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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pledge of Assets by Foreign Banking Corporations

I.D. No. BNK-44-06-00010-P

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

Proposed action: Amendment of sections 322.1 and 322.2 of Title 3 NYCRR.

Statutory authority: Banking Law, section 202-b(1)

Subject: Pledging of assets in New York (asset pledge) by foreign banking corporation operating a branch or agency in New York.

Purpose: To relieve foreign banks from current asset pledge requirement set at one percent of total third-party liabilities with a cap of $400 million for "well-rated" foreign branches and agencies; lower the cap to $100 million; introduce a sliding scale reducing the requirement for most "well rated" branches and agencies with liabilities subject to pledge of over $1 billion; and allow all institutions wider variety of assets eligible for up to one-half of the pledge.

Text of proposed rule: § 322.1 Deposit of assets; amount of assets to be deposited.

* * *

(f) For a well-rated foreign banking corporation as defined in section 322.7 of this Part, the maximum amount required to be deposited pursuant to paragraph (a)(1) of this section shall be [capped at $400,000,000.], *calculated according to the following schedule, as a percentage of average total liabilities for the previous month of such branch or branches or agency or agencies, including liabilities of an international banking facility maintained by such branch or branches or agency or agencies, but excluding amounts due and other liabilities to other offices, agencies, branches and affiliates as defined in section 322.6 of this Part, of such foreign banking corporation:*

(1) one percent of the first $1 billion;
(2) ¾ of one percent of the next $4 billion;
(3) ½ of one percent of the next $5 billion;
(4) ¼ of one percent of any additional liabilities;
(5) provided, however, that in no event shall the maximum amount required to be deposited hereunder exceed one hundred million dollars ($100,000,000).

* * *

§ 322.2 Assets that may be deposited; conditions and limitations.

* * *

(b) Unless the superintendent specifically permits otherwise, the following conditions and limitations shall apply to the asset pledge:

(1) All assets must be payable in the United States in United States dollars.

(2) Additional assets may not comprise more than 50 percent of the foreign banking corporation's total asset pledge requirement.

(3) For all foreign banking corporations, [except as provided in paragraph (4) of this subdivision, additional assets must be accorded the highest rating of a rating service designated by the Banking Board pursuant to section 61.1 of this Title. In the event that an asset is rated by more than one designated rating service, it must have the highest rating of each.]

[(4) For a well-rated foreign banking corporation, as defined in section 322.7 of this Part,] additional assets may include assets that have been accorded an investment grade rating of a rating service designated by the Banking Board pursuant to section 61.1 of this Title. In the event that an asset is rated by more than one designated rating service, it must have received at least an investment grade rating from each.

([5]*4*) No foreign banking corporation may pledge any obligations issued or guaranteed by an entity located or domiciled in, or any governmental entity of, the home country of such foreign banking corporation (same-country obligor)[, provided that a foreign banking corporation may continue to pledge same-country certificates of deposits (CDs) during the one-year period following the date of enactment of this provision in an aggregate dollar amount not to exceed the aggregate dollar amount of same-country CDs it had pledged on the date of enactment].

([6]*5*) With respect to any asset, the superintendent may determine that, for purposes of this Part, such asset shall be valued at other than face value, or shall be held in such form or subject to such conditions as the superintendent may prescribe. The superintendent may expressly disallow one or more otherwise eligible assets, either for all institutions or for specific institutions. All assets shall be subject to any additional conditions or limitations as determined by the superintendent with respect to such assets.

Text of proposed 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

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

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

Regulatory Impact Statement

1. Statutory authority:

Banking Law, § 202-b[1] provides that, upon opening a branch or agency and thereafter, a foreign banking corporation shall keep certain assets on deposit in New York (the "asset pledge"), in accordance with rules and regulations as the Banking Board may promulgate, in "an aggregate amount to be determined by the superintendent and subject to such conditions as he shall deem necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the business of such branch or branches or agency or agencies." Section 202-b(1) of the Banking Law also provides that the Superintendent may designate eligible assets as well as prescribe limitations or conditions upon which the assets may qualify. The Superintendent has promulgated Part 322 to identify eligible assets and to set forth conditions relating to the asset pledge requirement.

2. Legislative objectives:

The New York Legislature, in enacting Section 202-b(1), sought to provide the basis for the Superintendent to require assets to be kept in New York by foreign banking corporations doing business here. Unlike New York chartered banks, an institution with only a branch or agency office here might not maintain capital or assets within the state unless required to do so. This requirement gives the Superintendent the ability to protect creditors of the New York office and to utilize the funds in a liquidation scenario.

The Legislature purposely reserved the flexibility to the Superintendent to determine the appropriate level of assets that should be required, as well as what assets, in addition to those specifically listed in the statute, are acceptable for pledge and on what conditions. The Legislature deemed the Superintendent to be in the best position to determine how to meet current supervisory needs. The amendment proposes changes to the current Part 322 which seek to lessen the regulatory burden on foreign banks of complying with the asset pledge requirement, while still ensuring the Superintendent's supervisory needs regarding asset pledge are met, and retaining the flexibility for the Superintendent to strengthen the asset pledge requirement in situations where it may be necessary.

3. Needs and benefits:

The amendments would adopt a sliding scale for "well rated" institutions reducing the required pledge from 1% of covered third party liabilities with a cap of $400 million, to: 1% of the first $1 billion of such liabilities, ¾ of 1% for the next $4 billion in liabilities, ½ of 1% of the next $5 billion in liabilities, ¼ of 1% for the remaining liabilities, up to a cap of $100 million, while maintaining the current minimum pledge of $2 million. It would also allow the use of assets currently available only to "well rated" institutions to all institutions for up to ½ of the requirement.

The purpose of the rule is to grant some relief to most foreign banking corporations from the current asset pledge requirements. Because the current cap is set at $400 million, the largest "well rated" institutions will enjoy the biggest reduction, of up to $300 million, when the cap is lowered to $100 million. However, approximately ½ of the "well rated" foreign branches and agencies licensed by the Department will see some reduction in the requirement through the introduction of a sliding scale. While the smallest branches and agencies (i.e., those with liabilities subject to the pledge of under $1 billion) will continue to pledge at the current level, all institutions will be able to pledge, in addition to those assets now permitted, additional assets, i.e., those that are investment grade but not the highest rated, now eligible for pledge only by well-rated institutions, for up to ½ of the requirement and therefore may enjoy some cost reduction. While the banks do receive any monies earned on the assets pledged, a number have cited the high costs of maintaining these relatively low-yielding assets on deposit.

4. Costs:

No new costs are imposed as a result of these amendments to the regulation. Costs of compliance with the rule will be decreased for many institutions due to the overall lower pledge requirements. In addition, some institutions will benefit from lower compliance costs due to the decreased paperwork requirements.

5. Local government mandates:

None.

6. Paperwork:

Paperwork requirements for most institutions will be substantially unchanged. For those well-rated institutions that can reduce their pledge amount, administrative and paperwork requirements will also be reduced as they will need to secure fewer assets to meet their pledge requirements.

7. Duplication;

None.

8. Alternatives:

When the last change to the asset pledge requirements was made in late 2002, the Department committed to periodically reassessing the level of pledged assets needed. A specific request for further asset pledge relief was put forth by the foreign bankers' trade association, the Institute of International Bankers ("IIB"). The IIB and the Department conducted policy dialogue, which included input from several IIB member banks and an open industry meeting with the Department in April 2005, to discuss the ways in which the banks' compliance burdens with the asset pledge requirement might be further reduced.

The following alternatives were considered and were not adopted for the reasons described:

Lowering the cap for "well rated" foreign branches and agencies to a different amount ($50 million to $300 million). In the end it was determined that $50 million might not be sufficient at a very large institution and that amounts over $100 million were more than absolutely necessary.

Elimination of the same country obligor exclusion (which prohibits the pledge of any assets connected to the bank's home country) either in total or for ½ (or some other fraction) of the required pledge. Since it is likely that a failure of a foreign bank, or its inability to meet its obligations, would be the result of, or the cause of, a generic problem in the home country, it was believed that the value of same-country obligor assets could be compromised.

Allowing all institutions, whether or not well rated, to use additional assets with at least an investment grade rating and/or allowing such assets to be used for the entire pledge, not just ½ of the requirement. Such assets are, however, not quite as easily convertible or convertible with as much certainty, as are most of the assets on the primary list, and so they were limited to ½ of the required pledge amount.

Further expand the list of assets eligible for pledge, adding loans or other securities. While there are additional classes of assets acceptable to the Fed discount window, even with haircuts they would not be as easily convertible to cash. Loans are especially problematic and illiquid. Since the purpose of the pledge is the availability of ready cash this might be a problem.

Reduce the required pledge to below 1% on a general or a risk-focused basis. When the Department considered the amount of cash that may be needed to assure that it can pay the expenses of a liquidation, it was not considered to be prudent to do so.

Further expand the list of liabilities which may be excluded to include other classes of secured liabilities. We could not, however, identify other classes of essentially self-liquidating liabilities.

9. Federal standards:

The rule would not exceed federal government standards for the same area. There are no federal standards imposing or regulating an asset pledge requirement for state licensed offices of foreign banking organizations.

The Office of the Comptroller of the Currency ("OCC"), which offers a federal license to foreign banks as an alternative to the state license, has an asset deposit requirement, known as the "capital equivalency deposit" (or "CED"). Currently, the CED requirement is statutorily set for federal branches or agencies at 5% of total liabilities of the branch or agency, excluding certain classes of liabilities. A statutory change is being considered at the federal level to remove the percentage requirement from the statute and permit the OCC to exercise its regulatory discretion to determine the level of asset pledge, but in no case would the level of asset pledge be set lower by the OCC than the requirement set by the state in which the branch or agency is located.

10. Compliance schedule:

The proposed changes in the regulation would be effective immediately. However, since they would involve an easing of requirements, no action would be required to bring regulated entities into compliance. The Department will revise the Asset Pledge List appearing on its web site to reflect the changes in the regulation when the amendments become effective.

Regulatory Flexibility Analysis

The proposed rule relates to asset pledge calculations and requirements for foreign banking corporations licensed to conduct banking activities in New York. Because the rule affects banking institutions incorporated in countries abroad, such corporations do not qualify as small businesses in New York State and are not local governments, the proposed rule will not impose any appreciable or substantial adverse economic impact, or reporting, or recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a rural area based on the character and nature

of a rural area. Specifically, the rule deals with asset pledge requirements imposed on foreign banking corporations organized under the laws of a foreign country. Therefore, a Rural Area Flexibility Analysis is not submitted because it is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted because the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. The proposed rule reduces and liberalizes asset pledge calculations and requirements for foreign banking corporations licensed to conduct banking activities in New York.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Security Guard Training

I.D. No. CJS-44-06-00001-P

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

Proposed action: Amendment of section 6027.4(a) of Title 9 NYCRR.

Statutory authority: Executive Law, section 847-c(1)

Subject: Security guard training.

Purpose: To revise the topics and hours of instruction per topic for the security guard on-the-job training course.

Text of proposed rule: Subdivision (a) of section 6027.4 of Title 9 NYCRR is amended to read as follows:

(a) No on-the-job training course shall be approved by the commissioner which does not follow a curriculum consisting of at least 16 hours. The curriculum shall take into consideration the security guard's specific duties, the nature of the work place and the requirements of the security guard company. The 16 hours of instruction shall include, but not be limited to, the following general topic areas which shall relate to these three objectives and satisfy the corresponding minimum time requirements:

(1) role of a security guard - one *hour* [and one-half hours];
(2) legal powers and limitations - one *hour* [and one-half hours];
(3) emergency situations - one *hour* [and one-half hours];
(4) communications and public relations - *one-half* [one] hour;
(5) access control - *one-half* [one] hour;
(6) ethics and conduct - *one-half* [one] hour;
(7) report writing - one-half hour; [and]
(8) *incident command system - two hours;*
(9) terrorism related topics - four hours; and
(10) review and examination - one hour.

Text of proposed rule and any required statements and analyses may be obtained from: Mark Bonacquist, Division of Criminal Justice Services, Four Tower Plaza, Albany, NY 12203, (518) 457-8420

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law sections 841-c(1).

2. Legislative objectives: Executive Law section 841-c(1) requires the Commissioner of the Division of Criminal Justice Services to prescribe the minimum requirements for security guard training courses.

3. Needs and benefits: The Division has established an 8-hour preassignment training course and a 16-hour on-the-job training course for security guards in 9 NYCRR Part 6027. The current requirements for the security guard on-the-job training course were developed in 1994, shortly after the State Security Guard Act was passed, and are codified in section 6027.4. The course provides for a standardized 16-hour curriculum and must be completed within ninety working days following employment as a security guard. The Division provides an entire 16-hour curriculum for use by training schools. Alternatively, a training school may develop its own training course. Such a course must include the mandated nine hours of training on the specified topics set forth in section 6027.4(a). The training school has discretion in deciding what topics to present in the remaining seven hours of training, as long as the topics take into consideration the security guard's specific duties, the nature of the work place, and the requirements of the guard's employer.

As a result of the terrorist attacks of September 11, 2001, law enforcement agencies and the security guard industry have refocused and intensified their efforts regarding terrorism prevention and incident response. This proposal would add two new topical areas to the 16-hour on-the-job training course in this regard: incident command system (2 hours) and terrorism related topics (4 hours). Inclusion of these two new topics will better prepare security guards to detect, prevent, and respond to terrorist incidents. The amount of training time devoted to the existing mandated topics would be adjusted from 9 to 6 hours, so that the overall length of the course will remain 16 hours. The Division will continue to provide an entire 16-hour training curriculum and training schools will continue to retain the option of developing their own training curriculum.

The proposed revisions are endorsed by the Security Guard Advisory Council in accordance Executive Law section 841-c.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: There should be no costs to the security guard industry or training schools as a result of this proposal because the overall length of the on-the-job training course is remaining 16 hours. The Division will continue to provide an entire on-the-job training course curriculum for use by training schools.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Regulatory oversight will be accomplished using existing resources.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based on the fact that the overall length of the on-the-job training course is remaining 16 hours.

5. Local government mandates: In accordance with the Security Guard Act (General Business Law article 7-A), the definition of "security guard company" includes local governments that employ security guards. This proposal would add two new topical areas to the 16-hour on-the-job training course in this regard: incident command system and terrorism related topics. However, the overall length of the course will remain 16 hours.

6. Paperwork: There is no additional paperwork associated with conducting an on-the-job training course.

7. Duplication: None. There are no other State-mandated security guard training requirements. General Business Law section 89-f(6) and 9 NYCRR Part 6027 exclude from the definition of "security guard" a security guard who is subject to federal registration and training requirements.

8. Alternatives: The Division considered expanding the on-the-job training course beyond 16 hours. This alternative was rejected, however, because Division staff believe that the current time allocation for mandated topics can be adjusted to accommodate the new material.

The Division also considered not revising the course to include the terrorism related topics. This alternative was also rejected because it was felt that security guards need training in these topics in order to properly perform their duties.

9. Federal standards: Security guards who are subject to federal registration and training requirements are not subject to the provisions of the Security Guard Act (General Business Law article 7-A) and the Division's regulations (9NYCRR Part 6027).

10. Compliance schedule: All employers are expected to be able to immediately comply with the proposed rule.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule applies to security guards and security guard training schools. Local governments and small businesses may employ security guards and operate security guard training schools.

