

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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Various Trees and Plants of the Prunus Species

I.D. No. AAM-17-08-00031-E

Filing No. 327

Filing date: April 8, 2008

Effective date: April 9, 2008

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

Action taken: Addition of Part 140 to Title 1 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity, above, are as follows:

This rule establishes a plum pox virus quarantine in New York State for purposes of helping prevent the further spread of this viral infection of stone fruit trees within the State.

The plum pox virus, Potyvirus, is a serious viral disease of stone fruit and ornamental nursery stock that affects many of the Prunus species. This

includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but seriously debilitates the productive life of the plants. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for plum pox. However, in 2006, the plum pox virus was detected in two locations in Niagara County near the Canadian border. As a result, on July 16, 2007, the Department adopted, on an emergency basis, a rule which immediately established a plum pox quarantine in that portion of Niagara County. The plum pox virus has since been detected in four (4) other locations in Niagara County as well as one location in Orleans County. This rule establishes the plum pox virus quarantine in Orleans County and contains the necessary extensions of that quarantine in Niagara County.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that failure to immediately establish a quarantine to regulate the intrastate movement of stone fruit could result in the unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the agricultural resources of the State, but could also result in a federal quarantine or exterior quarantines imposed by other states. Such quarantines would cause economic hardship for New York's stone fruit growers, since such quarantines may be broader than that which we propose and may vary in requirements and prohibitions from state to state. The consequent loss of business would harm industries which are important to New York State's economy and as such, would harm the general welfare. Accordingly, it appears that this rule should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Various trees and plants of the prunus species.

Purpose: To establish a plum pox virus quarantine in New York State for purposes of helping prevent further spread of this virus.

Text of emergency rule: PART 140. CONTROL OF THE PLUM POX VIRUS (POTYVIRUS DIDERON STRAIN)

Section 140.1 Definitions.

For the purpose of this Part, the following words, names and terms shall be construed, respectively, to mean:

(a) *Certificate* means a certificate issued or authorized to be issued by the Commissioner, certifying the eligibility of products for intrastate movement under the requirements of this Part.

(b) *Commissioner* means the Commissioner of Agriculture and Markets of the State of New York and any officer or employee of the New York State Department of Agriculture and Markets or the United States Department of Agriculture duly delegated pursuant to section 17 of the Agriculture and Markets Law.

(c) *Compliance agreement* means an agreement approved by the Commissioner and executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.

(d) *Infection* means the presence of plum pox virus.

(e) *Inspector* means an inspector of the New York State Department of Agriculture and Markets, or representatives of the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), when authorized to act in that capacity.

(f) *Limited permit* means a permit issued by the Commissioner for the planting of regulated articles in the nursery stock regulated area for the restricted movement of regulated articles from a regulated area to a specified destination for specified processing, handling or utilization.

(g) *Moved and movement* means shipped, offered for shipment to a common carrier received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved from the regulated area.

(h) *Nursery dealer* means any person, firm, partnership, association or corporation which or who is not a nursery grower or an original producer of nursery stock in the State and which or who buys, or acquires, or receives on consignment nursery stock for the purpose of reselling, transporting, or otherwise disposing of same.

(i) *Nursery grower* means the owner or operator of the grounds or premises, private or public, on or which nursery stock is propagated, grown or cultivated for the purpose of distribution or selling the same as a business. The term nursery grower shall not include persons engaged in the part-time production of plant products not sold in the regular channels of business.

(j) *Nursery stock* means all trees, shrubs, plants and vines and parts thereof.

(k) *Nursery stock regulated area* means any area so designated by this Part, which is within 11.5 kilometers of any location where plum pox virus has been detected within the preceding three years.

(l) *Plum pox virus* means the plum pox potyvirus Dideron strain, which is a pathogen affecting susceptible *Prunus* species.

(m) *Quarantined area* means the area designated as quarantined by this Part.

(n) *Regulated area* means an area designated as regulated pursuant to this Part due to the presence of plum pox virus in that area.

(o) *Regulated articles* means plant and plant materials, including trees, seedlings, root stock, budwood, branches, twigs and leaves of the following varieties of the *Prunus* species:

(1) Fruit-bearing and ornamental varieties of *Prunus americana* (American plum and wild plum); *Prunus armeniaca* (apricot); *Prunus cerasifera* (Myrobalan plum/cherry plum); *Prunus domestica* (European plum); *Prunus dulcis* (sweet almond); *Prunus peresica* var. *persica* (peach and flowering peach); *Prunus persica* var. *nucipersica* (nectarine); and *Prunus salicina* (Japanese plum).

(2) Ornamental varieties of *Prunus cerasifera* (purple leaf plum); *Prunus x cistena* (purple leaf sand cherry); *Prunus glandulosa* (flowering almond); *Prunus persica* (flowering peach and purple leaf peach); *Prunus pumila* (sand cherry); *Prunus spinosa* (black thorn and sloe); *Prunus serrulata* (Japanese flowering cherry and Kwanzan cherry); *Prunus tomentosa* (Nanking cherry and Hansen's bush cherry); and *Prunus triloba* (flowering plum).

(3) For the purposes of this Part, the following varieties of the *Prunus* species are not regulated articles: *Prunus avium*; *Prunus cerasus*; *Prunus Effuse*; *Prunus laurocerasus*; *Prunus mahaleb*; *Prunus padus*; *Prunus sargentii*; *Prunus serotina*; *Prunus serrula*; *Prunus subhirtella*; *Prunus yedoensis*; and *Prunus virginiana*.

(4) For the purposes of this Part, seeds and fruit that is free of leaves of all varieties of the *Prunus* species are not regulated articles.

(o) *State* means the State of New York.

Section 140.2 Quarantined area

(a) That area of Niagara County which is bordered on the north by Lake Ontario and bordered on the east by Hartland Road, which extends south to its intersection with Ditch Road; extends west on Ditch Road to its

intersection with Hosmer Road; extends south on Hosmer Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to its intersection with Orangeport Road; and extends south on Orangeport Road to its intersection with Slayton-Settlement Road; extends west on Slayton-Settlement Road to its intersection with Route 78 (Lockport-Olcott Road); extends south on Route 78 (Lockport-Olcott Road) to its intersection with Stone Road; extends northwest on Stone Road to its intersection with Sunset Drive; extends south on Sunset Drive to its intersection with Shunpike Road; extends west on Shunpike to its intersection with Route 93 (Townline Road); extends south on Route 93 (Townline Road) to its intersection with Route 270 (Campbell Boulevard); extends south on Route 270 (Campbell Boulevard) to its intersection with Beach Ridge Road; extends southwest on Beach Ridge Road to its intersection with Townline Road; extends south on Townline Road to its intersection with the Tonawanda Creek; following the Tonawanda Creek west to its entry into the Niagara River; following the Niagara River north to its entry into Lake Ontario.

(b) That area of Orleans County which is bordered on the north by Lake Ontario and bordered on the west by County Line Road; extends south on County Line Road to its intersection with Johnson Road; extends east on Johnson Road to its intersection with Salt Works Road; extends south on Salt Works Road to its intersection with the Orleans/Genesee County border; extends east along the Orleans/Genesee County border to its intersection with Route 98 (Quaker Hill Road); extends north on Route 98 (Quaker Hill Road) to its intersection with East Barre Road; extends east on East Barre Road to its intersection with Culver Road; extends north on Culver Road to its intersection with East Lee Road; extends east on East Lee Road to its intersection with Rich's Corners Road; extends north on Rich's Corners Road to its intersection with Route 31 (Telegraph Road) and Keitel Road; extends north on Keitel Road to its intersection with Zig Zag Road; extends north on Zig Zag Road to its intersection with Lattin Road; extends north on Lattin Road to its intersection with Route 104 (Ridge Road West); extends west on Route 104 (Ridge Road West) to its intersection with Sawyer Road; extends north on Sawyer Road to its intersection with Roosevelt Highway; extends west on Roosevelt Highway to its intersection with Oak Orchard Road; extends north on Oak Orchard Road to its intersection with Point Breeze Road; extends north on Point Breeze Road to its intersection with Lake Ontario.

Section 140.3 Regulated area

The following areas within the quarantined area are regulated areas:

(a) That area bordered on the east by Porter Center Road; bordered on the south by Balmer Road which terminates on Creek Road; bordered on the west by Creek Road, Blairville Road and the Robert Moses Parkway; and bordered on the north by Lake Ontario in the Town of Porter in the County of Niagara, State of New York.

(b) That area bordered on the north by Lake Ontario; bordered on the west by Maple Road; extends south on Maple Road to its intersection with Wilson-Burt Road; extends east on Wilson-Burt Road to its intersection with Beebe Road; extends south on Beebe Road to its intersection with Ide Road; extends east on Ide Road to its intersection with Route 78 (Lockport-Olcott Road); extends north on Route 78 (Lockport-Olcott Road) to its intersection with Lake Ontario, in the Towns of Burt, Newfane, and Wilson in the County of Niagara, State of New York.

(c) That area bordered on the east by Porter Center Road starting at its intersection with Route 104 (Ridge Road) and extending north-northeast on Porter Center Road to its intersection with Langdon Road; extends east on Langdon Road to its intersection with Dickersonville Road; extends north on Dickersonville Road to its intersection with Schoolhouse Road; extends east on Schoolhouse Road to its intersection with Ransomville Road; extends south on Ransomville Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to its intersection with Simmons Road; extends south on Simmons Road to its intersection with Albright Road; extends east on Albright Road to its intersection with Townline Road; extends south on Townline Road to its intersection with Lower Mountain Road; extends west on Lower Mountain Road to its intersection with Meyers Hill Road; extends south on Meyers Hill Road to its intersection with Upper Mountain Road; extends west on Upper Mountain Road to its intersection with Indian Hill Road; extends northeast on Indian Hill Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to its intersection with Porter Center Road, in the Town of Lewiston, in the County of Niagara, State of New York.

(d) That area bordered on the south by the Erie Canal at its intersection with Culvert Road extending north on Culvert Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to

its intersection with Kenyonville Road; extends south on Kenyonville Road to its intersection with Eagle Harbor- Knowlesville Road; extends east on Eagle Harbor- Knowlesville Road to its intersection with the Erie Canal; following west along the Erie Canal to its intersection with Culvert Road, in the Town of Ridgeway, in the County of Orleans, State of New York.

Section 140.4 Nursery stock regulated area

The nursery stock regulated area shall consist of the quarantined area set forth in section 140.2 of this Part, exclusive of the regulated areas set forth in section 140.3 of this Part.

Section 140.5 Conditions governing the propagation of regulated articles.

Regulated articles originating from or growing within the regulated area or the nursery stock regulated area shall not be used as a source of propagated material (either root stock, scion or seed).

Section 140.6 Conditions governing the intrastate movement of regulated articles

(a) Prohibited movement.

(1) The movement of any regulated article within the regulated area is prohibited.

(2) The intrastate movement of any regulated article from the regulated area to any point outside the regulated area is prohibited, except pursuant to a limited permit, authorizing such movement.

(3) The intrastate movement of any regulated article from any point outside the regulated area to the regulated area is prohibited, except pursuant to a limited permit, authorizing such movement.

(4) The intrastate movement of any article infected with or suspected of having been exposed to the plum pox virus is prohibited, except as provided in Section 140.12 of this Part.

(5) The handling of regulated articles by nursery dealers or nursery growers within the nursery stock regulated area is prohibited, except pursuant to a compliance agreement.

(6) The digging or moving of regulated articles by nursery dealers and nursery growers within the nursery stock regulated area is prohibited.

(7) The planting and over-wintering of regulated articles by nursery dealers and nursery growers within the nursery stock regulated area is prohibited.

(b) Regulated movement.

Regulated articles may be moved through the regulated area if the regulated articles originated outside the regulated area and:

(1) the point of origin of the regulated articles is on the waybill or bill of lading; and

(2) a certificate accompanies the regulated articles; and

(3) the vehicle moving the regulated articles does not stop within the regulated area except for refueling; and

(4) the vehicle moving the regulated articles during the period April 1 through November 30 is either an enclosed vehicle or a vehicle completely covered by canvas, plastic or closely woven cloth to prevent access by aphids or other vectors of plum pox virus.

Section 140.7 Records

Nursery dealers and nursery growers handling regulated articles within the nursery stock regulated area shall compile, maintain and make available for inspection, for a period of two years, records of inventory and sales of regulated articles on a form or forms prescribed by the Commissioner.

Section 140.8 Conditions governing the issuance of certificates and permits

(a) Certificates may be issued for the intrastate movement of regulated articles under one or more of the following conditions:

(1) when they have been tested and found apparently free from infection; or

(2) when they have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infection would be transmitted thereby, provided, that subsequent to certification, the regulated articles will be loaded, handled, and shipped under such protection and safeguards against reinfection as are required by the inspector.

(b) Limited permits may be issued for the movement of noncertified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into compliance agreements to maintain such sanitation safeguards against the establishment and spread of infection and to comply with such conditions as to the maintenance of identity, handling, processing, or subsequent movement of regulated products and the cleaning of cars, trucks and other vehicles used in the transportation of

such articles, as may be required by the inspector. Failure to comply with conditions of the agreement will result in cancellation of a limited permit.

