510 is hereby amended to read as follows:

(2) fully explain in writing to the person requesting the record the reasons for further denial[, and inform such person of the right of judicial appeal pursuant to article 78 of the Civil Practice Law and Rules].

§ 510.10 of Part 510 is hereby amended by adding a new paragraph (d) to read as follows:

(d) *Failure by the Office of Mental Health to conform to the provisions of this section shall constitute a denial of appeal.*

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

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

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

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written since the purpose of the rule is to amend an existing regulation to make it comply with a recent amendment to statute. Part 510 of 14 NYCRR was adopted in order to comply with Article 6 of the Public Officers Law (Freedom of Information Law). Section 87 of the Public Officers Law requires that each state agency shall promulgate rules and regulations "in conformity with Article 6 of the Public Officers Law." That article establishes the criteria under which the public may access the records related to the process of governmental decision making. In adopting Part 510, the agency restated in regulation the standards set forth in the statute.

This proposed revision to Part 510 merely implements and conforms the existing Part 510 to nondiscretionary statutory provisions of Public Officers Law §§ 89(3) and 89(4), as amended by Chapter 22 of the Laws of 2005. In doing so, it revises and restates the language of the statute, as amended, in the appropriate sections of Part 510.

Job Impact Statement

The Office of Mental Health is not submitting a Job Impact Statement with this rule because it is clear from the nature and content of the rule that the rule will not have an adverse impact upon jobs within the State.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Management of Personal Allowance Funds

I.D. No. MRD-31-05-00008-P

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

Proposed action: This is a consensus rule making to amend sections 633.14, 633.15 and 633.99 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Management of personal allowance funds.

Purpose: To conform to Social Security Administration requirements regarding the management of conserved funds when a beneficiary moves from one living situation to another and conform to the SSA definition of incidental income.

Text of proposed rule: ● Subparagraph 633.14(a)(1)(viii) is amended as follows:

(viii) When the agency or sponsoring agency has managed someone's personal allowance and the person [has moved] *is moving* to another living situation, the balance of all personal allowance managed by the agency or sponsoring agency shall be forwarded to the officially designated party for the new residential setting within 10 business days of the person's departure. This includes the money as recorded in the personal allowance account, any personal allowance in cash at the residential site, all money in a training bank account, *and all money in a burial reserve account (see section 633.99). However, if the person's monies (personal allowance, accrued personal allowance, countable income or NAMI, and conserved countable income) were derived, in total or in part, from payments made by the Social Security Administration (SSA), and the chief executive officer of the agency is the representative payee, the following procedures apply:*

(a) *If the person is moving to a facility operated or sponsored by the same agency, the agency shall retain all monies and the chief executive officer of the agency shall continue to serve as the person's representative payee. Personal allowance monies maintained in cash at the residential site shall be forwarded to the new residential facility.*

(b) *In all other cases, the monies derived from payments made by SSA must either be returned to SSA within 10 business days of the person's departure or, if specifically permitted by SSA, forwarded to the new representative payee. Any encumbered funds shall be retained by the agency and appropriately disbursed. Monies derived from other sources shall be forwarded to the officially designated party for the new residential setting within 10 business days of the person's departure. If monies derived from SSA have been combined with monies from other sources, then the amount returned to SSA shall be the percentage of the current total which represents the SSA portion. The percentage shall be calculated based on the historical portions received over the last six months of monies from SSA and non-SSA sources.*

(1) *The original agency shall notify the new agency regarding the return of the person's monies to SSA at the time of such return or transfer of monies.*

(2) *If the person is moving to another residence certified or operated by OMRDD:*

(i) *on or before the date of the move, the original agency shall disburse a sum equivalent to one month's minimum statutory allowance or the total of the person's monies, whichever is less, prior to returning to SSA the remainder (if any) of the person's monies that were derived from payments made by SSA;*

(ii) *the chief executive officer of the new agency shall apply to SSA to become the person's representative payee no later than three business days after the person's admission;*

(iii) *upon the appointment of the chief executive officer of the new agency as representative payee by SSA and receipt of the person's accrued monies, the new agency shall consider the monies to be accrued personal allowance, except for any amount which is due and payable to the*

new agency for the provider payment(s) derived from the SSA payment at the time of the receipt of monies; and

(iv) the new agency shall monitor the person's asset amounts.