2. Compliance requirements: The proposed rule adds 2 new topical areas to the 16-hour on-the-job security guard training course required by 9 NYCRR section 6027.4. The overall length of the course will not change, however, because the time allocations for existing topics have been adjusted.

3. Professional services: No professional services not already being utilized by a training school will be needed to comply with the proposed rule.

4. Compliance costs: There should be no costs to the security guard industry or security guard training schools as a result of the proposal because the overall length of the course is not changing.

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: The Division attempted to minimize adverse impact on regulated parties by keeping the overall length of the on-the-job training course at 16 hours. This was accomplished by adjusting the time allocations for the existing topics presented in the course.

7. Small business and local government participation: The proposal was the subject of discussion by the Security Guard Advisory Council at its June 16, 2005 meeting. The Council consists of 17 members who are knowledgeable about the security guard industry, and many of whom represent small businesses or governmental entities. The Council unanimously endorsed the proposal.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The proposed rule applies to security guards and security guard training schools throughout New York State, an undetermined number of which may be located in a rural area. However, based on the Division's records, 649 of the 922 approved security guard training schools in New York State (approximately 70%) are located in New York City and the five most populous counties (Erie, Monroe, Nassau, Westchester, and Suffolk).

2. Reporting, recordkeeping and other compliance requirements and professional services: There are no new reporting, recordkeeping, or other compliance requirements associated with the proposal. No professional services not already being utilized by a training school will be needed to comply with the proposed rule.

3. Costs: There should be no new costs to security guards or security guard training schools as a result of the proposal because the overall length of the on-the-job training course is not changing.

4. Minimizing adverse impact: The Division attempted to minimize adverse impact on regulated parties in rural areas by keeping the overall length of the on-the-job training course at 16 hours.

5. Rural area participation: The proposal was the subject of discussion by the Security Guard Advisory Council at its June 16, 2005 meeting. The Council consists of 17 members who are knowledgeable about the security guard industry, and some of whom operate security guard firms serving rural areas.

Job Impact Statement

The proposal adds 2 new topics to the on-the-job security guard training course set forth in 9 NYCRR section 6027.4, although the overall length of the course will remain the same. As such, it is apparent from the nature and purpose on the proposal that it will have no impact on jobs and employment opportunities.

Department of Economic Development

EMERGENCY RULE MAKING

Empire State Film Production Tax Credit Program

I.D. No. EDV-44-06-00008-E
Filing No. 1233
Filing date: Oct. 13, 2006
Effective date: Oct. 13, 2006

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

Action taken: Addition of Part 170 to Title 5 NYCRR.

Statutory authority: L. 2004, ch. 60

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

Specific reasons underlying the finding of necessity: As a matter of public policy, the Legislature has determined that a tax credit to eligible qualified film production companies would provide incentive for films to be produced in New York State and thereby help stimulate the State's economy. The rule is necessary because section 7(c) of the Chapter 60 of the Laws of 2004 mandate the Department to promulgate regulations for the program to establish procedures for the allocation of tax credits and describing the application process, the due dates for the applications, the standards used to evaluate the applications and any other provisions deemed necessary and appropriate by October 31, 2004. Such legislation provides that, notwithstanding any other provisions to the contrary in the State Administrative Procedure Act, the rules and regulations may be adopted on an emergency basis.

Subject: Empire State Film Production Tax Credit Program.

Purpose: To establish procedures for the allocation of tax credits and describe the application process, the due dates for the applications, the standards used to evaluate the applications and any other provisions deemed necessary and appropriate. In addition, the proposed regulations clarify necessary definitions pertinent to the program.

Substance of emergency rule: The empire state film production tax credit program generally provides film production companies with a tax credit equal to ten percent of qualified production costs incurred within New York State. Under the program an applicant may be eligible for a full benefit or partial benefit. If an applicant has 75% or more of their total production costs occur at a qualified New York facility and the production spends at least $3 million during production, then the production qualifies for the full benefit which is a 10% tax credit on all qualified production expenditures. If 75% or more of total production costs occur at a qualified New York facility but the production spends less than $3 million at the qualified facility, it must then shoot 75% or more of its location days in New York to qualify for the full 10% tax credit.

If 75% or more of a production total facility expenditures occur at a qualified facility but the production spends less than $3 million and less than 75% of its total location shooting days are in New York, then the production qualifies for the 10% tax credit for expenditures at the qualified facility only.

This rule implements Chapter 60 of the Laws of 2004. Part 170 of Title 5 NYCRR is hereby created and is summarized as follows:

First, the rule makes clear that the Governor's Office for Motion Picture and Television development shall administer the empire state film production tax credit program. This proposed rule does not govern the New York City film production tax credit program – eligibility in either the state or city program does not guarantee eligibility or receipt of a credit in the other.

Second, eligibility in the program is established through the definition of authorized applicant. In order to be eligible to apply for the program, a business must be a qualified film production company or sole proprietor thereof that is scheduled to begin principal photography on a qualified film within 180 days after submitting its initial application to the Office and it must intend to shoot a portion of that photography on a stage at a qualified film production facility on a set or sets.

Third, a two part application process is created. An authorized applicant must complete an initial application, a document created by the Office which asks the applicant to project/estimate various expenditures at qualified film production facilities and shooting days in and outside of New York. The applicant must also meet with the Office to discuss the details of the application. The Office then reviews the initial application based on criteria set out in the proposed rule, including, the completeness of the application, whether or not it is premature (*i.e.,* incapable of photography starting within 180 days of the date of the application), and whether or not it meets the statutory requirements for qualification, including whether its projected qualified productions costs equal or exceed 75% of its total productions costs.

If the initial application is approved, the applicant (now referred to as an approved applicant) receives a certificate of conditional eligibility. This certificate assures the applicant that, pending successful completion of a final application, they are in line (though not guaranteed) to receive a tax credit. The certificate also contains the applicants' priority number, a number used by the Office to place the applicant in line for allocation of the tax credit purposes. Priority number is based on the applicant's effective date. Effective date is defined in the rule to mean the date the certification of conditional eligibility becomes effective. It is derived from the date the initial application is received by the Office. In the event an applicant does not begin principal and ongoing photography within 180 days of the submission of their initial application, effective date may be recalculated to

correspond to the date one hundred eighty days prior to the date the approved applicant submits a notification of commencement of principal and ongoing photography to the Office. If the application is disapproved, the applicant receives notice of its rejection from the program and may reapply at a later date.

Fourth, the rule requires the approved applicant notify the Office on the date principal and ongoing photography begins on their production and supply a sign-off budget at this point. This additional budget data helps the Office get a better sense of the production expenses the applicant has and ultimately helps the Office estimate the potential credit the applicant may later be entitled to.

Fifth, within 60 days after the completion of production of their qualified film, the approved applicant must submit a final application to the Office. The final application is similar to the initial application, though it now contains actual expenditure data as opposed to expenditure projections. The Office then considers certain criteria in its review to determine whether the final application should be approved. Much like the criteria used for the initial application, this includes analysis of whether the application is complete, whether applicant actually shot principal photography on stage at a qualified film production facility on a set or sets, whether a qualified film was completed, and whether the actual qualified production costs equal or exceed 75% of the actual production costs on the film, etc. The proposed rule allows the Office to request additional documentation, including receipts of qualified productions costs, to help the Office determine if the applicant meets the criteria. At this point, the applicant is either approved and issued a certificate of tax credit (stating the amount of tax credit they will be receiving) or provided a notice of disapproval.

Sixth, the proposed rule addresses the issue of the allocation of the empire state film production tax credits. The allocation is made in the order of priority based on the applicant's effective date. If an approved applicant's tax credit exceeds the amount of credits allowed in a given year, their credit will be allocated on a priority basis in the immediately succeeding calendar year. Also, the proposed rule makes explicit the fact that allocation and receipt of the tax credit are subject to availability of state funds for the program.

Seventh, the proposed rule requires applicants to maintain records of qualified production costs used to calculate their potential or actual benefit under the program for a period of 3 years. Such records may be requested by the Office upon reasonable notice.

Finally, the proposed rule creates an appeal process. Applicants who have had their initial or final applications disapproved, or who have a disagreement over the dollar amount of their tax credit have the right to appeal.

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 January 10, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Thomas P. Regan, Department of Economic Development, Counsel's Office, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section (7)(c) of Part P of Chapter 60 of the Laws of 2004 requires the Commissioner of Economic Development to promulgate rules and regulations by October 31, 2004 to establish procedures for the allocation of the empire state film production tax credit, including provisions describing the application process, the due dates for such applications, the standards used to evaluate the applications, and the documentation provided to taxpayers to substantiate to the State Department of Taxation and Finance the amount of the tax credit for the program itself. Such legislation provides that, notwithstanding any other provisions to the contrary in the State Administrative Procedure Act, the rules and regulations may be adopted on an emergency basis.

LEGISLATIVE OBJECTIVES:

The emergency rule is in accord with the public policy objectives the Legislature sought to advance by creating a tax credit program for the film industry. This program is an attempt to create an incentive for film industry to bring productions to New York State as opposed to other competitive markets, such as Toronto. It is the public policy of the State to offer a tax credit that will help provide incentive for the film industry to bring productions to the State. The proposed rule helps to further such objectives by establishing an application process for the program, clarifying portions of the Program through the creation of various definitions and describing the credit allocation process itself.

NEEDS AND BENEFITS:

The emergency rule is required to be promulgated by October 31, 2004 (see section 7(c) of Chapter 60 of the Laws of 2004). It is necessary to properly administer the tax credit program. The statute itself does not set out the specifics of the program; rather, it deals primarily with its creation and calculation of the actual tax credit. There are several administrative benefits that would be derived from this emergency rule making. First, the emergency rule establishes a clear and precise application process, complete with due process as there is an opportunity for applicants to appeal from denials of applications or a disagreement regarding the actual amount of the tax credit. Second, the emergency rule describes in detail the standards to be used to evaluate the initial and final applications created under this program. Third, it describes the documentation that will be provided to taxpayers to substantiate to the State Tax and Finance Department the amount of the tax credits allocation. Finally, it clarifies some existing definitions and creates several new definitions in order to help facilitate an effective and efficient administration of the program.

COSTS:

I. Costs to private regulated parties (the Business applicants): None. The proposed regulation will not impose any additional costs to the film industry.

II. Costs to the regulating agency for the implementation and continued administration of the rule: There could be additional costs to the Department of Economic Development associated with the proposed rule making as the Office may need an additional employee to help with the program's new created administrative process. Such costs are estimated to be $40,000 to $50,000 in annual salary for an employee's with a background in production accounting.

III. Costs to the State government: The program shall not allocate more than $25 million in any calendar year. The program sunsets on January 1, 2008 so the overall cost to the State is $100 million.

IV. Costs to local governments: None. The proposed regulation will not impose any additional costs to local government.

LOCAL GOVERNMENT MANDATES:

None.

PAPERWORK:

The emergency rule creates an application process for eligible applicants, including the creation of an initial and final application, certain tax certificates and forms relating to film expenditures.

DUPLICATION:

The proposed rule will not duplicate or exceed any other existing Federal or State statute or regulation.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The Department of Economic Development, through its Governor's Office for Motion Picture and Television Development, did an extraordinary amount of outreach to various interested parties before submitting this emergency rule. For example, the Department met with seven representatives from episodic television, seven representatives form the independent film industry and seven representatives from large studio films to seek industry input. In addition, the Department met with three film industry accountants, five industry tax attorneys and approximately seven studio representatives to solicit their comments. Furthermore, the Department was in close contact with representatives from the State Tax and Finance Department and the New York City Office for Motion Pictures to coordinate the details of the emergency rule.

FEDERAL STANDARDS:

There are no federal standards in regard to the empire state film production tax credit program; it is purely a state program that offers a state tax credit to eligible applicants. Therefore, the proposed rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The effected State agencies (Economic Development) and the business applicants will be able to achieve compliance with the emergency regulation as soon as it is implemented. In terms of compliance schedule, the statute (Chapter 60 of the Laws of 12004) was signed into law on August 20, 2004. All film production expenditures that date back to this date will be eligible for inclusion in the tax credit calculation. The statute gave the Department until October 31, 2004 to promulgate regulations to implement the program. The program applies to taxable years beginning on or after January 1, 2004 and expires on January 1, 2008.

Regulatory Flexibility Analysis

Participation in the empire state film production tax credit program is entirely at the discretion of qualified film production companies. Neither Chapter 60 of the Laws of 2004 nor the proposed regulations impose any obligation on any local government or business entity to participate in the

program. The proposed regulation does not impose any adverse economic impact or their compliance requirements on small businesses or local governments. In fact, the proposed regulation may have a positive economic impact on small businesses due to the possibility that these businesses may enjoy a film production tax credit if they qualify for the program's tax credit.

Because it is evident from the nature of the proposed rule that it will have either no impact, or a positive impact, on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

This program is open to participation from all qualified film production companies, which is defined by statute to include a corporation, partnership or sole proprietorship making and controlling a qualified film in New York. The location of the companies is irrelevant, so long as they meet the necessary qualifications of the definition. This program may impose responsibility on statewide businesses that are qualified film production companies, in that they must undertake an application process to receive the empire state film production tax credit. However, the proposed regulation will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed regulation creates the application process for the empire state film production tax credit program. As a tax credit program, it is designed to positively impact the film industry doing business in New York State and have a positive impact on job creation. The proposed regulation will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule making that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Trapping of Fisher and Bobcat

I.D. No. ENV-35-06-00010-A
Filing No. 1236
Filing date: Oct. 17, 2006
Effective date: Nov. 1, 2006

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

Action taken: Addition of section 6.4 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303 and 11-1103

Subject: Trapping of fisher and bobcat.

Purpose: To establish a three year experimental research trapping season for fisher and bobcat.

Text of final rule: A new section 6.4 is added to Title 6 of the New York Code, Rules and Regulations to read as follows:

§ 6.4 Experimental Research Trapping Seasons for Bobcat and Fisher.

(a) Purpose. The purpose of this section is to establish Experimental Research Trapping Seasons (ERTS) for both bobcat and fisher. Data collected from trappers participating in these seasons will contribute to the Department's ability to assess population status and make decisions concerning future management of these species.

(b) Duration. ERTS for both bobcat and fisher shall be held only during license years 2006-2007, 2007-2008, and 2008-2009.

(c) Bobcat ERTS.

(1) Any person holding a valid New York State trapping license shall be eligible to apply for a special ERTS permit for bobcat.

(2) Permit applications are available only at the Department's Region 4 office in Stamford, New York (by mail or in person).

(3) No person shall trap bobcat during the ERTS bobcat season established in this section unless the person holds both a valid New York State trapping license and a special ERTS permit for bobcat issued by the Department.

(4) ERTS season dates: October 25-February 15.

(5) Open areas: Wildlife management units 4F, 4N, and 4O.

(6) The following special permit conditions shall apply during the ERTS for bobcat:

(i) The carcasses, or parts of carcasses (as stated on the ERTS permit), shall be submitted to the Department within five (5) business days from the date on which a bobcat was taken.

(ii Each holder of an ERTS permit for bobcat shall submit a completed trapping activity diary within five (5) business days following the close of the ERTS.

(7) Notwithstanding any provision of this Chapter to the contrary, ERTS permits shall be revocable at the discretion of the Department.

(d) Fisher ERTS.

(1) Any person holding a valid New York State trapping license shall be eligible to apply for a special ERTS permit for fisher.

(2) Permit applications are available only at the Department's Region 6 office in Watertown, New York (by mail or in person).