(c) Certificates or limited permits issued under these regulations may be withdrawn or canceled by the Commissioner and further certification refused whenever in his or her judgment the further use of such certificates or limited permits may result in the spread of the plum pox virus.

Section 140.9 Inspection and disposition of shipments

Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate from the regulated area, which contains, or which the inspector has probable cause to believe may contain, regulated articles or other articles infected with the plum pox virus, may be examined by an inspector at any time or place. When regulated articles are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he or she deems necessary to eliminate the danger of the spread of the plum pox virus. If found to be infected, such articles or regulated articles shall be freed of infection without cost to the State except that for inspection and supervision.

Section 140.10 Assembly of regulated articles for inspection

(a) Persons intending to move intrastate any of the articles covered by these regulations shall make application for certification as far in advance as possible, and will be required to prepare and assemble articles at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments verified. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The New York State Department of Agriculture and Markets or the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS) shall not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

Section 140.11 Marking requirements

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate or limited permit, issued in compliance with these regulations: provided, that:

(a) for lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for car lot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and

(b) for movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of shipment.

Section 140.12 Shipments for experimental and scientific purposes

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the New York State Department of Agriculture and Markets. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the New York State Department of Agriculture and Markets showing compliance with such conditions.

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 July 6, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Robert J. Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-5608, e-mail: rick.arnold@agmkt.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

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

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

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

2. Legislative objectives:

The proposed rule establishing a quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the further spread within the State of a serious viral infection of plants, the plum pox virus (Potyvirus).

3. Needs and benefits:

This rule establishes a plum pox virus quarantine in New York State for purposes of helping prevent the further spread of this viral infection of plants within the State.

The plum pox virus, Potyvirus, is a serious viral disease of stone fruit trees that affects many of the *Prunus* species. This includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but debilitates the productive life of the trees. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. There is no known treatment or cure for this virus. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox virus by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for the plum pox virus. However, in 2006, the plum pox virus was detected in two locations in Niagara County near the Canadian border. As a result, on July 16, 2007, the Department adopted, on an emergency basis, a rule which immediately established a plum pox quarantine in that portion of Niagara County. The plum pox virus has since been detected in four (4) other locations in Niagara County as well as one location in Orleans County.

This rule establishes the plum pox virus quarantine in Orleans County and contains the necessary extensions of that quarantine in Niagara County. The amendments create two (2) separate and non-contiguous quarantined areas; one quarantined area is in Niagara County, and the other is in Orleans County.

Within the quarantined area in Niagara County, there are three (3) regulated areas and one nursery stock regulated area. The first regulated area extends 1.5 to 2 kilometers from one point where the plum pox virus was detected in 2006. The second regulated area extends 1.5 to 2 kilometers from the point where the plum pox virus was recently detected this year. The third regulated area extends 1.5 to 2 kilometers from each of the three (3) points where the plum pox virus was recently detected this year as well as from one point where the virus was detected in 2006. The nursery stock regulated area extends 11.5 kilometers from the regulated areas in Niagara County where the plum pox virus was detected.

Within the quarantined area in Orleans County, there is one regulated area and one nursery stock regulated area. The regulated area extends 1.5 to 2 kilometers from the point in Orleans County where the plum pox virus was recently detected. The nursery stock regulated area extends 11.5 kilometers from the regulated area in Orleans County where the plum pox virus was detected.

The amendments prohibit the movement of any article infected with or suspected of having been exposed to the plum pox virus, regardless of where the articles are located in the State. Otherwise, only the movement of regulated articles i.e., plants and trees of any *Prunus* species susceptible to plum pox virus, are restricted under the amendments, and the extent of those restrictions depends on whether the regulated articles are in the regulated areas or the nursery stock regulated areas.

In the regulated areas, the amendments prohibit the following: the movement of regulated articles within the regulated areas; the intrastate movement of regulated articles from the regulated areas to any point outside the regulated areas, except pursuant to a limited permit, authorizing such movement; and the intrastate movement of regulated articles from any point outside the regulated areas to the regulated areas, except pursuant to a limited permit, authorizing such movement.

The amendments also regulate the movement of regulated articles through the regulated areas. Under the amendments, regulated articles may be moved through the regulated areas if the regulated articles originate outside the regulated areas and the point of origin of the regulated articles is on the waybill or bill of lading; a certificate accompanies the regulated articles; the vehicle moving the regulated articles does not stop except for refueling; and the vehicle moving the regulated articles during the period April 1 through November 30 is either an enclosed vehicle or is completely covered by canvas, plastic or closely woven cloth.

In the nursery stock regulated areas, the amendments prohibit the following: the handling of regulated articles by nursery dealers or nursery growers, except pursuant to a compliance agreement; the digging or moving of regulated articles by nursery dealers and nursery growers; and the planting and over-wintering of regulated articles by nursery dealers and nursery growers.

Under the amendments, certificates may be issued when the regulated articles have been inspected and found to be free of infection or have been grown, produced, stored or handled in such a manner that, in the judgment of the inspector, no infection is present in the articles. Limited permits may be issued for the movement of noncertified articles to specified destinations for specified purposes. The amendments provide that persons shipping, transporting, or receiving such articles may be required to enter into written compliance agreements. These agreements would allow the shipment of articles without a state or federal inspection. They are entered into by the Department with persons who are determined to be capable of complying with the requirements necessary to insure that the plum pox virus is not spread. Under the amendments, certificates and limited permits may be withdrawn or canceled whenever an inspector determines that further use of such certificate or permit might result in the spread of infection.

The amendments are necessary, since although the virus has only been found in seven locations in Niagara County and Orleans County, the failure to immediately establish this quarantine could result in the unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the natural resources of New York, but could also result in the imposition on New York of a federal quarantine or quarantines by other states. Such quarantines would cause economic hardship for New York's nurseries and stone fruit growers, since such quarantines may be broader than this one. The consequent loss of business would harm industries which are important to New York's economy and as such, would harm the general welfare.

4. Costs:

(a) Costs to the State government:

Regulated articles in the regulated areas that are exposed to plum pox virus would be destroyed. Compensation for the regulated articles is predicated upon the age of the plants and trees. Compensation would range from \$4,368 to \$17,647 per acre, of which the USDA would pay 85% of the compensation. Accordingly, New York's 15% share of the compensation would be \$655 to \$2,647 per acre, provided the owners of the regulated articles in question submit verified claims to the Department in accordance with section 165 of the Agriculture and Markets Law, and provided further that damages are awarded based on those claims.

Nursery dealers and nursery growers would also be eligible to receive compensation for regulated articles planted in the regulated areas and nursery stock regulated areas that would otherwise be prohibited from sale. New York would pay up to \$1,000 per acre in costs to remove such regulated articles.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles planted in the regulated areas and nursery stock regulated areas.

(d) Costs to the regulatory agency:

It is anticipated that regulatory oversight and enforcement of the quarantine would require the hiring of two inspectors at an annual cost to the Department of \$150,900. This cost includes salary, fringe benefits, travel costs, computer hardware and support and cell phones for the persons hired.

5. Local government mandate:

None.

6. Paperwork:

Nursery dealers and nursery growers handling regulated articles in the nursery stock regulated areas would require a compliance agreement with the Department. They may also require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement of these regulated articles.

7. Duplication:

None.

8. Alternatives:

None.

The failure of the State to establish a quarantine could result in the establishment of quarantines by the federal government or other states. It could also place the State's own natural resources at risk from the further spread of plum pox virus which could result from the unrestricted movement of regulated articles in the regulated areas. In light of these factors, there does not appear to be any viable alternative to the establishment of the quarantine proposed in this rulemaking.

9. Federal standards:

Sections 301.74 through 301.74-5 of Title 7 of the Code of Federal Regulations (CFR) restricts the interstate movement of regulated articles susceptible to the plum pox virus. This rule does not exceed any minimum standards for the same or similar subject areas, since it restricts the intrastate, rather than interstate, movement of regulated articles by establishing a plum pox virus quarantine in New York State.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business.

The rule establishes a plum pox virus quarantine in New York State. It is estimated that there are 312 stone fruit growers and 4,049 nursery growers and nursery dealers throughout New York State. Of these, there are approximately 35 stone fruit growers and 50 nursery growers or nursery dealers in the nursery stock regulated areas, and 29 stone fruit growers in the regulated areas. Most of these entities are small businesses.

Although it is not anticipated that local governments would be involved in the handling or movement of regulated articles within the quarantined areas, in the event that they do, they would be subject to the same requirements and restrictions as are other regulated parties.

2. Compliance requirements.

All regulated parties in the nursery stock regulated areas, which includes approximately 35 stone fruit growers and 50 nursery growers or nursery dealers, would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in the nursery stock regulated areas would be required to enter into a compliance agreement.

The amendments would prohibit regulated parties in the nursery stock regulated areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties would be required to maintain sales records of regulated articles for a period of three years.

All regulated parties in the regulated areas, which include approximately 29 stone fruit growers, would be prohibited from moving regulated articles within the regulated areas. Regulated parties would, however, be able to move regulated articles to and from the regulated areas pursuant to a limited permit.

Under the amendments, all regulated parties would be prohibited from moving any article infected with or suspected of having been exposed to the plum pox virus, regardless of where the articles are located in the State.

3. Professional services.

In order to comply with the proposed rule, regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

4. Compliance costs.

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

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

Regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles planted in the regulated areas.

Local governments moving regulated articles to or through the regulated areas would incur similar costs.

5. Minimizing adverse impact.

The Department has designed the proposed rule to minimize adverse economic impact on small businesses and local governments. The proposal limits the regulated articles to only those varieties of the Prunus species which are susceptible to infection by plum pox virus. The proposal also limits the inspection and permit requirements to only those necessary to detect the presence of plum pox virus and to prevent its spread through regulated articles in the regulated areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the movement of regulated articles without state or federal inspection. These agreements are another way in which the proposed rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation.

In 1999, a Plum Pox Virus Task Force was established in response to the reported discovery of the virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the United States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convened annually via teleconference.

On October 3, 2006, February 15, 2007 and May 22, 2007, the director of the Department's Division of Plant Industry provided an overview of the plum pox virus and its discovery in New York to the Invasive Species Task Force in Albany; the Empire State Fruit and Vegetable Expo in Syracuse; and the Statewide Survey Committee of the Cooperative Agricultural Pest Survey Program in Albany, respectively.

The Department has provided Cornell Cooperative Extension with information on the plum pox virus for dissemination to stone fruit growers. Inspectors with the Department's Division of Plant Industry have also discussed the needs and benefits of this regulation with stone fruit growers in the regulated and quarantine areas.

On June 26, 2007, Department officials met with approximately 30 stone fruit growers to discuss the plum pox virus outbreak as well as the proposed regulations establishing the quarantine. Most of the growers recognized the need to proceed with the quarantine, and expressed the desire that New York's response be consistent with that of Pennsylvania, Michigan and the federal government. Several growers also questioned when compensation would be paid following the destruction and removal of infected trees.

Outreach efforts will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments.

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Nursery dealers and nursery growers handling regulated articles within the nursery stock regulated areas, other than pursuant to a compliance agreement, would require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, would be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The rule establishes a plum pox virus quarantine in New York State. It is estimated that there are 312 stone fruit growers and 4,049 nursery growers and nursery dealers throughout New York State. Of these, there are 35 stone fruit growers and 50 nursery growers or nursery dealers in the nursery stock regulated areas, and 29 stone fruit growers in the regulated areas. Many of these entities are located in rural areas of New York State.

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

All regulated parties in the nursery stock regulated areas, which includes approximately 35 stone fruit growers and 50 nursery growers or nursery dealers, would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in the nursery stock regulated areas would be required to enter into a compliance agreement.

The amendments would prohibit regulated parties in the nursery stock regulated areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties would be required to maintain sales records of regulated articles for a period of three years.

In order to comply with the proposed rule, regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

All regulated parties in the regulated areas, which include approximately 29 stone fruit growers, would be prohibited from moving regulated articles within the regulated areas. Regulated parties would, however, be able to move regulated articles to and from the regulated areas pursuant to a limited permit.

Under the amendments, all regulated parties would be prohibited from moving any article infected with or suspected of having been exposed to the plum pox virus, regardless of where the articles are located in the State.

3. Costs:

Regulated parties handling regulated articles in the nursery stock regulated areas pursuant to compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs will be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles exposed to the plum pox virus.

4. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on small businesses and local governments. The proposal limits the regulated articles to only those varieties of the *Prunus* species which are susceptible to infection by plum pox virus. The proposal also limits the inspection and permit requirements to only those necessary to detect the presence of plum pox virus and to prevent its spread through regulated articles in the regulated areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the movement of regulated articles without state or federal inspection. These agreements are another way in which the proposed rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

In 1999, a Plum Pox Virus Task Force was established in response to the reported discovery of the virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the United States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convened annually via teleconference.