(c) All funds in a burial reserve account, annotated as such, regardless of the origin of the funds, shall be forwarded to the officially designated party for the new residential setting within 10 business days of departure.

- Subparagraph 633.14(a)(1)(ix) is amended as follows:

(ix) When a person [moves] is moving to another living situation, the chief executive officer (of the original agency or sponsoring agency), as representative or designated payee, shall continue to use countable income or NAMI to pay for the cost of care and maintenance of the person in the new setting until a new payee has been designated. In addition, the ongoing monthly personal allowance shall be forwarded within five business days of receipt of the benefit check. *However, for any monies derived from payments received from SSA, if the chief executive officer of the original agency is the representative payee, the original agency and, if applicable, new agency shall follow the procedures specified in subparagraph 633.14(a)(1)(viii).*

- A new subparagraph (x) is added to paragraph 633.14(a)(1) to read as follows:

(x) when a person is moving to another residential facility certified or operated by OMRDD and the chief executive officer of the agency operating or sponsoring the original residential facility is the representative or designated payee:

(a) The chief executive officer of the agency operating or sponsoring the new residential facility shall apply to the Social Security Administration (SSA) or other payor organization to become the representative or designated payee no later than three business days after admission of the person.

(b) If the payor organization is SSA, the original and new agencies shall comply with the requirements in subparagraph 633.14(a)(1)(viii).

(c) If the payor organization is not SSA, so long as the original agency continues to be the representative or designated payee, the original agency shall continue to maintain records and submit reports required by the payor organization as specified in subparagraph 633.14(a)(1)(v). During this time, the new agency shall monitor income and asset levels, and provide such information as will be necessary for the original agency to maintain records and submit reports.

(d) If the payor organization is not SSA, the new agency shall notify the original agency of any changes that the payer organization requires to be reported, if the original agency continues to be the representative or designated payee. Such reports shall be made within three business days of the change.

- Subparagraph 633.14(a)(2)(viii) is amended as follows:

(viii) When a person [moves] is moving to another living situation, the chief executive officer of the [sending] original agency or sponsoring agency shall, upon designation of a new payee, forward all remaining assets, which were under his or her control, to the new designee. *However, for any monies derived from payments received from SSA, if the chief executive officer of the original agency is the representative payee, the original agency and, if applicable, new agency shall follow the procedures specified in subparagraph 633.14(a)(1)(viii).*

- Subparagraph 633.15(a)(11)(xxii) is amended as follows:

(xxii) When a person [moves] is moving to another living situation, the balance of all personal allowance managed by the agency or sponsoring agency shall be forwarded to the officially designated party for the new residential setting within 10 business days of the person's departure. This includes the money in the personal allowance account, any personal allowance in cash at the residential site, all money in a training bank account, and all money in a burial reserve account (see section 633.99). *However, if the person's monies (personal allowance, accrued personal allowance, countable income or NAMI, and conserved countable income) were derived, in total or in part, from payments made by the Social Security Administration (SSA), and the chief executive officer of the agency is the representative payee, the following procedures apply:*

(a) If the person is moving to a facility operated or sponsored by the same agency, the agency shall retain all monies and the chief executive officer of the agency shall continue to serve as the person's representative payee. Personal allowance monies maintained in cash at the residential site shall be forwarded to the new residential facility.