(3) No person shall trap fisher during the ERTS fisher season established in this section unless the person holds both a valid New York State trapping license and a special ERTS permit for fisher issued by the Department.

(4) ERTS season dates: October 25-January 10.

(5) Open areas: Wildlife management units 6A, 6C, and 6H.

(6) The following special permit conditions shall apply during the ERTS for fisher:

(i) The carcasses, or parts of carcasses (as stated on the ERTS permit), shall be submitted to the Department prior to the issuance of a pelt seal.

(ii) Each holder of an ERTS permit for fisher shall submit a completed trapping activity diary within five (5) business days following the close of the ERTS.

(7) Notwithstanding any provision of this Chapter to the contrary, ERTS permits shall be revocable at the discretion of the Department.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 6.4(c) and (d).

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

Regulatory Impact Statement

1. Statutory Authority

Section 11-0303 establishes the general purposes and policies governing the manner by which the Department of Environmental Conservation (Department) manages the fish and wildlife resources of the State. This authority includes the improvement of such resources as natural resources and the "development and administration of measures for making them accessible to the people of the state." The Department is directed to use research programs as one means to obtain this result. Section 11-1103 of the Environmental Conservation Law states that the Department may by regulation permit the trapping of fisher and bobcat (and other species), and may regulate the taking, possession and disposition of fisher and bobcat. This proposed regulation establishes an experimental research trapping season to improve the management of these species, and includes specific requirements for the taking, possession and disposition of fisher and bobcat in selected wildlife management units (WMUs).

2. Legislative Objectives

The legislative objectives behind the statutory provisions listed above are to authorize the Department to establish the conditions under which fisher and bobcat may be taken by trapping, and to use research to improve the management of these species. This authority may be used by the Department to provide for effective scientific management of fisher and bobcat, including the use of research to understand their population status, thereby facilitating the establishment of appropriate management programs for these species.

3. Needs and Benefits

The Department proposes to establish an experimental research trapping season (ERTS) for fisher and bobcat in selected areas of New York. The experimental research trapping seasons would occur annually over a

three year period, beginning with the 2006-2007 license year. The specific elements of the ERTS are:

(1) Establish a bobcat trapping season from October 25-February 15 in wildlife management units (WMUs) 4F, 4N, and 4O.

(2) Establish a lengthened fisher trapping season from October 25 - January 10 in WMUs 6A, 6C, and 6H. (These units are already open to fisher trapping, but the ERTS would extend the season from the current closing date of December 10 to January 10.)

(3) For the experimental seasons described in (1) and (2) above, trappers would have to obtain a special revocable ERTS permit issued by the Regional Department of Environmental Conservation offices in Stamford and Watertown. These permits would be revocable at the discretion of the Department. The ERTS permit would require submission of all carcasses from trapped animals, and completion of a special trapper's diary to record details of each catch. This system would be very similar to the existing permit system used to allow the trapping of American marten.

The Department is currently developing a furbearer population and harvest assessment system based on research focused on fisher, river otter, and bobcat. This is designed to enable science-based decision making on future management of these species using simple procedures involving submission of data from trappers.

The specific research objectives of the proposed rule are as follows: (1) Estimate mortality and population growth rate of fisher and bobcat during an experimental, three year program in selected wildlife management units. (2) Evaluate the usefulness of information collected from trappers (catch-per-unit-effort) and from the carcasses of animals turned over to the Department to assess changes, if any, in the population condition of these species. (3) Determine what effect, if any, the opening of areas currently closed to bobcat trapping and the lengthening of the current season for fisher in some areas will have on short-term population conditions, and movement of these animals to adjacent areas via dispersal.

The requirements to submit both carcasses and trapping diaries will provide an opportunity for careful evaluation of the effects of harvest on fisher and bobcat, thereby enabling more informed policies about management of these species.

A key component of the research is the collection of data on "catch per unit of effort." These data can easily be obtained from trappers, but not from hunters. Trappers issued an ERTS permit will be required to maintain a trapping diary and record information on traps set and animals caught. This is a standard research tool for assessing the condition of a given population, especially in comparison to comparable areas. However, these data are not available from hunters because hunters either "opportunistically" take a bobcat while hunting for other species (*e.g.*, turkey or deer) or hunt with hounds. In both cases, techniques for monitoring catch per unit of effort are not available. For these reasons, the bobcat ERTS is restricted to trappers only.

4. Costs

The Department will incur a small expense to administer the ERTS.

5. Local Government Mandates

This rule making does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

Trappers who participate in the ERTS will be required to maintain a trapping diary where they record information on traps set, animals caught, and effort.

7. Duplication

There are no other local, state or relevant federal regulations concerning the taking of fisher or bobcat.

8. Alternatives

The no action alternative would mean that the management of fisher and bobcat in New York would not be improved through the research findings expected from the experimental research trapping season.

9. Federal Standards

There are no relevant federal government standards for the taking of fisher and bobcat. The Department uses a federally-issued plastic pelt seal for bobcat to verify legal acquisition. The use of these seals for bobcat will continue during this experimental research trapping season.

10. Compliance Schedule

Trappers will be permitted to participate in the ERTS upon promulgation of the final rule during the 2006-2007 trapping season.

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

Non-substantive changes were made to the text of the final rule as adopted. These changes were made to clarify that the proposed experimental research trapping season (ERTS) special permits are revocable, and to simplify the reporting procedure for fisher harvested during the ERTS. The substance of the rule remains unchanged. Therefore, the Department of Environmental Conservation has determined that it is not necessary to revise the previously published RFA, RAFA, and JIS.

Assessment of Public Comment

The Department received comments on the proposed Experimental Research Trapping Season (ERTS) for bobcat and fisher. A summary of these comments and the Department's response follows:

Comment

The Department's proposal will enhance the understanding of the status of bobcat and fisher populations, and the proposal is justified because sightings of these species are common in the proposed ERTS wildlife management units. The use of trappers to help collect information on these species will strengthen the Department's understanding of their populations.

Response

The Department agrees. The purpose of the ERTS is to strengthen information on the status of these species. This will be accomplished by requiring all participants to first obtain a special revocable permit, to complete a daily diary of their trapping activity, and to submit all carcasses or appropriate parts of carcasses to the Department for biological examination. Reports of sightings, along with additional information obtained through the ERTS, will assist the Department in developing long-term management strategies for both fisher and bobcat.

Comment

Hunters should also be allowed to harvest bobcat in the wildlife management units open during the ERTS.

Response

A key component of the assessment of bobcat and fisher populations in the experimental areas is the collection of "catch per unit of effort" information from trappers. This type of data is very difficult to acquire from hunters because relatively few hunters hunt for bobcat (it is unlawful to hunt fisher), and catch per unit of effort data from hunters who harvest bobcat would be largely meaningless since a large proportion of hunter-harvested bobcat are taken during hunts for other species (*e.g.,* deer). Trappers, however, set a specific number of traps each day, and the ERTS permit will require that they maintain a diary of traps set, number of days of trapping, and bobcat caught. These data will be used to calculate catch per unit of effort in a highly standardized, repeatable manner. This is needed to achieve the Department's research objectives.

Comment

The Department is requiring an excessive level of reporting for participants in the ERTS.

Response

The purpose of the Department's proposal is to strengthen the management of fisher and bobcat throughout New York by thoroughly and scientifically evaluating their populations as related to trapping participation in the ERTS wildlife management units. To do this, data on catch per unit of effort is needed, along with a biological assessment of animals captured. Trappers will be required to complete a trapping diary and to submit carcasses of all harvested animals. This is essential to complete the research planned in association with the ERTS. The Department's regional offices will work very closely with all participants to make sure that they understand these requirements. A lesser level of effort would not produce the data and information that is necessary for the Department to assess populations.

Comment

Comments expressing concern or opposition to the Department's proposal were also received: The bobcat and fisher trapping season will delay the expansion of these species into other areas by slowing dispersal, and these predators should not be trapped at all. There are no significant human conflicts with these species, nor do they negatively effect other wildlife. The Department should complete studies without killing bobcat or fisher to reach a full understanding of their population status. The sighting of a bobcat or fisher is rare, and their populations should be fully protected. Before trapping these species, a biological "upper limit" for harvest should first be established.

Response

The collection of information via the ERTS will greatly strengthen the Department's understanding of the status and biological characteristics of bobcat and fisher. The Department agrees that bobcat and fisher do not cause significant conflict with people, or have a significant effect on other species. Trappers harvest bobcat and fisher during regulated and managed harvest seasons in parts of New York, and the Department is seeking to

strengthen its management systems to make sure that the populations of these species are managed appropriately. With an enhanced understanding of these species, the Department will develop a statewide population management objective geared towards establishing bobcat and fisher in all suitable areas of New York. Already, bobcat and fisher populations appear to be expanding, but it is unclear whether this is occurring because of expansion from adjacent areas of Pennsylvania or other occupied areas of New York, or both. In conjunction with data acquired via the ERTS, the Department also will be live-capturing some bobcat and marking them to assess their movements and dispersal. The Department is not planning to implement a quota system for harvest at the present time, but may consider doing so in the future if warranted based on an analysis of the ERTS. Additionally, the Department is implementing a reporting system for bobcat and fisher in all of central and western New York so that citizen's may report bobcat and fisher sightings in areas outside of the ERTS. Collectively, all of these data will yield a clearer picture of their population status, and enable the development of a comprehensive, statewide management plan that seeks to establish bobcat and fisher populations in all suitable areas of New York.

Department of Health

EMERGENCY RULE MAKING

Serialized Official New York State Prescription Form

I.D. No. HLT-42-06-00005-E
Filing No. 1230
Filing date: Oct. 13, 2006
Effective date: Oct. 13, 2006

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

Action taken: Addition of Part 910 and amendment of Parts 80 and 85 of Title 10 NYCRR; amendment of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

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 and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for the implementation of the use of statewide forge proof prescriptions by the April 19, 2006 date mandated by the law.

Immediate adoption of these regulations is necessary to allow the implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

Subject: Enactment of a serialized New York State prescription form.

Purpose: To enact a serialized New York State prescription form.

Substance of emergency rule: Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that, until April 19, 2007, hospitals and comprehensive voluntary non-profit community diagnostic and treatment centers designated by the Department are exempted from the requirement for their staff practitioners to prescribe non-controlled substances on an official prescription form. The exemption will continue beyond April 19, 2007 if the hospital and the comprehensive voluntary non-profit community diagnostic and treatment center implements and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department. Section 910.6 also authorizes pharmacies to fill prescriptions for non-controlled substances until October 19, 2006 that are not written on an official prescription provided that the pharmacy notify the Department of the prescribing practitioner so that the practitioner may be contacted and issued official prescriptions for subsequent prescribing.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes have been proposed:

Section 505.3 (18 NYCRR)

- Language included to reflect use of facsimile prescriptions.
- Language included to allow electronically transmitted prescriptions.
- Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.
- Delete language prohibiting telephone orders for OTCs.
- Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).
- Delete Estimated Acquisition Cost—defined in Social Services Law 367-a(9)(b)(ii).
- Delete language referencing "triplicate" prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.
- Delete language referencing other Sections that have been deleted (*i.e.,* 10 NYCRR 85.25).
- Delete language referencing dispensing fees—in Social Services Law 367-a(9)(d).
- Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.
- A change has been made to the prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words "or supplies" has been deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forged proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.
- Section 528.2 is deleted—language regarding "dispensing fees include routine delivery charges" is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3[6] *(3)*.

Part 85 (10 NYCRR)

- Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.
- Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (*i.e.,* 18 NYCRR 528.2 and 10 NYCRR 85.25).
- Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).
- Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

Part 80 (10 NYCRR)

- Part 80 table of contents has been revised to reflect amendments in titles of sections of regulations.
- Sections have been amended throughout Part 80 to revise the previous title of 'Bureau of Narcotic Control' and 'Bureau of Controlled Substances' to the current title of 'Bureau of Narcotic Enforcement'.
- Sections have been amended throughout Part 80 to revise the previous title of 'Bureau of Narcotics and Dangerous Drugs' to the current title of 'Drug Enforcement Administration'.
- Section 80.1—language added to define automated 'dispensing system'.
- Section 80.5—language deleted for 3b Institutional Dispenser license due to registration of facilities to be issued official prescriptions. Language added for retail pharmacy license, installation, and operation of automated dispensing system in Residential Healthcare Facility (RHCF).
- Section 80.11—language added to make requirements for supervising pharmacist of controlled substance manufacturer and distributor consistent with pharmacist licensure requirements in New York State Education Law.
- Section 80.46—language added to require supervising physician countersignature of medical order of physician's assistant if deemed necessary by supervising physician or hospital to bring regulation into consistency with PHL 3703.
- Section 80.47—language revised to except administration of controlled substances in emergency kits to patients in Title 18 adult care facilities.
- Section 80.49—language revised from prescription serial number to pharmacy prescription number.
- Section 80.50—language added to require pharmacies to maintain separate stocks of controlled substances received for use in automated dispensing system in RHCF and to authorize storage of noncontrolled substances in such system.
- Section 80.60—language added for female gender reference to practitioner.
- Section 80.63—deleted definition of written prescription and added definition of out-of-state prescription. Language added to authorize printed prescriptions generated by computer or electronic medical record system. Language added regarding practitioner oral prescribing requirement.
- Section 80.67—midazolam and quazepam added to list of benzodiazepine controlled substances, as per PHL 3306. Language added requiring quantity of dosage units to be indicated in both numerical and written word form. Language amended to include chorionic gonadotropin as controlled substance for prescribing up to a 3-month supply. Language added to assign code letters to medical conditions for prescribing more than a 30-day supply.
- Section 80.67(con't)—language deleted regarding Department's issuance of official New York State prescriptions, due to added language in section 80.72. Language deleted for face and back of prescription to facilitate timely pharmacist dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.68—language added for certain other controlled substances. Language deleted requiring pharmacist to endorse pharmacy DEA number on official NYS prescription to facilitate timely dispensing. Language added requiring electronic transmission of prescription data to Department.
- Section 80.69—language added requiring quantity of dosage units to be indicated in numerical and written word form. Language added to assign letters for condition codes. Deleted reference to PHL sections 3335 and 3336, which were deleted by PHL 21, and added reference PHL sections 3332 and 3333, which are now the relevant sections. Deleted written prescription and added official prescription. Deleted back of the prescription and face of the prescription to facilitate timely dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.70—Language added specifying oral prescriptions for 30-day supply or 100 dosage units does not apply to substance limited to 5-day supply by section 80.68. Deleted serial prescription number and added pharmacy prescription number. Added female gender language in reference to pharmacist. Language added requiring filing of prescription information with Department.
- Section 80.71—Deleted section (b) to reflect that practitioners are no longer required by PHL 3331 to complete an official prescription when dispensing controlled substances. Corrected spelling of chorionic gonadotropin. Added reference to condition codes in sections 80.67 and 80.69. Added packaging and labeling requirements for practitioner dispensing of controlled substances. Added requirement for practitioners to submit dispensing information to Department by electronic transmission.
- Section 80.72—deleted all references to practitioner dispensing and labeling requirements because practitioner dispensing now covered by section 80.71. Language added regarding practitioner registration with Department and Department issuance of official NYS prescription forms.
- Section 80.73—added language specifying pharmacist dispensing of schedule II and controlled substances listed in section 80.67. Added female gender language in reference to pharmacist. Deleted requirement for pharmacist to endorse pharmacy DEA number on prescription for timely dispensing. Language added requiring pharmacy to verify identity of person picking up dispensed prescription. Language added requiring pharmacy electronic transmission of prescription data to Department.
- Section 80.73(con't)—language added specifying emergency oral prescriptions for schedule II and controlled substances listed in section 80.67 and filing of emergency oral prescription memorandum. Language added requiring pharmacy electronic transmission of oral prescription data to Department. Language added specifying partial filling of official prescription for schedule II and controlled substances listed in section 80.67. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.
- Section 80.74—language added in section title specifying pharmacist dispensing of controlled substances. Language added for prescription labeling requirements. Added female gender reference to pharmacist. Added requirement for filing prescription data with Department. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.
- Section 80.74(con't)—language added for pharmacy requirement to verify identification of person picking up prescription. Deleted reference to schedule II controlled substances and those substances listed in section 80.67 because all controlled substances now require official NYS prescription. Deleted labeling requirement reference to section 80.72 and added reference to section 80.71.
- Section 80.75—deleted language regarding requirement to purchase official prescriptions. Added language regarding registration and issuance of official prescriptions for institutional dispenser.
- Section 80.78—Added a new section regarding pharmacist requirements for dispensing of out-of-state prescriptions for controlled substances, to be dispensed in conformity with provisions set forth for official prescriptions.
- Section 80.84—deleted language requiring group practice providing treatment of opiate dependence with buprenorphine to be limited to 30 patients at any one time, making New York State regulations consistent with the federal Drug Addiction Treatment Act. Deleted language requiring practitioners and pharmacies to register with Department to prescribe and dispense buprenorphine. Deleted language requiring pharmacy to file prescription data and report loss of controlled substances because redundant. Deleted reference to PHL 3335 and 3336 because deleted by PHL 21 and added reference to PHL 3332 and 3333 because now relevant sections.
- Section 80.106—added language requiring separate recordkeeping for pharmacies installing automated dispensing system in RHCF.
- Section 80.107—added language authorizing Department to notify practitioner of patient treatment with controlled substances by multiple practitioners, consistent with PHL 3371.