On October 3, 2006, February 15, 2007 and May 22, 2007, the director of the Department's Division of Plant Industry provided an overview of the plum pox virus and its discovery in New York to the Invasive Species Task Force in Albany; the Empire State Fruit and Vegetable Expo in Syracuse; and the Statewide Survey Committee of the Cooperative Agricultural Pest Survey Program in Albany, respectively.

The Department has provided Cornell Cooperative Extension with information on the plum pox virus for dissemination to stone fruit growers. Inspectors with the Department's Division of Plant Industry have also discussed the needs and benefits of this regulation with stone fruit growers in the regulated and quarantine areas.

On June 26, 2007, Department officials met with approximately 30 stone fruit growers to discuss the plum pox virus outbreak as well as the proposed regulations establishing the quarantine. Most of the growers recognized the need to proceed with the quarantine, and expressed the desire that New York's response be consistent with that of Pennsylvania, Michigan and the federal government. Several growers also questioned when compensation would be paid following the destruction and removal of infected trees.

Outreach efforts will continue.

Job Impact Statement

The establishment of a plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. It is estimated that there are 312 stone fruit growers and 4,049 nursery growers and nursery dealers throughout New York State. Of these, there are 35 stone fruit growers and 50 nursery growers or nursery dealers in the nursery stock regulated areas, and 29 stone fruit growers in the regulated areas. A further spread of this plant infection would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the spread of the plum pox virus, the rule would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's stone fruit and nursery industries.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Agricultural and Farmland Protection

I.D. No. AAM-17-08-00030-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 Part 390 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 325

Subject: Agricultural and farmland protection.

Purpose: To amend regulations governing State assistance payments for agricultural and farmland protection.

Text of proposed rule: Part 390 of Title 1 of the New York Code Rules and Regulations relating to Agricultural and Farmland Protection is hereby amended to read as follows:

A new subdivision (g) of section 390.5 is added to read as follows:

(g) *Plan updates.* A county which has an approved agricultural and farmland protection plan may after one hundred twenty months from the date of such approval by the commissioner, apply for additional state assistance payments for planning activities related to the updating of its current agricultural and farmland protection plan or development of a new plan. Such additional assistance payments shall not exceed \$50,000 to each county agricultural and farmland protection board or \$100,000 to two such boards applying jointly, and shall not exceed 50 percent of the total cost of preparing an agricultural and farmland protection plan. Applications for such additional state assistance shall be made and submitted as provided for and in accordance with this section and section 390.3.

Text of proposed rule and any required statements and analyses may be obtained from: William Kimball, Director for Agricultural Protection, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-7076, e-mail: bill.kimball@agmkt.state.ny.us

Data, views or arguments may be submitted to:

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

Consensus Rule Making Determination

This rule is proposed as a consensus rule, within the definition of that term in the State Administration Procedure Act section 102(11) pursuant to the expectation that no person is likely to object to its adoption.

Agriculture and Markets Law section 325 (L. 2007, c. 124) directs that additional state assistance for agricultural and farmland protection plan-

ning activities be made available to counties. The proposed adoption of the rule implements this legislative directive by making counties eligible to receive additional financial and technical assistance for updating agricultural and farmland protection efforts pursuant to Part 390 of 1 NYCRR.

Job Impact Statement

The proposed amendment to part 390 of Title 1 NYCRR would amend the regulations governing State assistance payments for agricultural and farmland protection. The rule would not have a substantial adverse impact on jobs and employment activities. The rule specifies the requirements for municipalities to apply for State agricultural and farmland protection grants. This will benefit agricultural producers and the local economy by encouraging and promoting agricultural use of farmland within municipalities.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Administration of “Other Approved Agents” such as Buprenorphine to Treat Opioid Addictions

I.D. No. ASA-17-08-00007-E
Filing No. 317
Filing date: April 7, 2008
Effective date: April 7, 2008

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

Action taken: Amendment of Part 828 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(b), (e), 19.21(b), 19.40, 32.01, 32.05(b) and 32.07(a)(b)

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

Specific reasons underlying the finding of necessity: The proper administration and availability of buprenorphine and other approved agents to treat opioid addiction is necessary to ensure that those persons suffering from addiction can get the most advanced and most appropriate treatment for their disease.

Subject: Administration of “other approved agents” such as buprenorphine to treat opioid addictions.

Purpose: To ensure that all persons will have equal access to the appropriate “approved” agent to treat their opioid addiction.

Text of emergency rule: PART 828

AMENDMENT TO: REQUIREMENTS FOR THE OPERATION OF CHEMOTHERAPY SUBSTANCE ABUSE PROGRAMS.

§ 828.1 Definitions.

(a) Methadone program means a substance abuse program using methadone or other approved agents, and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(1) Methadone maintenance means a treatment procedure using methadone or any of its derivatives, or other approved agents, administered over a period of time to relieve withdrawal symptoms, reduce craving and permit normal functioning so that, in combination with rehabilitative services, patients can develop productive life styles.

(i) Methadone to abstinence means a treatment procedure using methadone, or other approved agents, administered for a period exceeding 21 days, as part of a planned course of treatment involving reduction in dosage to the point of abstinence followed by drug-free treatment.

(ii) Methadone maintenance aftercare means a planned course of treatment for methadone, or other approved agents maintenance patients, directed toward the achievement of abstinence and, through the aid of supportive counseling, the continuance of a drug-free life style.

(2) Methadone detoxification means a treatment procedure using methadone, or any of its derivatives, or other approved agents, administered in decreasing doses over a limited period of time for the purpose of detoxification from opiates.

(b) Methadone clinic means a single location at which a methadone program provides methadone, or other approved agent and rehabilitative services to patients.

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 July 5, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Patricia Flaherty, Associate Counsel, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, e-mail: patriciaflaherty@oasas.state.ny.us

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the Register within 30 days of the rule’s effective date.

NOTICE OF ADOPTION

The Patient Rights Policy

I.D. No. ASA-08-08-00009-A
Filing No. 315
Filing date: April 7, 2008
Effective date: April 23, 2008

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

Action taken: Addition of Part 815 to Title 14 NYCRR.

Statutory authority: Mental Health Law, sections 19.07(c)(e), 19.09(b), (d), 19.21(b), (d), 22.03, 22.07(c), 32.01 and 32.07(a)

Subject: The patient rights policy.

Purpose: To establish criteria for establishment of a patient rights policy and document in compliance with the Mental Health Law.

Text or summary was published in the notice of proposed rule making, I.D. No. ASA-08-08-00009-P, Issue of February 20, 2008.

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

Text of rule and any required statements and analyses may be obtained from: Patricia Flaherty, Associate Counsel, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, e-mail: patriciaflaherty@oasas.state.ny.us

Assessment of Public Comment

Comments received in response to OASAS Part 815 proposed regulation - Patient Rights.

There were several comments that indicated any additional paperwork that could be associated with the promulgation of this rule would be a burden to the provider community. However, the interest of best practices in client care necessitate the promulgation, as does the Mental Health Law, of a patient rights regulation that requires certain actions be taken by providers.

Some of the providers stated that compliance with this regulation is in effect an unfunded mandate. The Agency is aware that most providers are already in compliance with the intent of this regulation, the only associated costs are printing costs, and the content of the regulation is required by statute.

Provider organizations representing Hospitals commented that the Department of Health requires a patient rights document be used in their setting that was developed by that agency, and therefore it would be duplicative to direct them to use an additional document that is compliant with this regulation. OASAS review the DOH patient rights document and found there were several key items that are specific to the chemically dependent population that would require a supplement of the DOH document in hospital settings that treat chemically dependent persons.

Comment received indicated the regulation needed to be simpler and user friendly. The Agency believes the regulation is in a proper format and will be viable for providers.

Posting the contact information for the director, medical, director and board of directors should be done upon request and provided to the client rather than posting. The Agency response is that posting is required under the statute.

Clinical protocol for providing information to clients was questioned, however none of the questions rises to the level of requiring a change in the language of the regulation because they are policy decisions that each provider will make as to how to implement the requirements in their particular service.

The provisions pertaining to keeping information about the administration of toxicology tests were questioned as over burdensome. The provisions were added in order to ensure the highest quality of care for patients. Documentation of the provision of toxicology tests protects clients as well as providers.

Department of Audit and Control

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting Requirements of Service, Salary, and Deduction Information for Employers to NYSLRS

I.D. No. AAC-17-08-00002-EP

Filing No. 310

Filing date: April 2, 2008

Effective date: April 2, 2008

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

Action taken: Amendment of sections 315.2 and 315.3 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 34, 311 and 334

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

Specific reasons underlying the finding of necessity: Recently conducted audits by the Office of the State Comptroller have raised substantial issues with respect to whether local governments and school districts are correctly classifying certain professionals engaged by local governments and school districts as employees eligible for membership in the NYSLRS and for service credit. The State Comptroller's Office has promulgated these amendments to regulations governing NYSLRS to provide additional guidance to local governments and school districts, to help them determine whether an individual is an employee or an independent contractor. A certification of the determination that an individual is an employee will now be required when a local government or school district initially reports to the NYSLRS certain covered professionals-- those persons providing services as an attorney, physician, architect, engineer, accountant or auditor.

Promulgation of these regulations on an emergency basis is necessary to assist employers and the NYSLRS to prevent potential fraud, abuse or error from occurring in records for newly hired individuals that could otherwise result in taxpayers paying retirement contributions for persons who are not eligible for membership or credit in the NYSLRS.

Subject: Reporting requirements of service, salary, and deduction information for employers to NYSLRS.

Purpose: To provide guidance to participating employees concerning whether an individual is an employee or independent contractor.

Text of emergency/proposed rule: Section 315.2 is amended to read as follows:

§ 315.2 [Definition] *Definitions.*

(a) As used in this Part, the term employer shall mean the State, a participating employer, and any other unit of government or organization obligated or agreeing to make contributions to the retirement system on behalf of its employees.

(b) *The term employee shall mean an individual performing services for the employer for which the employer has the right to control the means and methods of what work will be done and how the work will be done.*

(c) *The term independent contractor shall mean a consultant or other individual engaged to achieve a certain result who is not subject to the direction of the employer as to the means and methods of accomplishing the result. For purposes of this part, when making a determination as to whether an individual is an employee or an independent contractor, the factors set forth hereinafter in § 315.3(c)(2) shall be considered by the employer.*

Subdivision (c) of section 315.3 is amended to read as follows:

(c) Employees to be reported.

(1) Only persons who are active members of the New York State and Local Employees' Retirement System or the New York and Local Police and Fire Retirement System and who have been assigned a registration number shall be included in the above reporting requirements. In the case of employees who are in the process of being registered to membership, all service, salary and deductions data and mandatory contributions shall be accumulated by each employer and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned. Members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System must be reported on separate reports.

(2) *Determination by Employer. An individual serving the employer as an independent contractor or consultant is not an employee and should not be reported to the retirement system. The employer has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination, the employer must consider the following:*

(i) *Factors supporting the conclusion that an individual is an employee rather than an independent contractor:*

(A) *the employer controls, supervises or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;*

(B) *the individual reports to a certain person or department at the beginning or during each work day;*

(C) *the individual receives instructions as to what work to perform each day;*

(D) *the individual's decisions are subject to review by the employer;*

(E) *the employer sets hours to be worked;*

(F) *the individual works at established and fixed hours;*

(G) *the employer maintains time records for the individual;*

(H) *the employer has established a formal job description;*

(I) *the employer's governing board formally created the position with the approval of the local civil service commission where necessary;*

(J) *the employer prepares performance evaluations;*

(K) *the employer requires that the individual attend training;*

(L) *the employer provides permanent workspace and facilities (including, but not limited to, office, furniture and/or utilities);*

(M) *the employer provides the individual with equipment and support services (including, but not limited to, computer, telephone, supplies and/or clerical assistance);*

(N) *the individual is covered by a contract negotiated between a union and the employer;*

(O) *the individual is paid salary or wages through the employer's payroll system;*

(P) *tax withholding and employee benefit deductions are made from the individual's paycheck; and*

(Q) *the individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance and/or grievance procedures).*

(ii) *Factors supporting the conclusion that an individual is an independent contractor rather than an employee:*

(A) *the individual has a personal employment contract with the employer;*

(B) *the employer pays the individual for the performance of services through the submission of a voucher;*

(C) *the individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the employer;*

(D) *the individual provides similar services to the public;*

(E) *the individual is concurrently performing substantially the same services for other public employers; and*

(F) *the individual is also employed or associated with another entity that provides services to the employer by contract, retainer or other agreement.*

(iii) *Presumption:*

In the case of an individual whose service has been engaged by an employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and who is also a partner, associate, including an attorney in an "of counsel" relationship, or employee of another organization or entity that has a contract, retainer or other agreement to provide professional services to the participating employer, it shall be presumed

that the individual is an independent contractor and not an employee of the participating employer;

(iv) Examples:

(A) An attorney who, in providing services to a participating employer, sets his own hours, is not supervised in the manner in which the work is performed, uses his or her own office and staff and has no deductions from salary is considered to be an independent contractor.