(b) In all other cases, the monies derived from payments made by SSA must either be returned to SSA within 10 business days of the

person's departure or, if specifically permitted by SSA, forwarded to the new representative payee. Any encumbered funds shall be retained by the agency and appropriately disbursed. Monies derived from other sources shall be forwarded to the officially designated party for the new residential setting within 10 business days of the person's departure. If monies derived from SSA have been combined with monies from other sources, then the amount returned to SSA shall be the percentage of the current total which represents the SSA portion. The percentage shall be calculated based on the historical portions received over the last six months of monies from SSA and non-SSA sources.

(1) The original agency shall notify the new agency regarding the return of the person's monies to SSA at the time of such return or transfer of monies.

(2) If the person is moving to another residence certified or operated by OMRDD:

(i) on or before the date of the move, the original agency shall disburse a sum equivalent to one month's minimum statutory allowance or the total of the person's monies, whichever is less, prior to returning to SSA the remainder (if any) of the person's monies that were derived from payments made by SSA;

(ii) the chief executive officer of the new agency shall apply to SSA to become the person's representative payee no later than three business days after the person's admission;

(iii) upon the appointment of the chief executive officer of the new agency as representative payee by SSA and receipt of the person's accrued monies, the new agency shall consider the monies to be accrued personal allowance, except for any amount which is due and payable to the new agency for the provider payment(s) derived from the SSA payment at the time of the receipt of monies; and

(iv) the new agency shall monitor the person's asset amounts.

(c) All funds in a burial reserve account, annotated as such, regardless of the origin of the funds, shall be forwarded to the officially designated party for the new residential setting within 10 business days of departure.

- Subparagraph 633.15(a)(11)(xxiii) is amended as follows:

(xxiii) When the chief executive officer (of the [sending] original facility) is the representative or designated payee, the ongoing monthly personal allowance shall be forwarded within five business days of receipt of the benefit check to the new living situation. This arrangement shall continue until a new payee is designated. *However, for any monies derived from payments received from SSA, if the chief executive officer of the original agency is the representative payee, the original agency and, if applicable, new agency shall follow the procedures specified in subparagraph 633.15(a)(11)(xxii).*

- Section 633.99 is amended by the addition of a new subdivision (b), as follows:

(b) *Account, burial reserve. An account which is established for the express purpose of reserving an amount of money to be set aside for the burial of the individual named on the account. The account shall be separate and distinct from an agency bank account and a training bank account. The maximum dollar amount may not exceed that established by section 131-n of the Social Services Law. Any account or money which is held in trust by a funeral director, funeral firm or other person, firm or corporation under General Business Law section 453 shall not be considered a burial reserve account under this regulation and is not governed by this regulation.*

Note: Rest of section is renumbered accordingly.

- Subdivision 633.99(ba) is amended as follows:

(ba) Income, incidental. For purposes of this Part, income as defined in Social Security regulations as irregular or infrequent income which is not received on a scheduled basis; or is received no more than quarterly, even if scheduled; and does not exceed [\$10 in a given month] \$30 in a given quarter if earned, or [\$20 in a given month] \$60 in a given quarter if unearned.

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

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance

with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Consensus Rule Making Determination

The primary purpose of the amendments is to conform the regulation to current Social Security Administration policy. Conforming provisions concern the management of conserved funds when a beneficiary moves from one residence to another and modification of the definition of incidental income.

Several years ago, the Social Security Administration (SSA) changed their policy and procedures for Representative Payee (RP) management of conserved benefits when the beneficiary moves from a residence certified or operated by OMRDD and the Chief Executive Officer of the provider agency is the RP. When the beneficiary moves, the CEO must relinquish the responsibility of being the RP. In the past, SSA allowed the former RP to send the conserved funds directly to the new residential agency administrator until the new RP appointment was made. However, SSA changed their procedures and now require that a former Representative Payee (RP) for Social Security and/or Supplemental Security Income benefits return conserved benefits to the Social Security Administration. OMRDD appealed this change in policy but was unsuccessful in a SSA hearing. Additionally, OMRDD sought an administrative determination from the SSA Commissioner that a policy exception be made for OMRDD certified residential providers. SSA denied this request. This leaves OMRDD with no option other than changing the regulations to comply with SSA policy.