- Section 80.131—deleted written prescription, added official prescription and out-of-state prescription. Language added increasing oral prescription for hypodermic needles and syringes to quantity of one hundred hypodermic needles and syringes.

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 serve rule making, I.D. No. HLT-42-06-00005-P, Issue of October 18, 2006. The emergency rule will expire January 10, 2007.

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 purpose and intent.

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law, Chapter 58 of the Laws of 2004, permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

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 controlled substances within New York. New Section 21 of the Public Health law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Needs and Benefits:

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York.

Regulations are being proposed to implement Section 21 of the Public Health Law (PHL). The purpose of the law is to combat and prevent prescription fraud by requiring an official New York State prescription for every prescription written in New York. Official prescriptions contain security features designed specifically to curtail alterations, counterfeiting, and forgeries, all of which divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Regulations have been amended to reflect the implementation of the above Public Health Law and to update obsolete or outdated language in the existing regulations. The proposed regulations also include amendments to authorize a practitioner to deliver a controlled substance prescription to a pharmacy by facsimile transmission in specified circumstances and to authorize a pharmacist to dispense such faxed prescription. By facilitating timely prescribing and dispensing, such facsimile transmission will enhance healthcare for patients enrolled in hospice programs or residing in a Residential Healthcare Facility (RHCF) and for patients who require controlled substance prescriptions to be compounded for administration by parenteral infusion.

Regulations have also been amended to authorize the Department to license a retail pharmacy to install and operate an automated dispensing system in a RHCF, which will bring New York regulations into consistency with federal regulations. The installation and operation of such systems will significantly benefit patient care through timely and efficient dispensing of prescriptions for controlled substances. Automated dispensing systems will also lessen the cost of medications remaining from wastage due to discontinued drug therapy and will simultaneously decrease the amount of such controlled substances that are susceptible to diversion.

These regulations are found in amendments to10 NYCRR Part 80 and in the newly promulgated regulations in 10 NYCRR Part 910. Included in the Part 910 regulations is an exemption allowing hospital practitioners or practitioners in a comprehensive voluntary non-profit diagnostic and treatment center designated by the Department to prescribe non-controlled substances on a non-official hospital prescription until April 19, 2007. The exemption will continue beyond April 19, 2007 for hospitals and designated comprehensive voluntary non-profit diagnostic and treatment center that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them.

Also included in the Part 910 regulations is an exemption allowing pharmacies to dispense prescriptions for non-controlled substances that are not issued on an official prescription until October 19, 2006 in order that optimum care may continue to be provided to patients. The regulation requires pharmacies to notify the Department so that the practitioner may be contacted and issued official prescriptions for all subsequent prescribing.

Costs:

Costs to Regulated Parties:

This program is being funded by an annual assessment on the State Insurance Department of $16.9 million. The assessment funds the costs of providing 180 million official prescriptions annually as well as administrative and enforcement staffing to operate and enforce the program. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize, respectively, an estimated $75 million and $25 million in annual savings due to the reduction of fraudulent prescription claims.

The $25 million estimated saving for the Medicaid program represents the 25% New York State share. $50 million in estimated savings would accrue to the 50% federal government share of Medicaid, while $25 million in estimated savings would accrue to the 25% local government share of Medicaid.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

There will be a slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements for controlled substance prescriptions.

Costs to State and Local Government:

There will be no costs to state or local government. Savings to State government are estimated at $25 million to the 25% New York State share of Medicaid. Savings to local government, from reduction in subsidizing of prescription costs for patients in their Medicaid population, will result in an estimated $25 million to the 25% local government share of Medicaid.

Costs to the Department of Health:

There will be no additional costs to the Department. The decrease in prescription fraud as a result of use of the official prescription will result in savings for the Department for the Medicaid, EPIC, and Empire programs. An increase in the efficiency of investigations made possible by the official prescription program will result in additional savings for 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:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and recordkeeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

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

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances as opposed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

As a result of consultations with the hospital community, hospitals were granted a one-year exemption, until April 19, 2007, from the requirement for their staff practitioners to prescribe non-controlled substance medications on the official prescription. The purpose of the exemption is to serve as an incentive for hospitals to develop electronic prescription systems. The exemption will be extended if the hospital implements and utilizes an electronic prescription system to transmit such prescriptions directly to a pharmacy in lieu of an official prescription.

Federal Standards:

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

Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, there are approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions, there are approximately 18,000 licensed and registered pharmacists in New York.

Compliance Requirements:

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments;

(1) Eliminating the fee to practitioners and institutions for official prescriptions;

(2) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;

(3) Bar coding of the serial number on the official prescription to expedite the dispensing process; and

(4) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all prescriptions for controlled substances.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

Compliance Requirements:

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and pharmacies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

Professional Services:

None necessary.

Compliance Costs:

The new law requires all pharmacies in New York State to electronically transmit information from controlled substance prescriptions to the Department on a monthly basis, for monitoring and analysis purposes in combating prescription fraud. Pharmacies may require minor adjustments in computer software programming due to this additional prescription data submission requirement.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from pharmacist, health plan and practitioner associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas was expressed.

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 that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

EMERGENCY RULE MAKING

Recreational Aquatic Spray Ground

I.D. No. HLT-44-06-00007-E
Filing No. 1231
Filing date: Oct. 13, 2006
Effective date: Oct. 13, 2006

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

Action taken: Addition of Subpart 6-3 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: During the summer of 2005, approximately 4,000 patrons of the Seneca Lake State Park spray ground became ill with cryptosporidiosis as a result of exposure to the spray ground water.

This type of aquatic facility poses a significant risk of illness to the patrons due to the design which involves the collection and recirculation of the sprayed water. To prevent a similar illness outbreak involving this type of recreational aquatic activity, spray ground design and operation regulations are necessary.

Emergency adoption of the new regulation is necessary to provide the operators of existing facilities with adequate time to evaluate facilities, complete an engineering report and make modifications, as needed, prior to use. Proposed facilities will be able to utilize the design standards to ensure new facilities are in compliance.

Subject: Recreational aquatic spray ground.

Purpose: To establish standards for the safe and sanitary operation of recreational aquatic spray grounds that re-circulate water.

Substance of emergency rule: The proposed Subpart contains the following provisions:

Recreational aquatic spray grounds (spray ground) are defined and spray ground owners are required to obtain an annual permit to operate

from the local health department (LHD) having jurisdiction in the county that the spray ground is located.

Design standards for new and existing spray grounds are established. The standards including requirements for disinfection (chemical and ultraviolet) and filtration equipment, as well as, requirements for spray pad, spray pad treatment tank, decking and spray pad enclosure construction and design.

Existing spray ground operators must provide a report to the LHD which evaluates compliance with the design criteria contained in the regulation and needed improvements. The report must be prepared by a New York State licensed professional engineer and submitted to the LHD at least 90 days prior to operation.

LHDs must follow the recommendations of the State Health Department prior to accepting or denying alternative designs for new and existing spray grounds.

Operation and maintenance standards are established including daily start-up procedures, minimum disinfection levels, filtration rates, water quality standards and general safety provisions. The spray ground operator must maintain daily operation records.

On-site water supplies, toilet facilities, and sanitary wastewater treatment systems must comply with sanitary and operation standards.

Spray grounds must be supervised when open for use and must be maintained by a qualified swimming pool water treatment operator.

Spray ground operators must develop, update and implement a written safety plan consisting of procedures for patron supervision, injury prevention, reacting to emergencies, injuries and other incidents providing first aid and assistance.

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 January 10, 2007.

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 Public Health Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL Sections 225(5)(a) and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health.

Needs and Benefits:

During the summer of 2005, approximately 3,000 patrons of the Seneca Lake State Park spray ground became ill with cryptosporidiosis as a result of exposure to the spray ground water. This type of aquatic facility poses a significant risk of illness to the patrons due to the design, which involves the collection and recirculation of sprayed water. To prevent future illness outbreaks involving this type of aquatic activity, spray ground design and operation regulations are necessary including design criteria for new and existing spray grounds for water recirculation, filtration and disinfection (chemical and ultraviolet), electrical safety and spray pad enclosure.

Additionally, the regulation contains requirements for obtaining an annual permit to operate from the state or local health department (LHD) having jurisdiction, as well as, other bathhouse, personnel, potable water supply, wastewater disposal and general safety requirements.

Regulated Parties:

Statewide in 2005, there were thirty-two seasonally operated spray grounds that use re-circulated water. Four additional spray grounds are under construction. Until the emergency regulations became effective on January 18, 2006, spray ground operations were not regulated by the SSC. Of the 36 existing and proposed spray grounds, 14 have submitted the required engineering report and plans for installation of ultraviolet disinfection systems and other necessary modifications, and 5 indicated they will not meet the spray ground definition because they plan to discharge feature water to waste, therefore regulatory compliance is not necessary. The proposed regulation clarifies of certain requirements but is consistent with the emergency regulation effective April 18, 2006.

Costs to Regulated Parties:

There may be significant cost to spray grounds operators for water recirculation, filtration and disinfection (chemical and ultraviolet) improvements and additions. Additionally there will be expenses associated with an engineering report, which addresses the design criteria, and other miscellaneous improvements.

Government:

The printing and distribution the new Code and the corresponding revised inspection report will be a minimal State Health Department expense. There may be additional costs to some city and county health departments that enforce the proposed rule, because the proposed rule will increase the number of facilities regulated by some of these agencies. LHD's are expected to use existing staff to for the workload because of the low number of spray grounds in a jurisdiction.

The costs to municipally operated spray grounds are described above in Costs to Regulated Parties.

This regulation does not duplicate any existing federal, state or local regulations.

Alternatives Considered:

Several treatment options were considered for control of cryptosporidium including the use of ozone, membrane filtration, dilution and patron control. UV disinfection was selected as the code standard because of its effectiveness and appropriateness for the high flow rates of spray grounds. Other treatment options that can be documented to effectively remove cryptosporidium are acceptable in the proposed regulation.

Compliance Schedule:

The proposed regulation will be effective upon publication of a notice of adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on small business and local government:

There are thirty-two (32) recreational aquatic spray grounds (spray grounds) in New York State and four that are under construction. Eighteen (18) of the thirty-six (36) are or will be operated by local governments.

Compliance requirements.

Reporting and recordkeeping:

A spray ground operator must maintain daily operation records of the recreational aquatic spray ground including disinfection levels, bather usage and other maintenance. A copy of the records must be maintained at the facility for 12 months.

Facilities that are required to disinfect their potable water supply must maintain daily records of the potable water system disinfection. Forms will be provided by the permit-issuing official and require monthly submittal to the permit-issuing official.

Injury and illness that occur at a spray ground must be reported by the owner/operator to the permit-issuing official within 24 hours of its occurrence and recorded in a logbook.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Other affirmative acts:

Spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the facility is located.

Design criteria for new and existing spray grounds are established to assure safe and sanitary spray ground operation.

1. Water recirculation, filtration and disinfection (chemical and ultraviolet) standards are established to assure all water that is sprayed onto patrons is free of pathogens. Filtration is essential for effective disinfection. Both ultraviolet (UV) and chemical disinfection are required because UV is necessary to destroy cryptosporidium and chemical disinfection is effective for many other pathogens normally associated with swimming pools.

2. Spray pad and spray pad treatment tank construction standards ensure that there is no standing water on the spray pad, the spray pad is slip resistant, and the spray pad and spray pad treatment tank do not promote bacterial growth or harbor pathogens.

3. Electrical standards protect patrons from electrocution.

4. Spray pad enclosure requirements prevent access to the pad by people and animals during non-supervised time periods. Preventing access will reduce contaminants that can enter the recirculation system.

To ensure compliance with the regulation, spray grounds existing prior to January 18, 2006 effective date of initial emergency regulation) are required to submit an engineering report addressing the design criteria specified in the regulation. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies.

Personnel:

Spray grounds must provide at least one supervisory staff to provide periodic supervision of the spray pad. Supervisory staff is necessary to control patron activities and respond to events that can affect patron health and safety.

Spray feature water treatment systems must be maintained by a qualified swimming pool water treatment operator to assure continuous and proper operation of water treatment equipment.

Safety:

Signs, which contain seven rules and warning statements, must be posted at the spray pad or enclosure/entrance and bathhouse/toilet facilities. The statements inform the patrons that the water is recirculated (not potable) and highlights the practices to reduce the potential for the contamination of the spray ground water.

First aid equipment must be provided at the spray ground unless otherwise specified in the safety plan.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Potable water supply and waste water disposal:

Potable water supplies serving the spray ground must comply with Subpart 5-1 of the State Sanitary Code. On-site water supplies that do not meet the definition of a Public Water supply must comply with the requirements in Subpart 5-1 for non-community water supplies.

Sewage and other wastewater must be disposed of in acceptable sanitary facilities.

Bathhouse and foot shower:

Adequate sanitary facilities are required including toilets, lavatories, refuse di sposal, diaper changing areas and foot showers. The presence and maintenance of conveniently located toilet facilities, diaper changing areas and foot shower will help eliminate diaper changing on or near the spray pad and reduce the potential for spray pad contamination.

Professional services:

Operators of existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies. Spray grounds that require modifications to the existing equipment and plumbing will require additional engineering services related to design modification(s).

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employee such personnel may hire a company to provide the service or send a current employee to become certified.

Compliance cost:

The proposed rule has cost impacts that affect thirty-two (32) existing seasonally operated spray grounds and four spray grounds that are under construction.

Existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Some facilities may have existing reports that can be submitted; however, those that do not have an adequate existing report will need to hire a licensed professional engineer to prepare one. Cost estimates for the report range between $2,000 and $20,000. The cost is expected to be at the lower end of the range because spray ground operators will most likely utilize engineering firms that are already familiar with the facility and therefore require less time to prepare the report.