(B) A physician who in performing examinations and providing medical services for a school district, is provided with office space in the school, has set hours, is provided with supplies and receives a fixed salary with regular payroll deductions is considered to be an employee;

(3) Written explanation by participating employers; certain professions. In the case of an individual whose service has been engaged by a participating employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and the participating employer has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, such employer shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the chief fiscal officer of the employer, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant. Such certification shall be submitted to the retirement system at the time the individual is registered to membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by the participating employer to the system. In addition, such employer shall submit copies of documentation pertaining to the appointment of the individual as an employee and the decision to report the individual to the retirement system as well as the acceptance of the appointment by the local civil service commission where necessary. In the event appointments are made by a governing board of the participating employer, such documentation shall include a copy of the minutes of the meeting of such employer's governing board.

(4) Explanation at the request of the retirement system. In the case of any individual who is currently a member or a retiree of a retirement system, the retirement system may require that an employer submit to the retirement system an explanation of the factors that led to the conclusion that an individual engaged by the employer was an employee. An employer receiving such a request shall submit a response within thirty days of the date of the request or provide an explanation as to why it is unable to do so.

(5) Adjustment reports. In the event the retirement system or an employer determines that an individual has been incorrectly reported to a retirement system, the employer, upon notification from the retirement system, or upon its own initiative, shall promptly file salary and service adjustment reports with the retirement system to correct the error.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 30, 2008.

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua-Legislative Counsel, Office of the State Comptroller, 110 State St., Albany, NY 12236, (518) 474-9024, e-mail: jelacqua@osc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority: Sections 34 and 334 of the Retirement and Social Security Law, as added by chapter 510 of the Laws of 1974, require that the Comptroller adopt rules and regulations, which shall have the force and effect of law, for the reporting of service, salary and deductions information for all member-employees of employers which participate in the New York State Employees' Retirement System and the New York State Police and Fire Retirement System. Said statutes further provide that the chief fiscal officer of the participating employer, or other officer exercising similar duties, shall file the required report in such form and at such times as may be prescribed in the said rules and regulations. Sections 34 and 334 make the refusal or willful neglect to file the required report a violation which shall subject the officer so refusing or neglecting to a penalty of \$5 per day for each day's delay beyond seven days. Sections 11 and 311 of the Retirement and Social Security Law establish the Comptrol-

ler as the administrative head of the retirement system and authorize him to adopt and amend rules and regulations for the administration and transactions of the business of the retirement system.

2. Legislative Objectives: Elected officials, public officers and employees of participating employers are eligible for membership in the retirement system; independent contractors are not. Public employers participating in the retirement system are required to report service and salary information for all their employees so that the retirement system may accurately determine the employers' obligation to contribute to the funding of the retirement system, the employees' entitlement to the benefits provided to members of the retirement system and, ultimately, calculate the amount of benefits due to members upon retirement or death. To prevent the assessment of unnecessary employer contributions and the unauthorized distribution of retirement funds, individuals providing services to a public employer who are not in an employment relationship with the employer should not be reported to the retirement system. The existing regulation instructs employers to report employees who are active members of the retirement system or who are in the process of being registered to membership and it provides some instructions for the reporting of these individuals.

3. Needs and Benefits: The amendment to the existing regulation provides employers with more specific guidance to aid them in determining whether an individual is an employee and, therefore, eligible to be reported to the retirement system, or an independent contractor who should not be reported to the retirement system. The amendment includes a list of factors to be considered in making this determination as well as examples of individuals serving employers in both capacities. Furthermore, the amendment requires that, when an individual is engaged by a participating employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and is first reported to the retirement system, the employer submit to the retirement system a certified form explaining the factors that led to the conclusion that the individual is serving as an employee and not an independent contractor. Finally, it requires an employer to submit a certified form in response to a request from the retirement system and requires employers to file salary and service adjustment reports to correct errors.

4. Costs: While there may be a modest administrative cost for employers associated with the preparation and submission of the form explaining the conclusion to consider certain individuals to be employees and not independent contractors, we anticipate that any such cost will be offset by the savings to employers resulting from the reduction in incorrect reporting of independent contractors and the associated contributions to the retirement system.

5. Local Government Mandates: The proposed rule imposes a duty on county, city, town, village, school district, fire district or other special district participating employers to submit to the retirement system a form explaining the factors that led to the conclusion that individuals in certain professions are serving as an employee and not an independent contractor.

6. Paperwork: To reduce the incorrect reporting of independent contractors, the proposed amendment will require the employer to complete and submit a form when deciding to report individuals providing certain professional services.

7. Duplication: This action does not conflict with or duplicate any state or federal requirements.

8. Alternatives: No significant alternatives were considered.

9. Federal Standards: Not applicable .

10. Compliance Schedule: Not applicable.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the proposal will not impose any adverse economic impact or significant reporting, record keeping or compliance requirements on small businesses or local governments. Rather, this proposal may result in an economic savings by local governments as a result of the reduction in incorrect reporting of independent contractors and the associated contributions to the retirement system.

Rural Area Flexibility Analysis

This action will not impose any adverse economic impact, reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-17-08-00008-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Environmental Conservation.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Environmental Conservation, by adding thereto the position of Assistant Director Public Information.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-17-08-00009-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by adding thereto the position of Assistant Public Information Officer.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-17-08-00010-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Human Rights," by increasing the number of positions of Human Rights Regional Director 2 from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-17-08-00011-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the State Department Service.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State Department Service under the subheading "All State Departments and Agencies," by adding thereto the positions of Assistant Clinical Physician, Assistant Clinical Physician (various parenthetics), Assistant Psychiatrist, Clinical Physician 1, Clinical Physician 2, Clinical Physician 3, Clinical Physician 1 (various parenthetics), Clinical Physician 2 (various parenthetics), Dentist 1, Dentist 2, Dentist 3, Dentist 4, Medical Specialist 1, Medical Specialist 2, Medical Specialist 3, Pathologist 3, Psychiatrist 1, Psychiatrist 2, Psychiatrist 3, Psychiatrist 1 (various parenthetics), Psychiatrist 2 (various parenthetics), Psychiatrist 3 (various parenthetics), Veterinarian 1, Veterinarian 2 and Veterinarian 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-17-08-00012-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Law.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by adding thereto the position of Director Systems Development and by increasing the number of positions of Special Assistant from 14 to 16.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00013-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Civil Service.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Civil Service under the subheading "Public Employment Relations Board," by deleting therefrom the position of Executive Assistant and by adding thereto the position of Executive Director.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00014-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Special Assistant from 16 to 22.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00015-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "State Board of Elections," by adding thereto the positions of Confidential Clerk (2), Election Law Enforcement Investigator, Elections Finance Enforcement Specialist (2), Elections Finance Enforcement Training Specialist (2) and Supervising Investigative Auditor (2) and by increasing the number of positions of Investigative Auditor from 2 to 8.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00016-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by increasing the number of positions of Compliance Specialist 1 from 4 to 9.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00017-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the State University of New York

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "SUNY at Stony Brook," by increasing the number of positions of Recycling Specialist from 4 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00018-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Labor.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "State Insurance Fund," by adding thereto the position of ϕ Director Internal Control (NYSIF) (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00019-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Labor.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor, by adding thereto the positions of ϕ Director Immigrant Workers' Services (1), Immigrant Workers Specialist 1 (2) and Immigrant Workers Specialist 2 (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00020-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Department of Motor Vehicles.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Motor Vehicles, by deleting therefrom the position of ϕ Keyboard Specialist 3 (1) and by increasing the number of positions of ϕ Secretary 1 from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00021-P

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

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class and delete positions from the non-competitive class in the Banking Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Banking Department, by increasing the number of positions of Investigator from 9 to 11 and;

Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Banking Department, by decreasing the number of positions of Senior Risk Management Specialist from 19 to 17.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00022-P

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

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt class and delete positions from the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of the Governor, Office of the State Inspector General," by deleting therefrom the positions of Associate Counsel, Confidential Administrative Assistant, Confidential Secretary, Confidential Stenographer (6), Deputy Inspector General (19), Program Associate; by decreasing the number of positions of Investigative Auditor from 19 to 16; by adding thereto the positions of Administrative Officer, Assistant Administrative Officer, Assistant Director of Audit and Consulting, Assistant Director Public Information, Assistant Manager of Information Services, Assistant Manager of Training, Chief Investigator (2), Deputy Chief Investigator (2), Director of Audit and Consulting, Director and Chief of Investigations (2), Director of Public Information, Director of Quality Assurance, Forensic Accountant (3), Investigative Aide (8), Investigative Assistant (15), Investigative Auditor (11), Investigative Counsel (14), Manager of Information Services, Manager of Training and Special Deputy Investigator General and by increasing the number of positions of Investigator State Inspector General from 1 to 28; and

Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of the Governor, Office of the State Inspector General," by deleting therefrom the positions of Investigator (State Inspector General) (20), Principal Investigator (State Inspector General) (8), Senior Investigator (State Inspector General) (15) and Supervising Investigator (State Inspector General) (8).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-17-08-00023-P

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

Proposed action: Amendment of Appendix(es) 3 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the labor class in all State Departments and Agencies.

Text of proposed rule: Amend Appendix(es) 3 of the Rules for the Classified Service, listing positions in the labor class, under the heading All State Departments and Agencies, by adding thereto the positions of SUNY Campus Worker.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

**State Consumer Protection
Board**

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

Access to Personal Information

I.D. No. CPR-17-08-00003-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 4601.2, 4601.4 and 4601.8 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 94

Subject: Access to personal information.

Purpose: To amend the address and the telephone number for the CPB.

Text of proposed rule: Section 4601.2 of 21 NYCRR Part 4601 is amended to read as follows:

Section 4601.2 Designation of privacy compliance officer

(b) The address and telephone number of the privacy compliance officer is: [99 Washington Avenue, Room 1020, Albany, NY 12210] 5 Empire State Plaza, 21st Floor, Suite 2101, Albany, NY 12223-1556, telephone [(518) 474-1472] (518) 474-3514.

Section 4601.4 of 21 NYCRR Part 4601 is amended to read as follows:

Section 4601.4 Location

(a) Records shall be made available at the main office of the agency, which is located at: [99 Washington Avenue, Room 1020, Albany, NY 12210] 5 Empire State Plaza, 21st Floor, Suite 2101, Albany, NY 12223.

(b) Whenever practicable, records shall be made available at a regional office most convenient to a data subject. Regional offices are located at: [250] 1740 Broadway, New York, NY [10007] 10019.

Section 4601.8 of 21 NYCRR Part 4601 is amended to read as follows:

Section 4601.8 Denial of request for a record or amendment or correction of a record or personal information

(c) Any such denial may be appealed to the Executive Director, [99 Washington Avenue, Room 1020, Albany, NY 12210] 5 Empire State Plaza, 21st Floor, Suite 2101, Albany, NY 12223.

Text of proposed rule and any required statements and analyses may be obtained from: Laura Greco, Consumer Protection Board, Five Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-6175, e-mail: laura.greco@consumer.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 proposed amendments to sections 4601.2, 4601.4, and 4601.8 of Title 21 NYCRR change the address and telephone contact information for the Consumer Protection Board (CPB) to reflect the current locations and phone number for the CPB's offices. As these amendments are technical in nature, no person is likely to object to the rules as written. [SAPA Section 2020(1)(b)(i).]

Job Impact Statement

The following statement is provided pursuant to State Administrative Procedure Act (SAPA) § 201-a(2)(a). The Consumer Protection Board has determined that the proposed regulations will not have a substantial adverse impact, defined as a decrease of 100 jobs (SAPA § 201-a(6)(c)). The New York State Consumer Protection Board (CPB) no longer maintains the 99 Washington Avenue, Albany, New York or the 250 Broadway, New York, NY address and this is the reason for the proposed change. Because it is evident from the nature of this amendment that it would have would have no impact on the number of jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and non were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Confirmation of a Victim of Human Trafficking

I.D. No. CJS-07-08-00008-A

Filing No. 318

Filing date: April 7, 2008

Effective date: April 23, 2008

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

Action taken: Addition of Part 6174 to Title 9 NYCRR.

Statutory authority: Executive Law, section 837(13) and L. 2007, ch. 74, section 14

Subject: Confirmation of a victim of human trafficking.

Purpose: To implement the provisions of Social Services Law, section 483-cc.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. CJS-07-08-00008-EP, Issue of February 13, 2008.

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

Text of rule and any required statements and analyses may be obtained from: Mark Bonacquist, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, (518) 457-8413

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Chemical Analysis of Blood, Urine, Breath or Saliva for Alcoholic Content

I.D. No. HLT-17-08-00024-E

Filing No. 324

Filing date: April 8, 2008

Effective date: April 8, 2008

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

Action taken: Amendment of Part 59 of Title 10 NYCRR.