Job Impact Statement

A Job Impact Statement for these amendments was not submitted because it is apparent from the nature and purpose of the amendments that they will not have an impact on jobs and/or employment opportunities. The finding is based on the fact that the proposed rule making only revises regulations pertaining to existing Social Security Administration requirements. The proposed revisions will not have any effect on jobs or employment opportunities in New York State.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Fishing at Allegany State Park

I.D. No. PKR-21-05-00003-A

Filing No. 793

Filing date: July 19, 2005

Effective date: Aug. 3, 2005

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

Action taken: Amendment of section 398.2(c) of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(8)

Subject: Fishing at Allegany State Park.

Purpose: To address the time of year the taking of fish is to be permitted in specific waters in Allegany State Park.

Text or summary was published in the notice of proposed rule making, I.D. No. PKR-21-05-00003-P, Issue of May 25, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Jeffrey A. Meyers, Senior Attorney, Office of Parks, Recreation and Historic Preservation, Agency Bldg. 1, 19th Fl., Albany, NY 12238, (518) 486-2921, e-mail: Jeffrey.Meyers@oprhp.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

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

Submetering of Electricity by The Witkoff Group, LLC

I.D. No. PSC-31-05-00009-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by The Witkoff Group, LLC, on behalf of 55 Wall Associates, LLC, to submeter electricity at 55 Wall St., New York, NY.

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

Subject: Submetering of electricity.

Purpose: To submeter electricity at 55 Wall St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by The Witkoff Group, LLC, on behalf of 55 Wall Associates, LLC, to submeter electricity at 55 Wall Street, New York, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.

(05-E-0808SA1)

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

Submetering of Electricity by Windsor Tov, LLC

I.D. No. PSC-31-05-00010-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Windsor Tov, LLC to submeter electricity at 100 W. 58th St., New York, NY.

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

Subject: Submetering of electricity.

Purpose: To submeter electricity at 100 W. 58th St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Windsor Tov, LLC to submeter electricity at 100 West 58th Street, New York, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.
(05-E-0831SA1)

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

Issuance of Promissory Notes by National Fuel Gas Distribution

I.D. No. PSC-31-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by National Fuel Gas Distribution Corporation to issue promissory notes in the aggregate principal amount of not more than \$150,000,000, and enter into agreements concerning derivative transactions in notional amounts not to exceed \$350,000,000 outstanding at any one time.

Statutory authority: Public Service Law, section 69

Subject: Issuance of promissory notes.

Purpose: To authorize the issuance of notes and the application of the proceeds for various purposes.

Substance of proposed rule: The Public Service Commission is considering approving a request by National Fuel Gas Distribution Corporation (NFGDC) to issue promissory notes to National Fuel Gas Company in the aggregate principal amount of not more than \$150,000,000, for purposes including the repayment of existing debt, construction expenditures and for general corporate purposes through December 31, 2008. NFGDC's current authorization to issue promissory notes expires on December 31, 2005. The Public Service Commission is also considering approving a request by NFGDC to enter into derivative transactions in notional amounts not to exceed \$350,000,000 at any one time outstanding through December 31, 2008.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.

(05-G-0778SA1)

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

Provision of Water Service by Saratoga Water Services, Inc.

I.D. No. PSC-31-05-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Saratoga Water Services, Inc. requesting approval of an agreement for the provision of water service and requesting a waiver of certain tariff provisions and 16 NYCRR Parts 501 and 502.

Statutory authority: Public Service Law, section 89-b

Subject: Provision of water service and waiver of certain tariff provisions.

Purpose: To approve an agreement for the provision of water service and waive certain tariff provisions.