Spray grounds that require modifications to the existing equipment and plumbing incur additional cost. The estimated cost for engineering services related to design modification(s) range from 6% to 15% of the project cost.

The estimated cost for other modifications are as follows:

Spray Ground Feature Water Treatment:

Ultraviolet (UV) disinfection equipment cost will vary based on the spray ground feature flow rate. Costs are based on estimates provided by two leading UV reactor manufacturers.

Flow rate (gpm)	UV reactor cost	Installation[1]	Lamp replacement[2]
50	$6,585-$12,000	$1,930-$4,000	$240-$500
100	$9,000-$17,500	$2,050-$4,000	$480-$500
140-150	$13,800-$19,000	$2,290-$4,500	$600-$720
250	$20,965-$23,000	$2,650-$5,000	$600-$840
500	$29,355-$31,000	$3,068-$5,500	$700-$1,680
1,000-1,300	$34,000-$42,225	$3,712-$6,000	$700-$2,320
2,000-2,300	$40,000-$50,000	$4,100-$7,000	$800-$3,480

[1] UV reactor installation includes necessary labor and supplies for plumbing and electrical connection.

[2] Lamp replacement is anticipated to be once every 4-5 years for seasonally operated facilities.

The cost to operate UV reactors ranges from $30 to $875 per season for electric and $350 to $450 for cleaning and other maintenance.

Spray grounds that do not have adequate treatment tank filtration will require an additional pump and filtration. The pump and filter costs are based on the volume of water to be filtered. Costs range between $350 and $620 for pumps and $350 and $850 for filters. The number of required filters varies for each facility and cannot be estimated.

The proposed regulation requires spray grounds to have an automatic chemical controller for monitoring and adjusting the disinfectant and pH levels in the treatment tank. The cost for a chemical controller is between $1800 and $4,200 plus installation.

Each spray ground is required to have valves and piping in the spray pad drain system to allow for discharging water to waste prior entering the spray pad treatment tank. The cost of installing a water diversion valve will vary based on the accessibility of piping at the point where the valve must be installed. Cost estimates range between $750 and $6,400.

Bathhouse/foot shower:

Some spray grounds may need to replace or add bathhouse facilities and/or foot showers when insufficient facilities are provided. The need and cost for additional fixtures will vary greatly by facility and cannot be estimated.

Personnel:

Spray grounds must be provided with periodic supervision. Most spray grounds will have acceptable staff already on-site fulfilling this role and will incur no additional expense. Spray grounds that do not have staff to periodically supervise the facility will have a cost increase associated with hiring someone or reassigning staff to perform supervisory duties. Staff may perform other duties such as facility maintenance in addition to performing the supervisory responsibilities. The minimum wage is currently $6.75 an hour.

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employee such personnel may hire a company to provide the service or send a current employee to a course to become certified. Courses to become certified as a qualified swimming pool water treatment operator cost approximately $280. The cost of hiring a company to provide the service is $6,000 a season.

Miscellaneous expenses:

Spray grounds must be enclosed to prevent access by people and animals during non-supervised time periods. The cost of enclosures varies depending on the style. Fencing cost range from $9.00 a lineal foot to $23.00 per foot which includes installation. Some fence installation types include the cost of a gate while others have an additional gate charge.

Facilities must post signs stating seven rules/warning statements. The cost of a 2 feet by 3 feet commercially prepared sign ranges from $85 to $400. Two signs are required at each facility.

Spray grounds are required to have a 24-unit first aid kit or adequate first aid supplies. The cost of a 24-unit first aid kit is between $25 and $75. Purchasing first aid supplies to satisfy the requirement will cost less.

Economic and technological feasibility:

The proposal is technologically feasible because it requires the use of existing technology. The overall economic feasibility cannot be predicted at this time because the economic feasibility for each regulated spray ground is dependent upon the financial condition of that spray ground and the extent to which that spray ground must undertake additional actions to comply with the requirements of this regulation.

Minimizing adverse economic impact:

The proposed rule establishes standards for recreational aquatic spray grounds to minimize risk to the public health. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements other than spray ground feature water disinfection (chemical and ultraviolet or accepted equivalent) and filtration, will be considered, so long as alternative arrangements protect public health and safety. Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Small business participation:

During the development of the emergency regulation, the Department met with design professionals and industry representatives on one occasion

and had numerous telephone conversations to develop a better understanding of spray ground operation, particularly concerning spray ground feature water recirculation and treatment, and incorporated the information into the proposed regulation.

Rural Area Flexibility Analysis

Types and estimated number of rural areas:

There are thirty-six (36) recreational aquatic spray grounds (spray grounds) in New York State grounds including four that are under construction. Approximately half are located in rural areas.

Reporting and recordkeeping and other compliance requirements:

A spray ground operator must maintain daily operation records of the recreational aquatic spray ground including disinfection levels, bather usage and other maintenance. A copy of the records must be maintained at the facility for 12 months.

Facilities that are required to disinfect their potable water supply must maintain daily records of the potable water system disinfection. Forms will be provided by the permit-issuing official and require monthly submittal to the permit-issuing official.

Injury and illness that occur at a spray ground must be reported by the owner/operator to the permit-issuing official within 24 hours of its occurrence and recorded in a logbook.

Spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the facility is located.

Design criteria for new and existing spray grounds is established to assure safe and sanitary spray ground operation.

(1) Water recirculation, filtration and disinfection (chemical and ultraviolet) standards are established to assure all water that is sprayed onto patrons is free of pathogens. Filtration is essential for effective disinfection. Both ultraviolet (UV) or other acceptable equivalent, and chemical disinfection are required because UV is necessary to destroy cryptosporidium and chemical disinfection is effective for many other pathogens normally associated with swimming pools.

(2) Spray pad and spray pad treatment tank construction standards ensure that there is no standing water on the spray pad, the spray pad is slip resistant, and the spray pad and spray pad treatment tank do not promote bacterial growth or harbor pathogens.

(3) Electrical standards protect patrons from electrocution.

(4) Spray pad enclosure requirements prevent access to the pad by people and animals during non-supervised time periods. Preventing access will reduce contaminants that can enter the recirculation system.

To ensure compliance with the regulation, existing spray grounds are required to submit an engineering report addressing the design criteria specified in the regulation. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies.

Personnel:

Spray grounds must provide at least one supervisory staff to provide periodic supervision of the spray pad. Supervisory staff is necessary to control patron activities and respond to events that can affect patron health and safety.

Spray feature water treatment systems must be maintained by a qualified swimming pool water treatment operator to assure continuous and proper operation of water treatment equipment.

Safety:

Signs, which contain seven rules and warning statements, must be posted at the spray pad or enclosure/entrance and bathhouse/toilet facilities. The statements inform the patrons that the water is recirculated (not potable) and highlights the practices to reduce the potential for the contamination of the spray ground water.

First aid equipment must be provided at the spray ground unless otherwise specified in the safety plan.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Potable water supply and waste water disposal:

Potable water supplies serving the spray ground must comply with Subpart 5-1 of the State Sanitary Code. On-site water supplies that do not meet the definition of a Public Water supply must comply with the requirements in Subpart 5-1 for non-community water supplies.

Sewage and other wastewater must be disposed of in acceptable sanitary facilities.

Bathhouse and foot shower:

Adequate sanitary facilities are required including toilets, lavatories, refuse disposal, diaper changing areas and foot showers. The presence and maintenance of conveniently located toilet facilities, diaper changing areas and foot showers will help eliminate diaper changing on or near the spray pad and reduce the potential for spray pad contamination.

Professional services:

Operators of spray grounds existing prior to January 18, 2006 (effective date of the initial emergency regulation) must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies. Spray grounds that require modifications to the existing equipment and plumbing will require additional engineering services related to design modification(s).

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employee such personnel may hire a company to provide the service or send a current employee to become certified.

Cost:

The proposed rule has cost impacts that affect thirty-two (32) existing seasonally operated spray grounds and four spray grounds that are under construction.

Existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Some facilities may have existing reports that can be submitted; however, those that do not have an adequate existing report will need to hire a licensed professional engineer to prepare one. Cost estimates for the report range between $2,000 and $20,000. The cost is expected to be at the lower end of the range because spray ground operators will most likely utilize engineering firms that are already familiar with the facility and therefore require less time to prepare the report.

Spray grounds that require modifications to the existing equipment and plumbing incur additional cost.

The estimated cost for engineering services related to design modification(s) range from 6% to 15% of the project cost. The estimated cost for other modifications are as follows:

Spray ground feature water treatment:

Ultraviolet (UV) disinfection equipment cost will vary based on the spray ground feature flow rate. Costs are based on estimates provided by two leading UV reactor manufacturers.

Flow rate (gpm)	UV reactor cost	Installation[1]	Lamp replacement[2]
50	$6,585-$12,000	$1,930-$4,000	$240-$500
100	$9,000-$17,500	$2,050-$4,000	$480-$500
140-150	$13,800-$19,000	$2,290-$4,500	$600-$720
250	$20,965-$23,000	$2,650-$5,000	$600-$840
500	$29,355-$31,000	$3,068-$5,500	$700-$1,680
1,000-1,300	$34,000-$42,225	$3,712-$6,000	$700-$2,320
2,000-2,300	$40,000-$50,000	$4,100-$7,000	$800-$3,480

[1] UV reactor installation includes necessary labor and supplies for plumbing and electrical connection.

[2] Lamp replacement is anticipated to be once every 4-5 years for seasonally operated facilities.

The cost to operate UV reactors ranges from $30 to $875 per season for electric and $350 to $450 for cleaning and other maintenance.

Spray grounds that do not have adequate treatment tank filtration will require an additional pump and filtration. The pump and filter costs are based on the volume of water to be filtered. Costs range between $350 and $620 for pumps and $350 and $850 for filters. The number of required filters varies for each facility and cannot be estimated.

The proposed regulation requires spray grounds to have an automatic chemical controller for monitoring and adjusting the disinfectant and pH levels in the treatment tank. The cost for a chemical controller is between $1800 and $4,200 plus installation.

Each spray ground is required to have valves and piping in the spray pad drain system to allow for discharging water to waste prior entering the spray pad treatment tank. The cost of installing a water diversion valve will vary based on the accessibility of piping at the point where the valve must be installed. Cost estimates range between $750 and $6,400.

Bathhouse/Foot Shower:

Some spray grounds may need to replace or add bathhouse facilities and/or foot showers when insufficient facilities are provided. The need and cost for additional fixtures will vary greatly by facility and cannot be estimated.

Personnel:

Spray grounds must be provided with periodic supervision. Most spray grounds will have acceptable staff already on-site fulfilling this role and will incur no additional expense. Spray grounds that do not have staff to periodically supervise the facility will have a cost increase associated with hiring someone or reassigning staff to perform supervisory duties. Staff may perform other duties such as facility maintenance in addition to performing the supervisory responsibilities. The minimum wage is currently $6.75 an hour.

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employee such personnel may hire a company to provide the service or send a current employee to a course to become certified. Courses to become certified as a qualified swimming pool water treatment operator cost approximately $280. The cost of hiring a company to provide the service is $6,000 a season.

Miscellaneous expenses:

Spray grounds must be enclosed to prevent access by people and animals during non-supervised time periods. The cost of enclosures varies depending on the style. Fencing cost range from $9.00 a lineal foot to $23.00 per foot which includes installation. Some fence installation types include the cost of a gate while others have an additional gate charge.

Facilities must post signs stating seven rules/warning statements. The cost of a 2 feet by 3 feet commercially prepared sign ranges from $85 to $400. Two signs are required at each facility.

Spray grounds are required to have a 24-unit first aid kit or adequate first aid supplies. The cost of a 24-unit first aid kit is between $25 and $75. Purchasing first aid supplies to satisfy the requirement will cost less.

Minimizing adverse economic impact on rural areas:

The proposed rule establishes standards for recreational aquatic spray grounds to minimize risk to the public health. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements other than spray ground feature water disinfection (chemical and ultraviolet or accepted equivalent) and filtration, will be considered, so long as alternative arrangements protect public health and safety. Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Rural area participation: During the development of the emergency regulation, the Department met with design professionals and industry representatives on one occasion and had numerous telephone conversations to developed a better understanding of spray ground operation, particularly concerning spray ground feature water recirculation and treatment, and incorporated the information into the proposed regulation.

Job Impact Statement

No job impact statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

NOTICE OF ADOPTION

Revised Standards for Arsenic in Drinking Water

I.D. No. HLT-24-06-00009-A
Filing No. 1232
Filing date: Oct. 13, 2006
Effective date: Oct. 13, 2006

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

Action taken: Amendment of sections 5-1.52, 5-1.72, 5-1.91 and Appendix 5C of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201(1) and 225

Subject: Revised standards for arsenic in drinking water.

Purpose: To amend the sanitary code to incorporate mandatory Federal regulations revising the maximum containment level for arsenic in drinking water.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-24-06-00009-P, Issue of June 14, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Opioid Overdose Prevention Programs

I.D. No. HLT-44-06-00005-P

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

Proposed action: Addition of section 80.138 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 3309(1)

Subject: Opioid overdose prevention programs.

Purpose: To implement L. 2005, ch. 413 which calls for the establishment of standards for opioid overdose prevention programs to prevent fatalities due to overdoes.

Text of proposed rule: The Table of Contents for Part 80 of Title 10 NYCRR is amended to read as follows:

PART 80
RULES AND REGULATIONS ON CONTROLLED SUBSTANCES
(Statutory authority: Public Health Law, Sections 338, 3300, 3305, 3307, 3308, *3309*, 3381, 3701(1), (6), art. 33)

Sec.
GENERAL PROVISIONS
* * *
80.138. Opioid Overdose Prevention Programs

A new Section 80.138 is added as follows:

Section 80.138. Opioid Overdose Prevention Programs.

(a) Definitions.

(1) "Clinical Director" means a physician, physician assistant or nurse practitioner who provides oversight of the clinical aspects of the Opioid Overdose Prevention Program. This oversight includes serving as a clinical advisor and liaison concerning medical issues related to the Opioid Overdose Prevention Program, providing consultation on training and reviewing reports of all administrations of an opioid antagonist.

(2) "Opioid" means an opiate as defined in section 3302 of the public health law.

(3) "Opioid antagonist" means an FDA-approved drug that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid in the body. The opioid antagonist is limited to naloxone or other medications approved by the Department for this purpose.

(4) "Opioid Overdose Prevention Program" means a program the purpose of which is to train individuals to prevent a fatal opioid overdose in accordance with these regulations.

(5) "Opioid Overdose Prevention Training Program" means a training program offered by an authorized Opioid Overdose Prevention Program which instructs a person to prevent opioid overdoses, including by providing resuscitation, contacting emergency medical services and administering an opioid antagonist.

(6) "Person" means an individual other than a licensed health care professional, law enforcement personnel, and first responders otherwise permitted by law to administer an opioid antagonist.

(7) "Program Director" means an individual who is identified to manage and have overall responsibility for the Opioid Overdose Prevention Program.

(8) "Registered provider" for the purposes of this section shall mean any of the following that have registered with the Department pursuant to subsection (b):

(i) a health care facility licensed under the public health law;

(ii) a physician, physician assistant, or nurse practitioner who is authorized to prescribe the use of an opioid antagonist;

(iii) a drug treatment program licensed under the mental hygiene law;

(iv) a not-for-profit community-based organization incorporated under the not-for-profit corporation law and having the services of a Clinical Director;

(v) a local health department.