Statutory authority: Vehicle and Traffic Law, § 1194(4)(c); Environmental Conservation Law, section 11-1205(6)

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

Specific reasons underlying the finding of necessity: Immediate adoption of this amendment is necessary for preservation of the public safety.

The amendment, once adopted, will enable law enforcement agencies to use a breath alcohol testing device, which, while not currently listed in 10 NYCRR Section 59.4, is approved for use by the National Highway Traffic Safety Administration. A new Conforming Products List was published in the Federal Register on June 29, 2006, adding a state-of-the-art evidential breath test instrument: the DataMaster DMT. Under a Division of Criminal Justice Services project fully funded through the Governor's Traffic Safety Committee, the DataMaster DMT will replace 475 breath test instruments currently used by more than 420 police agencies statewide. The Division of Criminal Justice Services has informed the Department of its expectation to begin distribution of the first lot of approximately 40 DataMaster DMT instruments on or about April 30, 2007.

Failure to update the list by emergency rulemaking will result in confusion as to the DataMaster DMT's approval for use in New York State, resulting in defense challenges to the legal admissibility of evidentiary results obtained with the device. Such failure would obviously impede law enforcement efforts to combat drunk driving, particularly as more and more of the older DataMaster models become unusable, thereby adversely affecting public safety. Moreover, the federal and State lists of approved breath testing devices must be identical to avoid legal challenges to prosecutions for alcohol-related offenses and preclude inadmissibility of evidence, and to ensure effective enforcement of the laws against driving while intoxicated.

Subject: Chemical analysis of blood, urine, breath or saliva for alcoholic content.

Purpose: To update the conforming products list of breath alcohol testing devices currently approved for use by the NHTSA.

Text of emergency rule: Subdivision (c) of Section 59.1 is amended as follows:

(c) Chemical tests/analyses include breath tests conducted on those instruments found on the Conforming Products List of Evidential Breath Measurement Devices as established by the U.S. Department of Transportation/National Highway Traffic Safety Administration, published in the Federal Register on [June 4, 1999] June 29, 2006. Such list is set forth in section 59.4 of this Part.

Subdivision (b) of Section 59.4 is amended as follows:

(b) The commissioner has adopted the Conforming Products List of Evidential Breath Measurement Devices, as hereinafter set forth, established by the U.S. Department of Transportation/National Highway Traffic Safety Administration, as meeting the above criteria. Unless otherwise noted, the devices are approved for both mobile and nonmobile use.

Conforming Products List

(1) Alcohol Countermeasure Systems [,] Corp., Mississauga, Ontario, Canada:

(i) Alert J3AD.

(ii) Alert J4X.ec.

[(ii)] (iii) PBA3000C.

(2) BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer.

(3) CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer.

- (4) CMI, Inc., Owensboro, KY:
 - (i) Intoxilyzer 200.
 - (ii) Intoxilyzer 200D.
 - (iii) Intoxilyzer 300.
 - (iv) Intoxilyzer 400.
 - (v) *Intoxilyzer 400PA*.
 - [(v)] (vi) Intoxilyzer 1400.
 - [(vi)] (vii) Intoxilyzer 4011.
 - [(vii)] (viii) Intoxilyzer 4011A.
 - [(viii)] (ix) Intoxilyzer 4011AS.
 - [(ix)] (x) Intoxilyzer 4011AS-A.
 - [(x)] (xi) Intoxilyzer 4011AS-AQ.
 - [(xi)] (xii) Intoxilyzer 4011AW.
 - [(xii)] (xiii) Intoxilyzer 4011A27-10100.
 - [(xiii)] (xiv) Intoxilyzer 4011A27-10100 with filter.
 - [(xiv)] (xv) Intoxilyzer 5000.
 - [(xv)] (xvi) Intoxilyzer 5000 (with Cal. Vapor Re-Circ.).
 - [(xvi)] (xvii) Intoxilyzer 5000 (with 3/8" ID hose option).
 - [(xvii)] (xviii) Intoxilyzer 5000CD.
 - [(xviii)] (xix) Intoxilyzer 5000CD/FG5.
 - [(xix)] (xx) Intoxilyzer 5000EN.
 - [(xx)] (xxi) Intoxilyzer 5000 (CAL DOJ).
 - [(xxi)] (xxii) Intoxilyzer 5000 VA.
 - (xxiii) *Intoxilyzer 8000*.
 - [(xxii)] (xxiv) Intoxilyzer PAC 1200.
 - [(xxiii)] (xxv) Intoxilyzer S-D2.
 - (xxvi) *Intoxilyzer S-D5*.
- [(5) Decator Electronics, Decator, IL: Alco-Tector model 500 (nonmobile only).]
- [(6)] (5) Draeger Safety, Inc., Durango, CO:
 - (i) *Alcotest 6510*.
 - (ii) *Alcotest 6810*.
 - [(i)] (iii) *Alcotest 7010*.
 - [(ii)] (iv) *Alcotest 7110*.
 - [(iii)] (v) *Alcotest 7110 MKIII*.
 - [(iv)] (vi) *Alcotest 7110 MKIII-C*.
 - [(v)] (vii) *Alcotest 7410*.
 - [(vi)] (viii) *Alcotest 7410 Plus*.
 - [(vii)] (ix) *Breathalyzer 900*.
 - [(viii)] (x) *Breathalyzer 900A*.
 - [(ix)] (xi) *Breathalyzer 900 BG*.
 - [(x)] (xii) *Breathalyzer 7410*.
 - [(xi)] (xiii) *Breathalyzer 7410-II*.
- [(7)] (6) Gall's Inc., Lexington, KY: Alcohol Detection System-A.D.S. 500.
- (7) *Guth Laboratories, Inc., Harrisburg, PA*:
 - (i) *Alcotector BAC-100*.
 - (ii) *Alcotector C2H5OH*.
- (8) Intoximeters, Inc., St. Louis, MO:
 - (i) Photo Electric Intoximeter (nonmobile only).
 - (ii) GC Intoximeter MK II.
 - (iii) GC Intoximeter MK IV.
 - (iv) Auto Intoximeter.
 - (v) Intoximeter 3000.
 - (vi) Intoximeter 3000 (rev B1).
 - (vii) Intoximeter 3000 (rev B2).
 - (viii) Intoximeter 3000 (rev B2A).
 - (ix) Intoximeter 3000 (rev B2A) w/FM option.
 - (x) Intoximeter 3000 (Fuel Cell).
 - (xi) Intoximeter 3000 D.
 - (xii) Intoximeter 3000 DFC.
 - (xiii) Alcomonitor (nonmobile only).
 - (xiv) Alcomonitor CC.
 - (xv) Alco-Sensor III.
 - (xvi) *Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)*.
 - [(xvi)] (xvii) *Alco-Sensor IV*.
 - [(xvii)] (xviii) *Alco-Sensor IV-XL*.
 - [(xviii)] (xix) *Alco-Sensor AZ*.
 - [(xix)] (xx) *Alco-Sensor FST*.
 - [(xx)] (xxi) *RBT-AZ*.
 - [(xxi)] (xxii) *RBT III*.
 - [(xxii)] (xxiii) *RBT III-A*.
 - [(xxiii)] (xxiv) *RBT IV*.
 - [(xxiv)] (xxv) *RBT IV with CEM (cell enhancement module)*.
 - [(xxv)] (xxvi) *Intox EC/IR*.
 - [(xxvi)] (xxvii) *Intox EC/IR II*.
 - [(xxvii)] (xxviii) *Portable Intox EC/IR*.
- (9) Komyo Kitagawa, Kogyo, K.K., Japan:
 - (i) *Alcolyzer DPA-2*.
 - (ii) *Breath Alcohol Meter PAM 101B*.
- (10) Lifeloc Technologies, Inc. (formerly Lifeloc, Inc.), Wheat Ridge, CO:
 - (i) *PBA 3000B*.
 - (ii) *PBA 3000-P*.
 - (iii) *PBA 3000C*.
 - (iv) *Alcohol Data Sensor*.
 - (v) *Phoenix*.
 - (vi) *EV 30*.
 - (vii) *FC 10*.
 - (viii) *FC 20*.
- (11) Lion Laboratories, Ltd., Cardiff, Wales, UK:
 - (i) *Alcolmeter 300*.
 - (ii) *Alcolmeter 400*.
 - [(iii)] *Alcolmeter AE-D1.*
 - [(iv)] (iii) *Alcolmeter SD-2*.
 - [(v)] (iv) *Alcolmeter EBA*.
 - (vi) *Auto-Alcolmeter (nonmobile only).*
 - [(vii)] (v) *Intoxilyzer 200*.
 - [(viii)] (vi) *Intoxilyzer 200D*.
 - [(ix)] (vii) *Intoxilyzer 1400*.
 - [(x)] (viii) *Intoxilyzer 5000 CD/FG5*.
 - [(xi)] (ix) *Intoxilyzer 5000 EN*.
- (12) Luckey Laboratories, San Bernadino, CA:
 - (i) *Alco-Analyzer 1000 (nonmobile only)*.
 - (ii) *Alco-Analyzer 2000 (nonmobile only)*.
- (13) National Draeger, Inc., Durango, CO:
 - (i) *Alcotest 7010*.
 - (ii) *Alcotest 7110*.
 - (iii) *Alcotest 7110 MKIII*.
 - (iv) *Alcotest 7110 MKIII-C*.
 - (v) *Alcotest 7410*.
 - (vi) *Alcotest 7410 Plus*.
 - (vii) *Breathalyzer 900*.
 - (viii) *Breathalyzer 900A*.
 - (ix) *Breathalyzer 900BG*.
 - (x) *Breathalyzer 7410*.
 - (xi) *Breathalyzer 7410-II*.
- (14) National Patent Analytical Systems, Inc., Mansfield, OH:
 - (i) *BAC DataMaster (with or without the Delta-1 accessory)*.
 - (ii) *BAC Verifier Datamaster [DataMaster] (with or without the Delta-1 accessory)*.
 - (iii) *DataMaster cdm (with or without the Delta-1 accessory)*.
 - (iv) *DataMaster DMT*.

* * *

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 July 6, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:
The New York State Vehicle and Traffic Law, Section 1194(4)(c), and Department of Environmental Conservation Law, Section 11-1205(6), authorize the Commissioner of Health to adopt regulations concerning methods of testing breath for alcohol content.

Legislative Objectives:
This amendment allows law enforcement/police agencies to use state-of-the-art equipment for breath alcohol testing, as approved by the Commissioner of Health. This action fulfills the legislative objective of ensuring effective enforcement of the law against driving while intoxicated.

Needs and Benefits:
In 1986, the Commissioner of Health adopted the Conforming Products List of Evidential Breath Measurement Devices, as established by the National Highway Traffic Safety Administration, under 10 NYCRR Sections 59.1(c) and 59.4(b). The Traffic Safety Administration's list is periodically revised to include additional approved testing devices. Affected

parties are law enforcement agencies that train police organizations in the use of breath testing devices and the organizations/agencies whose staff conduct testing, including the New York State Police; the State Division of Criminal Justice Services' Office of Public Safety; and the Police Departments of Nassau County, Suffolk County, and the City of New York.

A new Conforming Products List was published in the Federal Register on June 29, 2006, adding a state-of-the-art evidential breath test instrument: the DataMaster DMT. Under a Division of Criminal Justice Services project fully funded through the Governor's Traffic Safety Committee, the DataMaster DMT will replace 475 breath test instruments currently used by more than 420 police agencies Statewide. The Division of Criminal Justice Services has informed the Department of its expectation to begin distribution of the first lot of approximately 40 DataMaster DMT instruments on or about April 30, 2007.

Prosecutors and defense attorneys Statewide rely on the provisions of Part 59 daily in adjudicating alcohol-related offenses. By including in Section 59.4 all devices that appear on the latest federal Conforming Products List, this proposed amendment, once adopted, will make these devices available for use by law enforcement agencies without risk of evidentiary challenge to prosecution, and will ensure effective enforcement of the laws against driving while intoxicated.

COSTS:

Costs to Private Regulated Parties:

The requirements of this regulation are not applicable to any private parties regulated by the Department.

Costs to State Government:

Adoption of additions and revisions to the Conforming Products List does not necessitate purchase of new devices or discontinuance of devices currently in use. Therefore, this proposed amendment does not require affected parties to incur new costs. The Division of Criminal Justice Services has requested timely amendment of Part 59 because the manufacturer of the DataMaster breath analysis device currently in use has begun phasing out production due, in part, to the fact that parts to manufacture and repair these instruments are becoming increasingly unavailable. Moreover, the Division of Criminal Justice Services expects the newer model instrument, which utilizes improved diagnostics, an enhanced operating system and an outboard printer, to generate cost savings from fewer instrument malfunctions, resulting in less downtime. Thus, this amendment's authorizing use of an updated model, the DataMaster DMT, will result in decreased costs to law enforcement agencies.

Costs to Local Government:

Adoption of additions and revisions to the Conforming Products List does not require purchase of new devices or discontinuance of devices currently in use. Therefore, this proposed amendment does not impose any additional costs to police departments operated by local governments, including the City of New York Police Department. Police departments operated by local governments may experience cost savings for the same reasons described under Costs to State Government.