Substance of proposed rule: On June 26, 2005, Saratoga Water Services, Inc. (Saratoga) filed a petition requesting approval of an agreement between Saratoga and Albany Partners, LLC (Albany) for the provision of water service by Saratoga to the Steeple Chase at Malta/Saint Ledgers

Woods PPD, a real estate subdivision being constructed by Albany in the Town of Malta, Saratoga County. The petition also requested waiver of the requirement of inconsistent tariff provisions and 16 NYCRR Sections 501 and 502, concerning water main extensions. The agreement takes into account that all costs and associated charges arising out of the company's expansion will be borne by the developer, Albany. Saratoga currently provides water service to approximately 2,029 customers and is located in the Towns of Malta and Stillwater, Saratoga County. The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(04-W-0065SA1)

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

Change in Billing Period and a Capital Improvement Surcharge by Emerald Green Lake Louise Marie Water Company, Inc.

I.D. No. PSC-31-05-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, Emerald Green Lake Louise Marie Water Company, Inc.'s request to change its billing period from bi-annual to quarterly and to institute a quarterly surcharge of \$25 per customer to establish an escrow account for capital improvements.

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

Subject: Change in the billing period as well as a capital improvement surcharge.

Purpose: To change the billing period from bi-annual to quarterly and approve a quarterly surcharge of \$25 per customer to fund an escrow account for capital improvements.

Substance of proposed rule: On June 7, 2005, Emerald Green Lake Louise Marie Water Company, Inc. (Emerald Green) filed a petition requesting a change in its billing cycle from bi-annually to quarterly and for approval of a quarterly surcharge of \$25 per customer to establish an escrow account for capital improvements. Emerald Green is about to begin a multi-year construction program to meet the water supply needs of its existing customers as well as the needs of extensive new construction going on in its service territory. Emerald Green provides unmetered water service to about 684 customers in the real estate developments known as Lake Louise Marie and Emerald Green, located in the Town of Rock Hill, Sullivan County. Emerald Green's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the Commission Documents - Tariffs. The Commission may approve or reject, in whole or in part, or modify Emerald Green's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.
(05-W-0670SA1)

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

Water Rates and Charges by Antlers of Raquette Lake, Inc.

I.D. No. PSC-31-05-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by Antlers of Raquette Lake, Inc. to make various changes in the rates and charges contained in its tariff schedule P.S.C. No. 1—Water, to become effective Sept. 30, 2005.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about \$16,875 or 1,570 percent.

Substance of proposed rule: On July 12, 2005, Antlers of Raquette Lake, Inc. (Antlers or the company) filed an electronic tariff schedule, P.S.C. No. 2—Water, to become effective September 30, 2005, which sets forth the rates, charges, rules and regulations under which the company will operate. Antlers currently serves approximately 38 seasonal customers (May 15th through October 15th), including SUNY Cortland, and is located in the Hamlet of Raquette Lake, Town of Long Lake, Hamilton County. The company proposes a residential flat rate of \$350 and a business flat rate of \$5,000. The company is currently charging a flat rate of \$25. The proposed filing would increase the company's annual revenues by \$16,875 or 1,570%. Antlers is also proposing a surcharge or escrow account to finance system improvement. In addition, the proposed tariff defines when a bill will be considered delinquent and establishes a late payment charge of 1½ percent per month, compounded monthly, and a returned check charge equal to the bank charge plus a handling fee of \$5. The proposed restoration of service charge is \$50 during normal business hours Monday through Friday, \$75 outside of normal business hours Monday through Friday, and \$100 on weekends and public holidays. The company's proposed tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under the File Room - Tariffs. The Commissioner may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.

(05-W-0839SA1)

Department of State

NOTICE OF ADOPTION

Uniform Standards of Professional Appraisal Practice

I.D. No. DOS-11-05-00001-A

Filing No. 794

Filing date: July 18, 2005

Effective date: Aug. 3, 2005

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

Action taken: Amendment of section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Uniform standards of professional appraisal practice.

Purpose: To adopt the 2005 edition of the *Uniform Standards of Professional Appraisal Practice*.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-11-05-00001-P, Issue of March 16, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.