(9) "Trained Overdose Responder" means a person who has successfully completed an authorized Opioid Overdose Prevention Training Program offered by an authorized Opioid Overdose Prevention Program within the past two years and has been authorized by a Registered Provider to possess the opioid antagonist.

(b) Registration.

(1) Registered providers may operate an Opioid Overdose Prevention Program if they obtain a certificate of approval from the Department authorizing them to operate an Opioid Overdose Prevention Program and otherwise comply with the provisions of this section.

(2) Providers eligible to register to operate an Opioid Overdose Prevention Program that are in good standing may apply to the Department to operate an Opioid Overdose Prevention Program on forms prescribed by the Department which must include, at a minimum, the following information:

(i) the provider name, address, operating certificate or license number where appropriate, telephone number, fax number, e-mail address, Program Director and Clinical Director;

(ii) the name, license type and license number of the affiliated prescriber(s);

(iii) the name and location of the site(s) at which the Opioid Overdose Prevention Program will be conducted;

(iv) a description of the targeted population to be served and recruitment strategies to be employed by the Opioid Overdose Prevention Program; and

(v) the addresses, telephone numbers, fax numbers, e-mail addresses and signatures of the Program Director and Clinical Director.

(c) Program Operation.

(1) Each Opioid Overdose Prevention Program shall have a Program Director who is responsible for managing the Opioid Overdose Prevention Program and shall, at a minimum:

(i) identify a Clinical Director to oversee the clinical aspects of the Opioid Overdose Prevention Program;

(ii) establish the content of the training program, which meets the approval of the Department;

(iii) identify and train other program staff;

(iv) select and identify persons as Trained Overdose Responders;

(v) issue certificates of completion to Trained Overdose Responders who have completed the prescribed program;

(vi) maintain Opioid Overdose Prevention Program records including Trained Overdose Responder training records, Opioid Overdose Prevention Program usage records and inventories of Opioid Overdose Prevention Program supplies and materials;

(vii) ensure that all Trained Overdose Responders successfully complete all components of Opioid Overdose Prevention Training Program;

(viii) provide liaison with local emergency medical services and emergency dispatch agencies, where appropriate;

(ix) assist the Clinical Director with review of reports of all overdose responses, particularly those including opioid antagonist administration; and

(x) report all administrations of an opioid antagonist on forms prescribed by the Department.

(2) Each Opioid Overdose Prevention Program shall have a Clinical Director who is responsible for clinical oversight and liaison concerning medical issues related to the Opioid Overdose Prevention Program and, at a minimum, shall:

(i) provide clinical consultation, expertise, and oversight;

(ii) serve as a clinical advisor and liaison concerning medical issues related to the Opioid Overdose Prevention Program;

(iii) provide consultation to ensure that all Trained Overdose Responders are properly trained;

(iv) adapt and approve training program content and protocols; and

(v) review reports of all administrations of an opioid antagonist.

(3) The Trained Overdose Responders shall:

(i) complete an initial Opioid Overdose Prevention Training Program;

(ii) complete a refresher Opioid Overdose Prevention Training program at least every two (2) years;

(iii) contact the emergency medical system during any response to a victim of suspected drug overdose and advise if an opioid antagonist is being used;

(iv) comply with protocols for response to victims of suspected drug overdose; and

(v) report all responses to victims of suspected drug overdose to the Opioid Overdose Prevention Program Director.

(4) The opioid antagonist shall be dispensed to the Trained Overdose Responder in accordance with all applicable laws, rules and regulations.

(5) The Opioid Overdose Prevention Program will maintain and provide response supplies including: latex gloves, mask or other barrier for use during rescue breathing, and agent to prepare skin before injection.

(6) The Opioid Overdose Prevention Program will establish and maintain a recordkeeping system that will include, at a minimum, the following information:

(i) list of Trained Overdose Responders, including dates of completion of training;

(ii) a log of Opioid Overdose Prevention Trainings which have been conducted;

(iii) copies of program policies and procedures;

(iv) copy of the contract/agreement with the Clinical Director, if appropriate;

(v) opioid antagonist administration usage reports and forms; and

(vi) documentation of review of administration of an opioid antagonist.

(7) The Opioid Overdose Prevention Program will establish a procedure by which any administration of Opioid Antagonist to another individual by a Trained Overdose Responder affiliated with an Opioid Overdose Prevention Program, shall be reported on forms prescribed by the Department.

(8) Approval obtained pursuant to this section shall consist of a certificate of approval provided by the Department that shall remain in effect for two years or until receipt by the authorized provider of a written notice of termination of the program from the Department, whichever shall first occur. The Department may renew a certificate of approval for a subsequent two-year period if the registered provider is in good standing with all applicable state and federal licensing agencies and such provider is found to have complied with the requirements of this section and has submitted a request for renewal.

(9) Pursuant to Public Health Law Section 3309(2) the purchase, acquisition, possession or use of an opioid antagonist by an Opioid Overdose Prevention Program or a Trained Overdose Responder in accordance with this section and the training provided by an authorized Opioid Overdose Prevention Program shall not constitute the unlawful practice of a professional or other violation under title eight of the education law or article 33 of the public health law.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Chapter 413 of the Laws of 2005 amended the Public Health Law to add a new Section 3309 to provide for opioid overdose prevention programs in New York State. Section 3309(1) authorizes the Commissioner of Health to establish standards for approval of opioid overdose prevention programs, including, but not limited to, standards for program directors, clinical oversight, training, recordkeeping and reporting. The effective date of Chapter 413 of the Laws of 2005 is April 1, 2006.

Legislative Objectives:

This legislation was enacted to reduce the incidence of fatal opioid overdoses by providing training to individuals to increase the likelihood that timely administration of life-saving medication will be provided on an emergency basis to individuals who experience accidental opioid drug overdoses.

Needs and Benefits:

Approximately half of all injection drug users (IDUs) experience at least one nonfatal overdose during their lifetime. According to the New York State (NYS) Office of Alcoholism and Substance Abuse Services (OASAS) estimates, there are approximately 171,500 IDUs in NYS. Overdose is a preventable cause of death in the majority of cases involving opioids. Opioids include heroin, morphine, codeine, methadone, oxycodone (Oxycontin, Percodan, Percocet), hydrocodone (Vicodin), fentanyl (Duragesic) and hydromorphone (Dilaudid). In an opioid overdose, the user becomes sedated and gradually loses the urge to breathe, leading to death from respiratory depression. Naloxone is an opioid receptor antagonist that can be used to reverse an opioid overdose within 1-2 minutes of administration. An untreated heroin overdose will result in death in 1-3 hours.

Although a comprehensive picture of the extent of opioid overdose in NYS does not yet exist, drug overdose is known to be a major cause of death among heroin users (Garfield and Drucker, 2001). Accidental fatal drug overdose continues to be a substantial cause of death. It has been one of the top ten causes of death in New York City (NYC) from 1993 to present (NYC Department of Health and Mental Hygiene, 2003). According to a study conducted by the New York Academy of Medicine, between 1990 and 1998 there were 5,506 accidental fatal overdoses in NYC involving opiates (Galea et al., 2003). These reflected 74% of all accidental overdose deaths (7,451) in NYC during that period.

NYS Department of Health (NYSDOH) hospital data show that, during 1998-2004, there were 3,408 hospital discharges reflecting admissions for which heroin-overdose was a factor. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) determined that the case rate for emergency department heroin admissions in NYC in 2002 was reported to be 123 per 100,000 population, which was more than three times the national rate of 36 per 100,000 (SAMHSA, March 2004). Between 1995 and 2002, heroin-related emergency department visits in Buffalo increased 125 percent (from 41 to 93 visits per 100,000 population with a 29 percent increase from 2001 to 2002 (from 72 visits) (SAMHSA, April 2004).

Most overdoses are not instantaneous and the majority of them are witnessed by others. Therefore, many overdose fatalities are preventable, especially if witnesses have had appropriate training and are prepared to respond in a safe and effective manner. Prevention measures include education on risk factors (such as polydrug use and recent abstinence), recognition of the overdose and an appropriate response. Response includes contacting emergency medical services (EMS) and providing resuscitation while awaiting the arrival of EMS. Resuscitation consists of rescue breathing, or if available, injectable naloxone which immediately reverses the effects of heroin overdose. Naloxone is an opioid antagonist with no abuse potential and no effect on a recipient who has not taken opioids. Provision of naloxone has been suggested for many years and is being offered in a variety of settings in jurisdictions outside of NYS. Complications of naloxone in the medical setting are rare. Naloxone is inexpensive ($1.00-$1.50) and there have been no cases in which it has developed a street value.

Opioid overdose prevention programs have proven effective in preventing unnecessary deaths abroad and elsewhere in the United States (US). In the US, opioid overdose prevention programs exist in New Mexico; Chicago, Illinois; Baltimore, Maryland; and San Francisco, California, for example, and programs are being planned elsewhere. A recently published evaluation of an opioid overdose prevention program in San Francisco showed that of the 20 heroin overdoses witnessed by trained program participants there were no deaths. (Seal et al., 2005). As of August 2005, the New Mexico Department of Health had trained and provided naloxone to a total of 1,168 individuals. There were over 191 reports of lives saved, of which 185 involved administration of naloxone. Almost all administrations of naloxone were accompanied by rescue breathing and 5 lives were saved with rescue breathing alone. (Fiuty, P., personal communication, November 3, 2005). The Chicago Recovery Alliance has reported training over 4,500 individuals, with 374 reported reversals using naloxone, as of November 3, 2005. There has been a 30% overall decline in overdose related deaths reported in Cook County, Illinois (Carlberg, S. Personal communication, November 3, 2005). The Baltimore City Health Department has reported 888 persons trained, 101 reported reversals and over 20 persons placed into drug treatment. A 17% decrease in overdose deaths was observed from 2001 to 2002 (Rucker, M., personal communication, November 3, 2005).

The potential exists to achieve similar outcomes in NYS through the establishment of opioid overdose prevention programs. Potential providers that may register voluntarily with NYSDOH to offer such programs include health and human service providers serving IDUs (such as NYSDOH-approved syringe exchange programs and other community-based organizations, health care practitioners (specifically physicians, physician assistants and nurse practitioners), local health departments, health care facilities licensed by NYSDOH under Article 28 of the NYS Public Health Law and drug treatment programs licensed by the NYS Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to the NYS Mental Hygiene Law).

The proposed rule, which is entirely within the legislative mandate of Section 3309 of the Public Health Law, is consistent with established models for opioid overdose prevention programs elsewhere. Common features of opioid overdose prevention programs operating elsewhere that have been incorporated into the proposed rule include: a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

The anticipated benefits under the proposed rule are: reduced incidence of fatal opioid overdoses, increased contact of IDUs with medical personnel, greater awareness of risk factors for overdose, increased knowledge of safer injection practices and an increased number of persons trained in rescue breathing. The creation of opioid overdose prevention programs will not lead to increased drug use. Naloxone is not addictive and does not cause a "high." It has no potential for abuse or street value.

Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Local Government Mandates:

This regulation does not impose any program, service, duty, or other responsibility on any county, city, town, village, school, fire district, or other special district except to the extent that such entities choose to provide opioid overdose prevention programs and, consequently, would be subject to the same requirements as all other providers.

Paperwork:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional recordkeeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

Duplication:

The proposed regulation does not duplicate any existing state or federal law or regulation regarding opioid overdose prevention.

Alternatives:

The proposed regulation does not exceed the specific requirements of the legislation. Because offering an opioid overdose prevention program is voluntary, the regulation was designed to encourage eligible individuals and organizations to provide opioid overdose prevention services allowed under law and regulation. The registration process will be simple and the reporting and financial impact of establishing a voluntary opioid overdose prevention program will be minimal. Any other alternatives would require a more complex and more costly approach for both the NYSDOH and volunteer operators of opioid overdose prevention programs.

Federal Standards:

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

Compliance Schedule:

Each individual or organization that chooses to establish an opioid overdose prevention program must submit a registration form to the Department. Information will be distributed to eligible parties to allow implementation on April 1, 2006. Registration information will be used to develop a listing of opioid overdose prevention programs holding certificates of approval issued by the Department. Registration forms from those seeking to establish opioid overdose prevention programs will be accepted

on a continuous basis, with review and renewal of certificates of approval taking place at two-year intervals.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will have no impact on small businesses unless such businesses voluntarily decide to operate an Opioid Overdose Prevention Program. The types of businesses that could be affected include hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local governments (health departments). In New York State there are 7 hospitals, 245 clinics, 1,164 drug treatment programs, an unknown number of community-based organizations and 36 county health departments that are considered small businesses.

Compliance Requirements:

Under the proposed rule, hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments that elect to establish opioid overdose prevention programs will report aggregate data on forms prescribed by the NYSDOH. Providers must have a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

Programs must also keep records including but not limited to documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Aside from simple reporting of certain easy-to-collect data, no new requirements are mandated.

Professional Services:

No additional professional services will be required since providers and others will be able to utilize existing staff.

Compliance Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Economic and Technological Feasibility:

Most health care facilities, health care practitioners, drug treatment programs, community-based organizations and local health departments that are eligible to offer opioid overdose prevention programs have the capacity and expertise to carry out the necessary activities. Small businesses that opt to voluntarily offer opioid overdose prevention programs will be provided with necessary forms and instructions to register and comply with reporting requirements. In large part, these forms and instructions are being/will be developed with specific input from regulated parties and NYSDOH staff are being made available to provide instructions and technical assistance.

Minimizing Adverse Impact:

There are no alternatives to the proposed recordkeeping and reporting requirements due to the need for the NYSDOH to assure that registered providers holding certificates of approval to operate opioid overdose prevention programs conduct activities in a safe and effective manner. Reporting requirements are those minimally necessary for the Department to coordinate oversight and provide information to the Governor and the Legislature as required by Section 3309(4) of the Public Health Law.

Small Business and Local Government Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Small businesses (hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments) will have opportunities to review and comment on the proposed regulations. The NYSDOH has already begun to have conversations with providers interested in offering this service that are small businesses and local health departments and has consulted with representatives of opioid overdose prevention programs already operating in other states that are offered by small businesses and local health departments.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

Rural Area Flexibility Analysis

Types and Estimated Number of 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, includes towns with population densities of 150 persons or less per square mile. There are 44 counties in NYS with a population less than 200,000. Nine counties have certain townships with population densities of 150 persons or less per square mile. The proposed rule will have no impact on hospitals, clinics, health care practitioners, drug treatment programs and local governments in these rural areas, unless such providers voluntarily decide to operate opioid overdose prevention programs.

Hospital, clinic, health care practitioner, drug treatment program, community-based organization and local health department participation in making opioid overdose prevention programs available will be on a voluntary basis and potential providers will make individual decisions regarding participation. Potential providers are most likely to be located in urban or suburban, not rural, areas. For example, NYSDOH SPARCS data show 3,408 hospital discharges for admissions related to opioid overdose during 1998-2002. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions. Similarly, OASAS county-level estimates of treatment need show that the greatest need for opioid overdose prevention programs is in urban or suburban areas (OASAS, 2004 County Resource Book, Volume 1. Service Need and Utilization Data, Table 2).

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional recordkeeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Minimizing Adverse Impact:

The program is designed to minimize impact on those who will participate: participation is voluntary, the registration process will be simple, no fee will be charged, and recordkeeping requirements will be minimal.