Costs to the Department of Health:

Adoption of additions and revisions to the Conforming Products List does not impose any costs on the Department.

Local Government Mandates:

This regulation does not impose any new mandate on any county, city, town, village, school district, fire district or other special district.

Paperwork:

No new reporting requirements or forms are imposed as a result of the proposed amendment.

Duplication:

This regulation is consistent with, but does not duplicate, other State and federal statutes concerning approved breath alcohol measurement devices.

Alternative Approaches:

At the present time, there are no acceptable alternatives. Failure to update the list will result in confusion as to the DataMaster DMT's instrument approval for use in New York State, resulting in defense challenges to the admissibility of results obtained with the device. Such failure will obviously impede law enforcement efforts to combat drunk driving, particularly as more and more of the older DataMaster models become unusable, thereby adversely affecting public safety.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government; it merely adds new federally approved devices to the Conforming Products List, to be consistent with federal standards.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing a Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to Section 202-b (3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb (4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and does not impose any reporting, record keeping or other compliance requirements on regulated parties in rural areas. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

NOTICE OF ADOPTION

Rate Enhancement/Pay for Performance

I.D. No. HLT-01-08-00021-A

Filing No. 323

Filing date: April 8, 2008

Effective date: April 23, 2008

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

Action taken: Addition of section 86-2.38 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(22)

Subject: Rate enhancement/pay for performance.

Purpose: To establish a payment methodology for rate enhancements.

Text of final rule: A new section 86-2.38 is hereby added, to read as follows:

86-2.38 Nursing Home Incentive Payment

(a) *The commissioner shall make rate adjustments, subject to the availability of funds therefore, to certain residential health care facilities who demonstrate to the satisfaction of the commissioner that they can meet or exceed defined quality measures.*

(b) *Initial awards shall be based on a residential health care facility's performance for pressure ulcer quality of care for chronic care residents.*

(c) *The commissioner shall make two sets of awards as follows:*

(1) *An award shall be made for the best performers for the evaluation period;*

(2) *An award shall be made to residential health care facilities with the best improvement in pressure ulcer care between a base and evaluation period except that facilities in the bottom quarter percentile of all eligible residential health care facilities for this evaluation period shall not be eligible for such an award if, even after their improvement in pressure ulcer care, they still remain in the bottom quarter percentile of all eligible residential health care facilities; and*

(3) *Residential health care facilities that qualify are eligible to receive an award in both categories of awards.*

(d)(1) *The evaluation period for the award for best performers shall be January 1, 2007 through December 31, 2007.*

(2) *The base period for the award for best improvement shall be July 1, 2006 through June 30, 2007, which shall be compared to the period July 1, 2007 through June 30, 2008.*

(e) *The following factors shall be considered by the commissioner in making awards pursuant to this section:*

(1) *The quality measure of pressure ulcer care shall be risk adjusted using such patient health factors to include but not be limited to: coma, malnutrition, diseases and conditions related to pressure ulcer, low body mass index, and plegia (paraplegia or hemiplegia);*

(2) *Pressure ulcer rates shall be considered only for chronic care residential health care facility residents;*

(3) *In order to be eligible to be considered for a rate enhancement, a residential health care facility must have averaged more than one prevented pressure ulcer per quarter of the evaluation period identified in subdivision (d) of this section as calculated by comparing the actual number of residents with a pressure ulcer to the expected number of residents with a pressure ulcer, based on the facility's risk adjusted pressure ulcer rate developed pursuant to this subdivision; and*

(4) *Any residential health care facility receiving a written deficiency for substandard quality of care, as defined in federal regulation 42 C.F.R. § 488.301, during the evaluation periods contained in this section shall be excluded from receiving an award under this section.*

(f) *Rate adjustments made pursuant to this section for residential health care facilities receiving monetary awards shall be made based on the residential health care facility's percent of patient days of care attributable to patients eligible for medical assistance pursuant to title eleven of article five of the social services law.*

(g) *Residential health care facilities chosen to receive rate enhancements pursuant to this section shall, prior to the rate enhancement, inform the commissioner in writing as to their proposed use of the additional monies to further improve quality and care of patients in the residential health care facility.*

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 86-2.38 (section title) and 86-2.39(e)(1).

Text of rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

Revised Regulatory Impact Statement

Statutory Authority:

The authority by which the Commissioner promulgates the subject regulations is contained in section 2808(22) of the Public Health Law, which requires the Commissioner to adopt rules and regulations for residential health care facility reimbursement rates that incorporate payment incentives related to certain quality of care measures.

Legislative Objectives:

The legislative intent of Article 28 of the Public Health Law is to provide for the protection and promotion of the health of the inhabitants of the State of New York by delivering high quality nursing home services in a safe and efficient manner at a reasonable cost. Section 2808(22) of the Public Health Law requires the Commissioner of Health to adopt rules and regulations that incorporate rate enhancements for nursing homes that meet certain quality measures.

Needs and Benefits:

In accordance with Public Health Law section 2808(22), the proposed amendment is needed to establish rules and regulations for a rate enhancement for improved performance in long term residential patient care. The initial round of enhancements will be based on a nursing home's risk adjusted pressure ulcer measure for chronic care residents. This quality measure produces a ratio that compares the actual rate to the expected rate of pressure ulcers at a facility.

Rate enhancements will be given to Best Performers and Best Improvers among eligible nursing homes. An eligible nursing home is one that has not been cited for substandard quality of care during the relevant period. A nursing home can be selected in both categories.

The Best Performers will consist of the top four percent of all eligible nursing homes rank ordered for the risk adjusted pressure ulcer measure. Nursing homes will be ranked according to average quarterly score for the period from January 1, 2007 through December 31, 2007.

The Best Improvers will consist of the top four percent of all eligible nursing homes showing improvement in the risk adjusted pressure ulcer measure from the base period to the evaluation period. A facility will not be eligible for a Best Improver award if its average pressure ulcer ratio for the evaluation period remains in the bottom 25th percentile of all eligible nursing homes. The base period will be July 1, 2006 to June 30, 2007. The evaluation period will be July 1, 2007 to June 30, 2008.

COSTS:

Costs to State Government:

A State appropriation has been made in the amount of \$1.5 million for the 2007 State fiscal year. The State will seek approval from the Centers for Medicare and Medicaid Services to amend its Medicaid State Plan to obtain federal financial participation in the cost of providing these rate enhancements.

Costs of Local Government:

The additional costs to local government will be the local share of the Medicaid costs.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The proposed regulation allows a rate enhancement if a facility meets certain quality measures.

Costs to the Department of Health:

There will be no additional costs to the Department of Health.

Local Government Mandates:

This proposal poses no program, service, duty or other responsibility upon any city, town, village, school, fire district or other special district.

Paperwork:

Providers receiving an award will be required to report to the Department their proposed use of the monies.

Duplication:

These regulations do not duplicate any other existing State or Federal regulations.

Alternatives:

To determine an appropriate quality measure or measures on which to base an award, the Department formed a workgroup consisting of representatives from a number of individual nursing homes, as well as from various organizations representing nursing homes and nursing home residents. Among the organizations represented in the workgroup were: Coalition of Institutionalized Aged & Disabled; Continuing Care Leadership Coalition; Greater New York Health Care Facilities Association; Healthcare Association of New York State; Long Term Care Community Coalition; New York Association of Homes & Services for the Aging; and New York State Health Facilities Association.

The workgroup looked at the eighteen separate performance measures established by the federal Centers for Medicare and Medicaid Services to measure quality of care in nursing homes. Three of these measures related to pressure ulcers. The workgroup determined the incidence of pressure ulcers to be a good indicator of the overall quality of care in a facility and that New York State nursing homes most needed improvement with respect to this quality measure. For these reasons, the workgroup chose pressure ulcers as the initial quality performance measure for awarding rate enhancements pursuant to Public Health Law section 2808(22).

As an alternative, the workgroup considered evaluating nursing homes on a combination of different types of performance measures. However, the workgroup concluded that this approach would not necessarily yield more reliable results and would pose certain methodological difficulties. Therefore, the workgroup ultimately concluded that the incidence of pressure ulcers would provide the best yardstick for measuring overall improvement in quality of care.

Federal Standards:

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

Compliance Schedule:

The proposed rule establishes rate enhancements for facilities that meet certain quality standards. There is no period of time necessary for regulated parties to achieve compliance.

Contact Person:

Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

Comments submitted to Department personnel other than this contact person may not be included in any assessment of public comment issued for this regulation.

Regulatory Flexibility Analysis

No Consolidated Analysis is required. The proposal will not impose an adverse economic impact on small businesses or local governments and will not impose additional reporting, recordkeeping or other compliance requirements. The proposal simply increases Medicaid reimbursement to nursing homes that meet or exceed certain performance measures as defined in Department regulations.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required. The proposal will not impose an adverse economic impact on rural areas nor impose additional

reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal simply increases Medicaid reimbursement to nursing homes that meet or exceed certain performance measures defined in Department regulations.

Job Impact Statement

A Job Impact Statement is not attached because it is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposal simply increases Medicaid reimbursement to nursing homes that meet or exceed certain performance measures as defined in Department regulations.

Assessment of Public Comment

The Department received two letters commenting on the proposed Pay for Performance regulation. The first letter was submitted by the Healthcare Association of New York State (HANYs) expressing its support for the regulation and its implementation. In its letter, HANYs noted that a broad array of nursing home providers, trade associations and consumer groups participated in the workgroup that issued recommendations providing the basis for the regulation. The HANYs letter added that the workgroup had agreed that the final product should be based on a simple and fair process.

A second letter was received from the Continuing Care Leadership Coalition (CCLC). CCLC expressed its support for creating payment incentives based on the actual quality of care provided in order to improve quality performance. CCLC, however, contended that the rate awards should use an alternate mechanism utilizing multiple quality measures instead of the adjusted pressure ulcer measure. CCLC's criticism rests on two arguments: First, the risk adjustment mechanism is flawed; and second, the use of multiple measures would capture a better picture of overall quality.

The first CCLC criticism stems from an erroneous understanding of the risk adjustment applied to the CMS data. In the instances cited, the risk adjustment, in fact, includes the factors which CCLC claims are omitted. Similarly the "exclusion" of sub-acute care facilities from participation resulted from the need to ensure that pre-existing pressure ulcers are not counted, which the methodology accomplishes by undertaking the initial assessment ninety days following admission. The methodology also does not exclude any nursing homes from participating in the award competition, including specialty facilities, contrary to the CCLC claims.

The second criticism centers on CCLC's preference for the use of multiple quality measures in determining the rate awards. This point received significant discussion during the workgroup deliberations. Workgroup participants presented evidence that the rate of pressure ulcer occurrence represents a reasonable proxy for quality at nursing homes. Further, the reduction in pressure ulcer rates is highly correlated to higher quality expressed through other MDS measures. The designation of pressure ulcer prevention as a measure also reflected the below average performance of New York nursing homes in this regard compared to rest of the country. The New York performance for other MDS measures is generally higher than the national average, providing additional justification for using the single pressure ulcer measure.

While recognizing that multiple measures may, in fact, better represent overall quality at nursing homes, the workgroup determined that a lack of staff resources would preclude their use for the initial round of awards. Also the suggested inclusion of process measures, such as participation in quality improvement campaigns, would raise additional validity issues, and detract from the workgroup's goal of keeping the methodology simple, and the results fair and easily understood. Further examination of the methodology shows that surveillance data, suggested by CCLC as an additional measure, are used as a screen for the awards, with any nursing home experiencing substandard quality of care during the award period automatically excluded from the competition.

The assessment of public comment concludes that there are no issues which would impede the adoption of the regulation and that the regulation does not require amendment or revision.

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

At its meeting on December 11, 2007, the Board proposed amendments to the minimum standards regarding basic training for call-takers/dispatchers. Currently, the standards restrict call-takers/dispatchers who have failed to satisfy the annual in-service training standards from being assigned to duty in the subsequent calendar year. This amendment will replace that provision with a new requirement that restricts call takers/dispatchers who fail to satisfy the annual in-service training standard from being eligible for or assigned to duty until such training has been successfully completed. The Notice of Proposed Amendment was published in the February 6, 2008 issue of the *State Register*. Following a period of public comment, the Board at its meeting of March 26, 2008, adopted the amended final standard which appears in this Notice. The amended final standard is identical to the amendment as originally proposed.

For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6746.

The Amendment is as follows: Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section 5201.4(b) is amended to read as follows:

Section 5201.4(b) Annual In-Service Training Standards.

(b) [No] A call-taker/dispatcher who [shall have] *has* failed to satisfy the annual in-service training standards set forth herein for any calendar year shall *not* be eligible for, or be assigned to, duty [in any subsequent calendar year] *until such time as the training is successfully completed.*

INFORMATION NOTICE

NOTICE OF ADOPTION OF MINIMUM STANDARDS

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

At its meeting of October 16, 2007, the 911 Board proposed amendments to the minimum standards regarding basic training for call-takers/dispatchers. Currently, the standards require the authority having jurisdiction over the county public safety answering point to maintain accurate and current copies of curricula consisting of course outlines and descriptions, and specific lesson plans for all training courses. This amendment will replace that provision with a new requirement that the authority maintain accurate and current copies of curricula and specific lesson plans that are completed through an in-house training program. The Notice of Proposed Amendment was published in the November 14, 2007 issue of the *State Register*. Following a period of public comment, the Board at its meeting of March 26, 2008, adopted the amended final standard which appears in this Notice. The amended final standard is identical to the amendment as originally proposed.

For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6746.

The Amendment is as follows:

Section 5201.3 Basic training standards.

(a) Emergency Services Dispatch Training Evaluation Program.

(6) Administrative requirements. The authority shall:

New York State 911 Board

INFORMATION NOTICE NOTICE OF ADOPTION OF MINIMUM STANDARDS

(i) maintain accurate and current copies of curricula consisting of course outlines, [and] descriptions, and specific lesson plans for all training courses *that are completed through an in-house training program*;

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

(b) Classroom and related instruction.

(6) Administrative requirements. The authority shall:

(i) maintain accurate and current copies of curricula consisting of course outlines, [and] descriptions, and specific lesson plans for all training courses *that are completed through an in-house training program*;

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

Section 5201.4 Annual in-service training standards.

(d) Administrative requirements. The authority shall:

(1) maintain accurate and current copies of curricula consisting of course outlines, [and] descriptions, and specific lesson plans for all training courses *that are completed through an in-house training program*;

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

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electric Meter Access by Rochester Gas and Electric Corporation I.D. No. PSC-17-08-00025-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 Rochester Gas and Electric Corporation (RG&E) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 19—Electric to become effective July 1, 2008.

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

Subject: Meter access.

Purpose: To make revisions to its meter access notification process.

Substance of proposed rule: The Commission is considering Rochester Gas and Electric Corporation's (RG&E) request to revise its method of notifying customers when it is unable to access a customer's meter. The proposed filing has an effective date of July 1, 2008. The Commission may approve, reject or modify, in whole or in part, RG&E's request.

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

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

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

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

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

(08-E-0350SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Promotional Restrictions on the Save Bundle Order to Protect the Uniformity Rule Established in the Competition III Order Case I.D. No. PSC-17-08-00026-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 granting Verizon New York Inc. relief from promotional restrictions put into place in the save bundle order (Case No. 06-C-0954) and revising the uniformity rule that was established in the competition III order (Case No. 05-C-0616) based upon a petition received March 31, 2008 in Case 08-C-0353. The commission may grant or deny the petition or take other action related to Verizon's rates.

Statutory authority: Public Service Law, section 92(3) and (5)

Subject: Promotional restrictions put into place in the save bundle order to protect the uniformity rule that was established in the competition III order (Case No. 05-C-0616).

Purpose: To consider granting Verizon New York Inc. relief from promotional restrictions.

Substance of proposed rule: The Public Service Commission is considering granting Verizon New York Inc. relief from promotional restrictions put into place in the Save Bundle Order (Case No. 06-C-0954) and revising the Uniformity Rule that was established in the Competition III Order (Case No. 05-C-0616) based upon a petition received March 31, 2008 in Case 08-C-0353. The Commission may grant or deny the petition or take other action related to Verizon's rates.

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

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

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

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

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

(08-C-0353SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gas Meter Access by Rochester Gas and Electric Corporation I.D. No. PSC-17-08-00027-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 Rochester Gas and Electric Corporation (RG&E) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 16—Gas to become effective July 1, 2008.

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

Subject: Meter access.

Purpose: To make revisions to its meter access notification process.

Substance of proposed rule: The Commission is considering Rochester Gas and Electric Corporation's (RG&E) request to revise its method of notifying customers when it is unable to access a customer's meter. The proposed filing has an effective date of July 1, 2008. The Commission may approve, reject or modify, in whole or in part, RG&E's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-G-0351SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreement to Interconnect Telephone Networks

I.D. No. PSC-17-08-00028-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 modification filed by Verizon New York Inc. and MetroPCS New York, LLC to revise the interconnection agreement effective Jan. 31, 2008.

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

Subject: Intercarrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and MetroPCS New York, LLC interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and MetroPCS New York, LLC in January 2008. The companies subsequently have jointly filed amendments to clarify the provisions regarding their reciprocal compensation rate.

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

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

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

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

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

(08-C-0138SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mini Rate Filing by the Village of Richmondville

I.D. No. PSC-17-08-00029-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 the Village of Richmondville to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 1—Electricity, to become effective Sept. 1, 2008.

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

Subject: Mini rate filing by the Village of Richmondville.

Purpose: To increase annual electric revenues by approximately \$159,000 or 15.9 percent.

Substance of proposed rule: The Commission is considering the Village of Richmondville's (Richmondville) request to increase its annual electric revenues by approximately \$159,000 or 15.9%. The proposed filing includes an increase to reconnection charges which more accurately reflect the costs to Richmondville to perform these services; an increase to returned check charges and an update to its Factor of Adjustment. Richmondville also proposes to begin performing annual reconciliations of their purchased power and recovering or refunding any variance that is determined as approved by the Commission in Case 05-E-1496. The proposed filing has an effective date of September 1, 2008. The Commission may approve, reject or modify, in whole or in part, Richmondville's request.

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

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

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

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

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

(08-E-0359SA1)

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Veteran Assistance

I.D. No. TDA-17-08-00001-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 301.2(a), (c), (d)(2), 301.3(a) and 301.5(a)(1), (b)(1) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34, 131(1) and 169

Subject: Veteran assistance.

Purpose: To clarify that incapacitated children may be eligible for veteran assistance if one of their parents is a deceased veteran.

Text of proposed rule: Subdivision (a) of section 301.2 is amended to read as follows:

(a) Persons eligible or presumptively eligible for [ADC] *family assistance (FA)* or in receipt of *supplemental security income (SSI)* are ineligible for veteran assistance.

Subdivision (c) of section 301.2 is amended to read as follows:

(c) Incapacitated children of a deceased [veterans] *veteran*, who by reason of a physical or mental defect or infirmity are totally or partially disabled, are eligible for veteran assistance regardless of their age, if they are not eligible for [ADC] *FA* or in receipt of SSI.

Paragraph (2) of subdivision (d) of section 301.2 is amended to read as follows:

(2) If the investigation does not establish the required relationship to the veteran or deceased veteran and there is reasonable doubt as to the validity of the information, the sources of verification used in establishing relationship under similar circumstances in the [aid to dependent children] *FA* program shall be consulted.

Subdivision (a) of section 301.3 is amended to read as follows:

(a) Responsibility for determining initial and continuing eligibility of a family group consisting of veterans and nonveterans may be assigned either to the veteran assistance division or to the division that serves nonveterans, except that SSI or [ADC] *FA* cases shall not be assigned to the veteran assistance division unless such division has been authorized to administer the Federal categories of public assistance.

Paragraph (1) of subdivision (a) of section 301.5 is amended to read as follows:

(1) Veteran assistance must be administered in accordance with the provisions of law and the regulations of the [department] *Office* governing the administration of [home relief] *safety net assistance (SNA)*.

Paragraph (1) of subdivision (b) of section 301.5 is amended to read as follows:

(1) When administration of other categories of public assistance and care is authorized by subdivision 5 of section 173 of the Social Services

Law, such categories must be administered in accordance with the regulations of the [department] Office applicable to the administration of such programs.

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.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 Office of Temporary and Disability Assistance (OTDA) is proposing a rule to amend 18 NYCRR Part 301 which governs the veteran assistance program. OTDA has determined that no person is likely to object to the adoption of the proposed rule as written.

The proposed rule conforms to the provisions of the Welfare Reform Act of 1997 (Chapter 436 of the Laws of 1997) by changing the references in 18 NYCRR Part 301 from the aid to dependent children program to the family assistance program and from the home relief program to the safety net assistance program. The proposal also removes references to the former New York State Department of Social Services (the department) and replaces them with references to the New York State Office of Temporary and Disability Assistance (the Office). By proposing these changes, this rule would update the names of the public assistance programs, would remove references to a former department, and would make the regulations more comprehensible to applicants and recipients of assistance.

The proposed rule clarifies that pursuant to 18 NYCRR § 301.2(c), incapacitated children may be eligible for veteran assistance if one of their parents is a deceased veteran. This proposed clarification is consistent with Social Services Law § 169(4) and with State policy.

Lastly, the proposed rule clarifies that "SSI" is the acronym for "supplemental security income". Although this meaning is set forth in other portions of 18 NYCRR, it presently is not contained in 18 NYCRR Part 301. This proposed clarification would help ensure that 18 NYCRR Part 301 is more comprehensible to persons who are not familiar with the SSI program.

It is expected that no person will object to the proposed amendments contained in this consensus rule since the rule is consistent with State law, better reflects the policies of the State and renders 18 NYCRR Part 301 more comprehensible to the public.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the jobs of the workers applying the regulations impacted by the proposed amendments will not be affected in any real way. Thus the changes will not have any impact on jobs and employment opportunities in the State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State-Confirmed Human Trafficking Victims

I.D. No. TDA-17-08-00032-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 765 to Title 18 NYCRR.

Statutory authority: Social Services Law, art. 10-D

Subject: State-confirmed human trafficking victims.

Purpose: To govern the process and protocols for confirming an individual as a human trafficking victim in New York State.

Text of proposed rule: A new Subchapter K is added to Title 18 NYCRR to read as follows:

Subchapter K Victims of Human Trafficking

A new Part 765 is added to Subchapter K of Title 18 NYCRR to read as follows:

Part 765 Confirmation as a State-confirmed Human Trafficking Victim

§ 765.1 Scope. The provisions of this Part shall govern the process and protocols for the Office of Temporary and Disability Assistance in assessing, and the social services districts in identifying, an individual as a State-confirmed human trafficking victim in New York State. In conjunction with the Division of Criminal Justice Services and Part 6174 of 9 NYCRR, this part shall also include defining the participant parties, the victim, the nature of the consultative role in the confirmation and appeal processes,

and the process for required notifications, referrals and assistance to the prescribed parties.

§ 765.2 Definitions. When used in this Part:

(a) The term "Office" shall mean the Office of Temporary and Disability Assistance.

(b) The term "Division" shall mean the Division of Criminal Justice Services.

(c) The term "human trafficking victim" shall mean a victim of sex trafficking, as defined in section 230.34 of the Penal Law, or a victim of labor trafficking, as defined in section 135.35 of the Penal Law.

(d) The term "subject of referral" shall mean a human trafficking victim referred by a statutory referral source under section 483-CC(A) of the Social Services Law to the Division and the Office for assessment as a State-confirmed human trafficking victim.

(e) The term "statutory referral source" shall mean the law enforcement agency or district attorney's office that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, refers such human trafficking victim to the Division and the Office for assessment as a State-confirmed human trafficking victim.

(f) The term "State-confirmed human trafficking victim" shall mean a human trafficking victim referred by a statutory referral source who appears to meet the criteria for certification as a victim of a severe form of trafficking in persons pursuant to the federal Trafficking Victims Protection Act set forth in section 7105 of 22 U.S.C. (United States Code Annotated, Title 22, § 7105; 2007 Cumulative Annual Pocket Part, page 31 et al.; Thomson West Publishing, Eagan, Minnesota. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, New York 12243-0001) or appears to be otherwise eligible for any federal, state, or local benefits and services, in the judgment of the Division, in consultation with the Office and statutory referral source.

(g) The term "case management provider" shall mean an entity under contract with the Office pursuant to section 483-BB(B) of the Social Services Law to provide services to certain State-confirmed human trafficking victims.

§ 765.3 Minors. If a subject of referral is under the age of 18 at the time of referral to the Division and the Office, the following actions must be taken regardless of whether the subject of referral is deemed a State-confirmed human trafficking victim:

(a) The Office shall, as soon as practicable, notify the social services district in the county where the subject of referral was found; and

(b) the social services district shall provide to such minor any services to which the minor is entitled under applicable law.

§ 765.4 Consultation. Within three business days of receipt of a referral by a statutory referral source, the Office shall notify the Division in writing of its assessment regarding whether a subject of referral is a State-confirmed human trafficking victim.

§ 765.5 Notice of Confirmation. Within three business days of receipt of written notice from the Division, the Office shall notify the subject of referral and statutory referral source in writing that, in the judgment of the Division, in consultation with the Office and statutory referral source, the subject of referral is a State-confirmed human trafficking victim. Such notice shall include a written referral for services from a case management provider or from any other available source.