The new opioid overdose prevention programs will build upon already-existing programs and services for IDUs - - through hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. The NYSDOH will maintain and make available a list of registered programs holding certificates of approval.

Rural Area Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments in rural areas will have opportunities to review and comment on the proposed regulations. The NYSDOH has already consulted with representatives of opioid overdose prevention programs already operating in rural areas of other states.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

Job Impact Statement

A Job Impact Statement is not required. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities based upon its nature and purpose.

Division of Housing and Community Renewal

NOTICE OF ADOPTION

Assessment of Real Property Used for Residential Rental Purposes

I.D. No. HCR-32-06-00003-A
Filing No. 1234
Filing date: Oct. 17, 2006
Effective date: Nov. 1, 2006

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

Action taken: Addition of Part 2656 to Title 9 NYCRR.

Statutory authority: Public Housing Law, section 14(a); and Real Property Tax Law, section 581-a

Subject: Assessment of real property used for residential rental purposes.

Purpose: To set forth regulations governing the assessment of real property used for residential rental purposes.

Text or summary was published in the notice of proposed rule making, I.D. No. HCR-32-06-00003-P, Issue of August 9, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Brian P. McCartney, Division of Housing and Community Renewal, 38-40 State St., Albany, NY 12207, (518) 473-5439, e-mail: bmccartney@dhcr.state.ny.us

Assessment of Public Comment

Three written comments were received during the comment period, one from the Director of the New York State Association for Affordable Housing and the remaining two from affordable housing developers. The comments were unanimous in their support and praise for the proposed regulations. No alternatives were suggested.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Healthy New York Program

I.D. No. INS-44-06-00004-P

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

Proposed action: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2, 362-5.3 and 362-5.5 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326, and 4327

Subject: Amendments to the Healthy New York Program to reduce cost, lessen complexity, and add a second benefit package.

Purpose: To reduce Healthy New York premium rates to enable more uninsured businesses and individuals to afford health insurance; and generally improve the Healthy New York Program.

Substance of proposed rule (Full text is posted at the following State website: www.ins.state.ny.us): The Second Amendment to Regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection also provides that once enrolled in the program, any change in the selection of a benefit package may occur at the time of annual recertification or at anytime the premium rate changes. Notice of this option must be included with any notice of rate change.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions through January 31, 2005 as those that do not exceed an average of $50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of $75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester

or an average of $50 per employee per month for employers in all other counties. De-minimus contributions shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund to include claims paid on behalf of a covered member in excess of $5,000 and less than $75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the." This corrects a technical error.

Subsection 362-5.3(e) is amended to change the loss ratio standard for Healthy New York contracts from small group to individual.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

Subsection 362-5.5(a) is amended to require that reports pertaining to stop loss reimbursement or loss ratio be certified by an officer of the company that such report is accurate and complete.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Data, views or arguments may be submitted to: Lara M. Quintiliani, Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, e-mail: lquintil@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the premium rate changes. Any notice of rate change must include notice of this option to change benefit packages. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the re-certification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. Through January 31, 2005, de-minimus contributions are those that do not exceed an average of $50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of $75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of $50 per employee per month for employers in all other counties. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New

York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York. This amendment changes the loss ratio standard for Healthy New York contracts from small group to individual and requires that insurer's reports pertaining to stop loss reimbursement or loss ratio be certified.

4. Costs: The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees. This amendment requires that insurers certify all reports pertaining to stop loss reimbursement and loss ratio but does not require any additional reports.

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

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. Increase of the loss ratio standard for Healthy New York contracts will increase the percentage of premium dollar that is received in claims by members. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. Federal standards: The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. Compliance schedule: This rule making will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. Compliance requirements: Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. Professional services: The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. Compliance costs: The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable

to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. This amendment does require that a notice of rate change include a notice of the right to change benefit packages. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule making process.

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Environmental Remediation Insurance Tax Credit

I.D. No. INS-44-06-00009-P

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

Proposed action: Addition of Part 75 (Regulation 181) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2105, 2118 and 3447; and Tax Law, section 23

Subject: Standards for insurance which qualifies for the environmental remediation insurance tax credit.

Purpose: To set forth requirements relating to policies of insurance which qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law. The insurance tax credit applies to taxable years beginning on or after April 1, 2005.

Text of proposed rule: *Section 75.0 Introduction.*

Section 3447 of the Insurance Law provides that the superintendent is authorized to promulgate regulations relating to the certification of policies of insurance that qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law. This Part provides guidance for insurers as to the minimum standards for environmental remediation insurance coverages that will enable an insurer to certify that the coverages qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law. This Part also provides the requirements for disclosure of the premiums paid for the coverages under section 3447(b) of the Insurance Law to enable the insured to obtain the appropriate tax credit.

Section 75.1 Required coverages.

In accordance with the provisions of section 3447(b) of the Insurance Law, in order to qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law, the insurance must be written pursuant to the provisions of paragraph (13) or (14) of subsection (a) of section 1113 of the Insurance Law and must contain any of the following coverages or substantially similar coverages or combination of coverages:

(a) coverage for the costs of on-site clean-up of pre-existing pollution conditions from the insured property that are outside the scope of the remedial work plan pursuant to section 27-1411 of the Environmental Conservation Law for such insured property, hereinafter called coverage 1;

(b) coverage for third-party claims for on-site bodily injury and property damage resulting from pre-existing pollution conditions outside the scope of the remedial work plan for the insured property, hereinafter called coverage 2;

(c) coverage that caps clean-up costs relating to the remedial work plan, hereinafter called coverage 3; and

(d) coverage for the costs of state re-openers pursuant to section 27-1421 of the Environmental Conservation Law or modifications to the remedial work plan to fill any gap in any liability limitation provided pursuant to section 27-1421 of the Environmental Conservation Law for environmental conditions, hereinafter called coverage 4.

Section 75.2 Disclosure of the portion of the premium paid for the coverage under Section 3447(b) of the Insurance Law.

Section 3447(a) of the Insurance Law provides that the tax credit shall only apply against a portion of the premium paid for coverage provided under section 3447(b). The insurer shall disclose the portion of the premium charged for the coverages provided under subsections (a) through (d) of section 75.1 of this Part, as separately enumerated items on the policy declarations page. Premiums charged on the policy for other coverages provided shall be shown separately on the declarations page.

Section 75.3 Insurer certification form.

(a) An insurer shall complete the Brownfield Tax Credit Certification Form. All fields must be completed and provided to the developer/insured upon request for use in submitting the information to the Department of Taxation and Finance in order to qualify for the tax credit for the insurance coverages provided pursuant to section 3447 of the Insurance Law. Such Brownfield Tax Credit Certification Form must be in the format contained in subsection (c) of this section.

(b) Where a policy is issued on an excess line basis, the insurer shall cause the delivery of the completed form to the insured with a copy to the excess line broker.

(c) The format for the Brownfield Tax Credit Certification Form is as follows:

Brownfield Tax Credit Certification Form
CERTIFICATION FORM FOR THE ENVIRONMENTAL REMEDIATION INSURANCE TAX CREDIT
Coverages required for the environmental remediation insurance tax credit

In accordance with the provisions of section 3447(b) of the Insurance Law, in order to qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law, the insurance must be written pursuant to the provisions of paragraph (13) or (14) of subsection (a) of section 1113 of the Insurance Law and must contain any of the following coverages or substantially similar coverages or combination of coverages:

Coverage 1 - coverage for the costs of on-site clean-up of pre-existing pollution conditions from the insured property that are outside the scope of the remedial work plan pursuant to section 27-1411 of the Environmental Conservation Law for such insured property.

Coverage 2 - coverage for third-party claims for on-site bodily injury and property damage resulting from pre-existing pollution conditions outside the scope of the remedial work plan for the insured property.

Coverage 3 - coverage that caps clean-up costs relating to the remedial work plan.

Coverage 4 - coverage for the costs of state re-openers pursuant to section 27-1421 of the Environmental Conservation Law or modifications to the remedial work plan to fill any gap in any liability limitation provided pursuant to section 27-1421 of the Environmental Conservation Law for environmental conditions.

The Brownfield Property Information required on Certification Part 1 of the Brownfield Tax Credit Certification Form should be the same as the information on the Certificate of Completion for the site.

See Appendix in the back of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Data, views or arguments may be submitted to: Buffy Cheung, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: bcheung@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Sections 20 1, 301, 2105, 2118 and 3447 of the Insurance Law and Section 23 of the Tax Law.

Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations.

Sections 2105 and 2118 relate to the licensing and duties of the excess line brokers.

Section 3447 of the Insurance Law was added by Chapter 1 of the Laws of 2003 and amended by Chapter 577 of the Laws of 2004. Section 3447 provides that the Superintendent is authorized to promulgate regulations relating to the certification of policies of insurance that qualify for the environmental remediation insurance tax credit provided for under Section 23 of the Tax Law.

2. Legislative objectives: Section 3447 gives the Superintendent the authority to prescribe, by regulation, the conditions relating to the certification of policies of insurance that qualify for the environmental remediation tax credit provided for under Section 23 of the Tax Law.

3. Needs and benefits: Section 3447 requires that insurance policies written pursuant to paragraphs 13 and 14 of Section 1113(a) of the Insurance Law include one or more of the four coverages specified in Section 3447(b) in order for the policies to qualify for the environmental remediation insurance tax credit provided for under Section 23 of the Tax Law. The developer/insured may receive a tax credit of the lesser of $30,000 or 50% of the premiums paid which shall only apply against the portion of the premiums paid for one or more coverages specified in Section 3447(b) of the Insurance Law. The law authorizes the Superintendent to promulgate a regulation relating to the certification of policies of insurance that qualify for the environmental remediation tax credit provided for under Section 23 of the Tax Law. The rule is needed to provide guidance to the insureds and the insurer in order to facilitate meeting the eligibility requirements for the tax credit. The rule provides the minimum requirements for such certification and includes a certification form that must be completed by the insurer and utilized by the insured to demonstrate compliance with these requirements. The rule states the required coverages specified in Section 3447 of the Insurance Law that qualify for the tax credit. These coverages are: on-site clean-up coverage, third party claims for on-site bodily injury and property damage coverage, coverage that caps clean-up costs, and state-reopeners costs coverage.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. Compliance costs of implementing this regulation should be minimal for regulated parties, since, the only new requirement is for the insurer to complete the certification form and provide it to the insured. The rule will provide savings to the developer/insured in the form of the tax credit.

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

6. Paperwork: There is a certification form requirement in order to qualify for the remediation insurance tax credit. Upon the request of the developer/insured, the insurer is required to complete the Brownfield Tax Credit Certification Form. The insurer will complete the form and have it delivered to the insured for their tax records. Where the policy is issued on an excess line basis, a copy of the completed form will be provided to the excess line broker.

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

8. Alternatives: Section 3447 provides guidance for insurers on the minimum standards for an environmental remediation policy which will enable an insurer to certify that the coverages qualify for the environmental remediation tax credit. An insured who purchases a qualified environmental remediation policy and meets other requirements is eligible for the tax credit. Without the Department's action in promulgating this rule, consumers might purchase qualified policies and not receive the appropriate tax credit to which they are entitled.

The Department had extensive policy dialogue with 13 other state agencies as part of an inter-agency task force. The rule was shown to the NYS Department of Taxes and Finance, the Department of Environmental Conservation, and a representative of the Excess Line Association of New York (ELANY) for their input. When developing this rule, the Department reached out to insurers that provide this coverage.

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

10. Compliance schedule: It is expected that regulated parties will be able to comply with this Part within 120 days.

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 eligible excess line insurers through New York licensed excess line brokers, 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 the Annual Statements of excess line insurers and believes that none of them would fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none which are independently owned and have under 100 employees.

The Insurance Department finds that this rule will 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.

Rural Area Flexibility Analysis

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State.

Job Impact Statement

This rule should not have any adverse impact on jobs and employment opportunities in this State since it merely provides the standards for an environmental remediation insurance policy which will enable an insurer to certify that the coverages qualify for the environmental remediation insurance tax credit provided for under Section 23 of the Tax Law.

Public Service Commission

NOTICE OF ADOPTION

Water Company Assets and other Related Matters by Airmont Construction Corp. and the Town of Goshen

I.D. No. PSC-30-06-00010-A
Filing date: Oct. 13, 2006
Effective date: Oct. 13, 2006

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

Action taken: The commission, on Sept. 20, 2006, adopted an order approving the transfer of the water supply assets of Airmont Construction Corporation to the Town of Goshen, Orange County.

Statutory authority: Public Service Law, sections 2, 5, 89-b and 89-h

Subject: Transfer of water company assets.

Purpose: To approve the transfer of the water company assets of Airmont Construction Corp. to the Town of Goshen.

Substance of final rule: The Commissioner adopted an order approving the transfer of all of the water plant assets owned by Airmont Construction Corporation to the Town of Goshen, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-W-0709SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Frontier Communications of America, Inc.

I.D. No. PSC-44-06-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Frontier Communications of America, Inc. for approval of an interconnection agreement executed on July 21, 2006.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Frontier Communications of America, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Frontier Communications of America, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 14, 2006, or as extended.

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. Brilling, 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.
(06-C-1204SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Windstream New York, Inc. and Pac-West Telecomm, Inc.

I.D. No. PSC-44-06-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Windstream New York, Inc. and Pac-West Telecomm, Inc. for approval of an interconnection agreement executed on Sept. 19, 2006.

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

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

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

Substance of proposed rule: Windstream New York, Inc. and Pac-West Telecomm, Inc. have reached a negotiated agreement whereby Windsteram New York, Inc. and Pac-West Telecomm, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the terms of an underlying agreement.

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. Brilling, 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.
(06-C-1205SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Ogden Telephone Company and Frontier Communications of America, Inc.

I.D. No. PSC-44-06-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Ogden Telephone Company and Frontier Communications of America, Inc. for approval of an interconnection agreement executed on Aug. 22, 2006.

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

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

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

Substance of proposed rule: Ogden Telephone Company and Froniter Communications of America, Inc. have reached a negotiated agreement whereby Ogden Telephone Company and Frontier Communications of

America, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until August 22, 2007, or as extended.

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. Brilling, 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.

(06-C-1177SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electric Power Outages in Northwest Queens by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-44-06-00014-P

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

Proposed action: The commission is considering information and action plans presented by Consolidated Edison Company of New York, Inc. (Con Edison) in its filings made on Sept. 25, 2006 (Part 105.4(c) Emergency Preparedness Review, Restoration and Communications) and Oct. 12, 2006 (Comprehensive Report on the Power Outages in Northwest Queens in July 2006). The commission may direct the company to implement the action plans provided in the Oct. 12 filing and/or other action items that may be developed and/or identified as a result of the review of the Sept. 25 and Oct. 12 filings, as well as information gathered during this proceeding.

Statutory authority: Public Service Law, sections 2, 4, 5, 65 and 66

Subject: Consolidated Edison Company of New York, Inc.'s Sept. 25 and Oct. 12 filings concerning the electric power outages in Northwest Queens in July 2006.

Purpose: To implement the action plans provided in the Oct. 12 filing and other action items that may be developed and/or identified as a result of the review of the Sept. 25 and Oct. 12 filings, as well as information gathered during this proceeding.

Substance of proposed rule: The Commission is considering information and action plans presented by Consolidated Edison Company of New York, Inc. (Con Edison) in its filings made on September 25, 2006 (Part 105.4(c) Emergency Preparedness Review, Restoration and Communications) and October 12, 2006 (Comprehensive Report on the Power Outages in Northwest Queens in July 2006). The Commission may direct the Company to implement the action plans provided in the October 12 filing and/or other action items that may be developed and/or identified as a result of the review of the September 25 and October 12 filings, as well as information gathered during this proceeding. Among the issues to be considered are Con Edison's communications with customers, residents, State and local governmental entities located in the area affected by the electric power outages, the Company's maintenance and operation of the Long Island City (LIC) primary and secondary electric distribution network, and capital investment in the LIC network.

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. Brilling, 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.

(06-E-0894SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Herbert E. Hirschfeld, P.E. on Behalf of Bay Park One

I.D. No. PSC-44-06-00015-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Bay Park One, to submeter electricity at 2750-2770 W. 33rd St. and 3325 Neptune St., Brooklyn, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Herbert E. Hirschfeld, P.E., on behalf of Bay Park One to submeter electricity at 2750-2770 W. 33rd St. and 3325 Neptune St., Brooklyn, 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 Herbert E. Hirschfeld, P.E., on behalf of Bay Park One, to submeter electricity at 2750-2770 West 33rd Street and 3325 Neptune Street, Brooklyn, 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. Brilling, 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.

(06-E-1176SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Herbert E. Hirschfeld, P.E. on Behalf of Surf 21

I.D. No. PSC-44-06-00016-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Surf 21, to submeter electricity at 2930 W. 21st St. and 2940 W. 21st St., Brooklyn, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Herbert E. Hirschfeld, P.E., on behalf of Surf 21, to submeter electricity at 2930 W. 21st St. and 2940 W. 21st St., Brooklyn, 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 Herbert E. Hirschfeld, P.E., on behalf of Surf 21, to submeter electricity at 2930 West 21st Street and 2940 West 21st Street, Brooklyn, 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. Brilling, 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.

(06-E-1178SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Herbert E. Hirschfeld, P.E.

I.D. No. PSC-44-06-00017-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Herbert E. Hirschfeld, P.E., to submeter electricity at Riverview, 1600 Sedgwick Ave., Bronx, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Herbert E. Hirschfeld, P.E., to submeter electricity at Riverview, 1600 Sedgwick Ave., Bronx, 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 Herbert E. Hirschfeld, P.E., to submeter electricity at Riverview, 1600 Sedgwick Avenue, Bronx, 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. Brilling, 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.

(06-E-1179SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Herbert E. Hirschfeld, P.E. on Behalf of Bay Park Two

I.D. No. PSC-44-06-00018-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Bay Park Two, to submeter electricity at 3395, 3405 and 3415 Neptune Ave., Brooklyn, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Herbert E. Hirschfeld, P.E., on behalf of Bay Park Two, to submeter electricity at 3395, 3405 and 3415 Neptune Ave., Brooklyn, 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 Herbert E. Hirschfeld, P.E., on behalf of Bay Park Two, to submeter electricity at 3395, 3405 and 3415 Neptune Avenue, Brooklyn, 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. Brilling, 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.

(06-E-1180SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Bay City Metering Company, Inc.

I.D. No. PSC-44-06-00019-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bay City Metering Company, Inc., on behalf of 201 E. 17th Street Tenants Corporation, to submeter electricity at 201 E. 17th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Bay City Metering Company, Inc., on behalf of 201 E. 17th Street Tenants Corporation, to submeter electricity at 201 E. 17th 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 Bay City Metering Company, Inc., on behalf of 201 East 17th Street Tenants Corporation, to submeter electricity at 201 East 17th 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. Brilling, 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.

(06-E-1184SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of New Types of Gas Meters and Accessories

I.D. No. PSC-44-06-00020-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a petition filed by New York State Electric and Gas Corporation, for the approval of Orion Intergral Automatic Meter Reading Transmitter for Gas Meters, and data collection devices manufactured by Badger Meter Inc.

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

Subject: Approval of new types of gas meters and accessories.

Purpose: To permit gas utilities in New York State to use Badger Meter Inc., Orion Integral Transmitters.

Substance of proposed rule: The Commission will consider a request from New York State Electric and Gas Corporation for the approval to use the Orion Integral Transmitter for gas meters. The Orion Integral Transmitter provides Automatic Meter Reading capability to various residential and commercial gas meters, and data collection devices. According to NYSEG the Orion Integral Transmitter uses 'bubble-up' technology eliminating the need for FCC licensing, and is designed for indoor and outdoor applications. The cost of the Orion Integral Transmitter for gas meters will range from $53.00 to $60.00 depending on the number of units purchased.

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. Brilling, 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.

(06-G-1077SA2)

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Traffic and Parking Regulations of the State University of New York College at Cortland

I.D. No. SUN-44-06-00003-P

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

Proposed action: Amendment of sections 585.3 and 585.14 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Proposed amendments to the traffic and parking regulations of the State University of New York College at Cortland.

Purpose: To increase the allowable amount for fines for violations of parking and traffic regulations and bring the traffic and parking regulations into conformity with L. 2005, ch. 699, by authorizing the exemption of veterans attending the State University of New York College at Cortland from parking and registration fees.

Text of proposed rule: Section 585.3 is amended by adding a new subdivision (f) to read as follows:

(f) Veterans. Any veteran, as defined in section 360 of the New York State Education Law, in attendance as a student at the college shall be exempt from registration and parking fees upon submission by the veteran of a written request for exemption together with written certification by the veteran that such veteran was honorably discharged or released under honorable circumstances from such service.

Subdivision (c) of section 585.14 is amended to read as follows:

(c) Fines and penalties for violations (see, generally, section 585.13 of this Part).

(1) Possessory violations (section 585.13[a] of this Part): [$20] *$25* fine.

(2) Parking violations (section 585.13[b] of this Part): [$20] *$25* fine, *except that a $100 fine shall be imposed for handicap parking violations.*

(3) Moving violations (section 585.13[c] of this Part).

(i) Minor moving violations (section 585.13[c][1] of this Part): [$20] *$25* fine.

(ii) Major moving violations (section 585.13[c][2] of this Part): sanction will be imposed by the City Court of Cortland, New York.

Text of proposed rule and any required statements and analyses may be obtained from: Carolyn J. Pasley, Associate Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: Carolyn.Pasley@suny.edu

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

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

Regulatory Impact Statement

1. Statutory authority: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure will bring the parking and traffic regulations applicable to the State University of New York College at Cortland into compliance with Chapter 699 of the Laws of 2005 by authorizing SUNY/Cortland to exempt veterans attending the College from applicable parking and registration fees and also will increase allowable fines for violation of the parking and traffic regulations.

3. Needs and benefits: New York State Education Law was amended to authorize exemption of veterans from State University parking and registration fees. This amendment is needed to conform the SUNY/Cortland parking and traffic regulations to the change in law. Additionally, the increase to the fines for violation of traffic and parking requirements proposed here will allow SUNY/Cortland to strengthen incentives to avoid violation of campus traffic and parking rules.

4. Costs: Veterans enrolled at State-operated campuses of the State University will have exemptions from parking and registration fees and thus incur savings. Violators of traffic and parking rules will experience higher fines.

5. Local government mandates: None.

6. Paperwork: Veterans will have to submit a written request for exemption and certify that they were honorably discharged.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY/Cortland will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Cortland.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Cortland.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Cortland.

Department of Taxation and Finance

NOTICE OF ADOPTION

Taxation of Corporate Partners

I.D. No. TAF-34-06-00005-A
Filing No. 1235
Filing date: Oct. 17, 2006
Effective date: Nov. 1, 2006 for taxable years beginning on or after Jan. 1, 2007.

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

Action taken: Amendment of section 1-2.6 and Parts 3 and 4 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, and 1096(a)

Subject: Taxation of corporate partners.

Purpose: To provide guidance with regard to the computation of the business corporation franchise tax imposed by art. 9-A of the Tax Law for corporations that are partners in partnerships or that are members of limited liability companies that are treated as partnerships under art. 9-A.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-34-06-00005-P, Issue of August 23, 2006.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Assessment of Public Comment
The agency received no public comment.

Department of Transportation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Divisible Load Overweight Permit Insurance Compliance Requirements

I.D. No. TRN-44-06-00002-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 154-2.3 and 154-2.10; add section 154-2.7; and repeal section 154-2.8(b) of Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 385.15(a)

Subject: Divisible load overweight permit insurance compliance requirements.

Purpose: To set forth in regulation existing insurance requirements for issuance of divisible load overweight permits and to streamline processes for compliance.

Text of proposed rule: Section 1. Paragraph 3 of Subdivision f of Section 154-2.3 of Subpart 154-2 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(3) applicant must submit a completed Lottery Overweight Divisible [Loan] *Load* Permit Application (PERM 92), a check for the appropriate permit fee payable to the New York State Department of Transportation, a copy of current registration and manufacturers incomplete vehicle data sheet showing VIN number, a Gross Vehicle Weight Rating and Axle Weight Rating (a legible photograph, of the vehicle door data plate may be substituted for the manufacturers rating showing the above information)[. If selected, the applicant will be required to supply a certificate of insurance (PERM 17) before permit is issued]; and

§ 2. Subpart 154-2 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new Section 154-2.7 to read as follows:

§ 154-2.7 Financial responsibility.

In order to protect the State of New York, the various political subdivisions thereof, and the public, every holder of a divisible load permit shall meet the insurance requirements described in this section.

(a) Liability Insurance Coverage. Every holder of a divisible load permit shall procure and maintain a policy of liability insurance coverage from a company duly authorized to transact business in this state. Such insurance policy shall provide for liability arising from the ownership, operation, maintenance, or use of each vehicle for which a divisible load permit is granted and shall provide for at least the following liability coverage:

(1) for bodily injury to or death of one or more persons in any one accident, $750,000 and for injury to or destruction of property in any one accident, $250,000; or

(2) a combined single limit for any one accident, $1,000,000.

(b) Certification. Each applicant for a divisible load permit shall certify to the Department the following:

(1) that the applicant has obtained insurance coverage with the minimum coverage specified in this section;

(2) that the applicant will not operate or allow to be operated any permitted vehicle unless the required insurance covering such vehicle is in effect;

(3) that the operation of a vehicle without the insurance required by this section being in effect constitutes grounds for the revocation of the permit as well as other applicable civil and criminal penalties; and

(4) that upon request such applicant will provide evidence issued by or on behalf of an insurance company duly authorized to transact business in this state that an insurance policy meeting the requirements of this subpart is or has been in effect for all such time as the permit has been granted.

The Department shall not issue, amend or renew a divisible load permit to any applicant who has not provided this certification to the Department.

(c) Proof of Insurance. The commissioner may require from each applicant, prior to issuing a divisible load permit, a certificate of insurance, as that term is defined in Section 311 of the Vehicle and Traffic Law, showing that there is a liability insurance policy in effect meeting the minimum requirements specified in this section.

(d) Permit Revocation. The commissioner may revoke any divisible load permit when an insurance policy meeting the requirements of this section has been cancelled without corresponding evidence that a replacement policy also meeting the requirements of this section has been issued.

(e) Audit. The commissioner may investigate or audit any holder of a divisible load permit with respect to compliance with the provisions of this section. Failure of a permit holder to cooperate in any such investigation or failure to provide within a reasonable time such records as the commissioner may reasonably require to investigate the permit holder's compliance with the provisions of this section shall constitute grounds for the suspension or revocation of the divisible load permit.

(f) Municipalities. A self-insured municipality may furnish, in lieu of the insurance certificate, a self-insurance indemnification agreement in a form prescribed by the Department of Transportation.

(g) Waiver. The commissioner may waive any of the provisions contained in this section when special conditions warrant.

§ 3. Subdivision (b) of Section 154-2.8 of Subpart 154-2 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed.

§ 4. Subdivision (h) of Section 154-2.10 of Subpart 154-2 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York, as added on February 23, 1994, is amended to read as follows:

(h) The registered owner, or designated agent, must complete and submit the requisite number of copies, together with the application[and certificate of insurance], the required permit fee, as well as any additional required supporting documentation such as letters of transfer, manufacturers specifications, proof of prior registration, active original permits (for transfers). Such information shall be mailed to the Department, or submitted in person at the address listed on the application.

Text of proposed rule and any required statements and analyses may be obtained from: David Rudinger, Department of Transportation, Re-

gistration and Permitting Bureau, 50 Wolf Rd., POD 53, Albany, NY 12232, (518) 485-2448, e-mail: drudinger@dot.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 Department of Transportation annually issues approximately 170,000 divisible load overweight permits and has over 5000 customers for these permits. Since April, 2006, the Department has been meeting with customers and with associations that represent the trucking industry as well as holding a number of Listening Forums in an attempt to identify problems with the existing permitting process for hauling permits.

One of the problems that has been identified through this outreach effort concerns the Department's existing insurance requirements for divisible load overweight permits. These requirements include the need for a permit applicant's insurance policy to name New York State and all its political subdivisions as additional named insured parties. In addition, Department regulations require that each permit applicant's insurance carrier file a Department of Transportation form—known as a Perm 17—with the Department before any permit will be issued. The Perm 17 form requirement, used only by the Department, is one of the major reasons why 11% of permit applications were rejected in 2005.

This rule making is intended to clarify Department requirements for liability coverage limits.

The proposed regulations are intended to accomplish the following:

1) Set forth existing motor vehicle insurance requirements—namely a motor vehicle insurance policy that, at a minimum, will provide liability coverage of $750,000 for bodily injury to or death of one or more persons in one accident and $250,000 for injury to or destruction of property in any one accident; or, alternatively, a motor vehicle insurance policy providing for a combined single of at least $1,000,000 liability coverage for any one accident.

2) Eliminate current requirements that the State of New York and all its municipal subdivisions and their officials, officers, and employees be named as additional insured parties under the required insurance policy. Correspondingly, eliminate the ability to satisfy divisible load overweight insurance requirements with a "protective liability insurance" policy. The only type of acceptable insurance policy will be a motor vehicle insurance policy.

3) Eliminate the Department's current PERM 17 filing requirement. Instead the Department will require each applicant for a divisible load overweight permit to sign a certification stating that the applicant has obtained the required insurance and will not operate a permitted vehicle without such insurance. Prior to issuing the permit, the Department may also require from each applicant a certificate of insurance. Such a certificate could be submitted directly by the applicant along with the rest of the application.

These procedural changes, which the proposed regulation will allow, should make it much easier for divisible load overweight permit applicants already insured to demonstrate compliance at the time of permit application and will enable the Department to more efficiently process and approve permit applications.

The Department has shared these proposed changes with the industry through recent meetings with industry groups, by a direct mailing of the proposal to all 5000 divisible load overweight permit customers and by publication on the Department of Transportation's Permit Office website: http://dot.state.ny.us/nypermits/perm-news.shtml

This proposal does not impose any new or additional burdens on the industry or on individual permit applicants. Instead, this proposal will expedite the process for applying for and receiving divisible load overweight permits. Based on comments received so far, the Department anticipates that the industry and individual permit applicants will support this proposal and that the Department will receive no substantive comments in opposition. Accordingly, the Department is treating this proposed change as a consensus rule making.

Job Impact Statement

A job impact statement is not submitted because the proposed revisions to 17 NYCRR Subpart 154-2 consist entirely of clarifications and streamlining of Department of Transportation policies and requirements relating to the issuance of Divisible Load Overweight Permits in order to ease compliance requirements. In turn, these revisions are expected to facilitate the Department's processing of divisible load overweight permit applications. These revisions impose no additional burdens are imposed on industry, and no impacts on jobs and employment opportunities are anticipated.