§ 765.6 Referrals for Assistance. When providing a written referral for services from a case management provider or from any other available source to a State-confirmed human trafficking victim, the Office shall:

(a) refer a State-confirmed human trafficking victim who appears to meet the criteria for certification as a victim of a severe form of trafficking in persons pursuant to the federal Trafficking Victims Protection Act set forth in section 7105 of 22 U.S.C. (United States Code Annotated, Title 22, § 7105; 2007 Cumulative Annual Pocket Part, page 31 et al.; Thomson West Publishing, Eagan, Minnesota. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, New York 12243-0001) to a case management provider, and shall also notify that case management provider of the referral; or

(b) refer a State-confirmed human trafficking victim who appears to be otherwise eligible for any federal, state, or local benefits and services to the social services district in which the person resides and to any other available source of assistance, and shall also notify that social services district and any other available source of assistance of the referral; or

(c) refer a State-confirmed human trafficking victim who is under the age of 18 to the social services district in the county where such minor was found and to any other available source of assistance.

§ 765.7 Appeals. If the Commissioner of the Division reverses a denial of confirmation pursuant to sections 6174.4(a) and (b) of 9 NYCRR, and notifies the Office of its determination in writing, the Office shall follow the procedures set forth in this part.

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

The New York State human trafficking law, Chapter 74 of the Laws of 2007, enacted on June 6, 2007, adds to the Social Services Law (SSL) a new Article 10-D "Services for Victims of Human Trafficking". The major provisions of Article 10-D of the SSL are in the following subsections:

483-AA Definitions

483-BB Services for Victims of Human Trafficking

483-CC Confirmation as a Victim of Human Trafficking

483-DD Law Enforcement Assistance with Respect to Immigration

483-EE Establishment of Interagency Task Force on Human Trafficking

The rationale for the proposed regulations is that the new law specifically charges the Office of Temporary and Disability Assistance (OTDA) with certain responsibilities under these subsections and the proposed regulations elaborate on the requirements set forth in section 483-CC of the new Article 10-D of the SSL.

2. Legislative objectives:

The legislation requires the New York State Division of Criminal Justice Services (DCJS) to consult with the OTDA to determine whether individuals who have been appropriately referred to both State agencies by law enforcement or by district attorneys are "confirmed" as Human Trafficking Victims under New York State law by virtue of whether they appear to meet the criteria for federal certification as a victim of a severe form of human trafficking or appear to be otherwise eligible for any federal, State, or local benefits and services. Upon denial of confirmation, deferral of confirmation, or confirmation, either OTDA or DCJS is required to provide notification to the referral source, to the alleged or confirmed victim, and to the local entity that may provide services and/or benefits. Additionally, in the case of a minor child, OTDA is responsible for the immediate notification of the social services district in the county where the child is found. OTDA is also charged with the responsibility to make services available, through contracts with non-governmental organizations and subject to appropriation, to State-confirmed trafficking victims. DCJS and OTDA must jointly convene an Interagency Task Force on Human Trafficking, which must submit a progress report to the Governor and the Legislature by June, 2008.

The proposed regulations provide more detailed instruction on protocols and procedures relating to the confirmation of human trafficking victims and how the responsibilities are to be carried out by the OTDA. DCJS is promulgating companion regulations.

3. Needs and benefits:

The purpose of the proposed regulations is to provide more detailed instruction on the requirements set forth in the law, as described above.

The need for regulations is derived from the necessity to clearly define the participant agencies, the victim, and the terms describing the process of referral; to clearly describe the nature of the OTDA consultative role in the confirmation process; and to clearly describe the process for required notifications to the prescribed parties.

The benefits of the proposed regulations include a clear understanding of who the participants are and the key elements of the process; to promote a timely and accurate determination of confirmation; and to expedite appropriate notifications to the required parties.

4. Costs:

The regulated parties include OTDA and the social services districts.

OTDA costs for personnel would be for one staff position (Trafficking Coordinator) at approximately the cost of a Grade 27 annual salary with fringe benefits (\$110,000).

Costs to the local districts would be reflective of the number of individuals served by that district. Adult trafficking victims who are citizens or qualified aliens would be eligible for benefits and services to the same degree as any other citizen or qualified alien, if other wise eligible (unfortunately, there are no reliable estimates of trafficking victims who are citizens or qualified aliens). Therefore, any additions to the local adult or

family caseload that result from this legislation would cost the same as the addition to the caseload of any other citizen or qualified alien adults or families.

The appropriate local district will be notified of all minors who are referred for confirmation, whether they are unaccompanied or are with their family. Those who are unaccompanied will be screened by the local district for services and benefit eligibility. Child welfare costs for any minors placed in care would be at the same costs as for any other minor placed in that level of care. There are no reliable estimates of the number of minors that may be referred. OTDA defers to OCFS on all matters regarding child human trafficking victims. The estimate provided by OCFS is that 1,854 children in NYS might be sex trafficking victims. This is a rough figure extrapolated from existing OCFS data not specifically collected to measure human trafficking victimization among children, per se. Also, this estimate applies to possible child sex trafficking victims only and excludes possible child labor trafficking victims. OTDA believes minors may be a large majority of victims that are identified and since these costs are shared by the State and the localities there is the potential for an increase in costs. Some minors may be eligible for reclassification into the federally-funded Unaccompanied Refugee Minor (URM) Program. These URM Program costs are 100% federally reimbursable. With the exception of the URM Program, all child welfare aspects of the State's trafficking program are the responsibility of the Office of Family and Children Services (OCFS).

5. Local government mandates:

Social services districts must receive notifications regarding any minor that is referred to DCJS and OTDA as a possible trafficking victim. Local districts must receive notifications of any State-confirmed trafficking victims, including minors. Districts must assess a human trafficking victim's eligibility for services and/or benefits. Local districts are requested to refer ineligible persons to other local resources, as may be available, for further assistance.

6. Paperwork:

OTDA must be able to receive faxed referrals from law enforcement and district attorneys on the referral form prepared by DCJS. Upon confirmation of a trafficking victim, the OTDA program office, the Bureau of Refugee and Immigrant Assistance (BRIA), must mail a written notification of confirmation to the referral source, the victim, and to the provider of services and benefits. The written notifications are basically the same letter, with slight variations in the addressees.

7. Duplication:

The New York State law is designed, in part, to address human trafficking victims that have not yet been certified by the federal Office of Refugee Resettlement (ORR) as a victim of a severe form of human trafficking. The terms identified, the information provided, the processes described, the notifications, and the actions by local district and service providers under this regulation precede the eligibility period conferred by the federal certification process and are designed to expedite the victims' application for such certification. Therefore, there is no conflict with other federal or state rules with regard to the identification of human trafficking victims, the confirmation process, or the notification process.

8. Alternatives:

There were no alternative proposals. OTDA consulted regularly with DCJS on these regulations, and DCJS consulted regularly with OTDA on their regulations. Both regulations reflect the agreement of the two agencies.

9. Federal standards:

No minimum federal government standards are exceeded.

As indicated above, the State law is designed to address the needs of victims prior to their certification, which would make the victim eligible for benefits and services as if they were refugees. Allowable expenditures by OTDA regional contractors for benefits and services are established at rates that are equivalent to, and which may not exceed, those allowed for cash assistance recipients.

10. Compliance schedule:

Regulations are to be effective on the date the notice of adoption for this proposal is published in the State Register.

Regulatory Flexibility Analysis

1. Effect of rule:

All local social services districts may be affected. No small businesses will be affected.

2. Compliance requirements:

Local social services districts must receive written notifications of any minor found in the district that has been referred to DCJS and OTDA as a human trafficking victim. Local districts must also receive written notifi-

cation of any state-confirmed human trafficking victim who may be eligible for local district services and benefits.

For all state-confirmed human trafficking victims referred to the local district, the district must conduct the routine eligibility determination process. For those determined to be eligible and are enrolled in services or benefit programs, including child welfare programs, the local district must then follow the usual appropriate system reporting requirements.

3. Professional services:

The estimated number of state-confirmed aliens or citizens who may be eligible for local district services and benefits is unknown. There are no reliable estimates for minors who may be eligible for local district services and benefits. OTDA defers to OCFS on all matters regarding child human trafficking victims. The estimate provided by OCFS is that 1,854 children in NYS might be sex trafficking victims. This is a rough figure extrapolated from existing OCFS data not specifically collected to measure human trafficking victimization among children, per se. Also, this estimate applies to possible child sex trafficking victims only and excludes possible child labor trafficking victims.

Any local district may receive several referrals in a year but it is expected that the majority of districts would receive none. Therefore, it is not expected that a local district would need to consider additional staffing until such time in the future as a significant caseload develops for that district.

4. Compliance costs:

There should be no appreciable initial capital costs for local districts and the continuing capital costs would be limited to those districts that may have a significant future caseload of trafficking victims.

5. Economic and technological feasibility:

Due to the anticipated small caseload statewide and the difficulty in predicting the specific local districts that may be affected, plus the low technology requirements for compliance, there are no reasons to believe that compliance is not economically and technologically feasible.

6. Minimizing adverse impact:

The minimal expectations for additional recording and reporting (over and above that which is already required of local districts) combined with the anticipated low caseload, should minimize the foreseeable impacts.

7. Small business and local government participation:

The OTDA notified local social services districts (LDSSs) of the requirements of the rule via a General Information System (GIS) message on Monday, October 29, 2007. This GIS message provided LDSSs with a contact at OTDA BRIA.

LDSSs will receive an Administrative Directive from OTDA soon to further explain the requirements of the rule and to obtain LDSS feedback through the clearance process.

Additionally, with regard to services to minor trafficking victims, OTDA has conferred with OCFS program staff and their office of legal affairs, commencing in June 2007, through numerous e-mails, telephone calls, and face-to-face meetings. The Administrative Directive mentioned above is now conceptualized as a joint release with OCFS and would include instructions to the districts on assessment of service needs of trafficked minors and the child care options that the local district could consider. OCFS has commented on and/or provided language for the regulations and for the proposed Administrative Directive. At least three written drafts of the directive have been shared among OTDA/OCFS representatives for comment.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Potentially all rural areas of the State may be affected by these regulations.

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

Social services districts must receive written notification of any minor found in the district that has been referred to DCJS and OTDA as a human trafficking victim. Districts must also receive written notification of any State-confirmed human trafficking victims who are U.S. citizens, nationals, individuals determined to be persons residing under color of law (PRUCOL), or have a satisfactory immigration status.

For all State-confirmed human trafficking victims referred to a social services district, the district must conduct the routine eligibility determina-

tion process that they do for all applicants. For all State-confirmed victims the districts must prepare a Human Trafficking Victim Disposition Report and submit it to OTDA (through BRIA). For those determined to be eligible and who are enrolled in services or benefit programs, including child welfare programs, the local district must then follow the usual appropriate system reporting requirements.

The estimated number of qualified aliens, U.S. nationals, citizens, individuals determined to be PRUCOL, or have a satisfactory immigration status that would be confirmed as trafficking victims is unknown. There are no reliable estimates for minors in rural areas.

Any local district may receive several referrals in a year but it is expected that the majority of districts would receive none. Therefore, it is not expected that a local district in a rural area would need to consider additional staffing until such time in the future as a significant caseload develops for that district.

3. Costs:

The regulated parties include OTDA and the social services districts.

Costs to the local districts in rural areas would be reflective of the number of individuals served by that district. Adult trafficking victims who are citizens or qualified aliens would be eligible for benefits and services to the same degree as any other citizen or qualified alien, if other wise eligible (unfortunately, there are no reliable estimates of trafficking victims who are citizens or qualified aliens). Therefore, any additions to the local adult or family caseload that result from this legislation would cost the same as the addition to the caseload of any other citizen or qualified alien adults or families.

The appropriate local district will be notified of all minors who are referred for confirmation, whether they are unaccompanied or are with their family. Those who are unaccompanied will be screened by the local district for services and benefit eligibility. Child welfare costs for any minors placed in care would be at the same costs as for any other minor placed in that level of care. There are no reliable estimates of the number of minors that may be referred. OTDA defers to OCFS on all matters regarding child human trafficking victims. The estimate provided by OCFS is that 1,854 children in NYS might be sex trafficking victims. This is a rough figure extrapolated from existing OCFS data not specifically collected to measure human trafficking victimization among children, per se. Also, this estimate applies to possible child sex trafficking victims only and excludes possible child labor trafficking victims. OTDA believes minors may be a large majority of victims that are identified and since these costs are shared by the State and the localities there is the potential for an increase in costs. Some minors may be eligible for reclassification into the federally-funded Unaccompanied Refugee Minor (URM) Program. These URM Program costs are 100% federally reimbursable. With the exception of the URM Program, all child welfare aspects of the State's trafficking program are the responsibility of the Office of Family and Children Services (OCFS).

4. Minimizing adverse impact:

The minimal expectations for additional recording and reporting (over and above that which is already required of local districts) combined with the anticipated low caseload, should minimize the foreseeable impacts on social services districts in rural areas.

5. Rural area participation:

OTDA notified all social services districts, including rural districts, of the requirements of the rule via a General Information System (GIS) message on Monday, October 29, 2007. This GIS message provided social services districts with a contact at OTDA BRIA.

Social services districts will receive an Administrative Directive from OTDA soon to further explain the requirements of the rule and to obtain the districts' feedback through the clearance process.

Job Impact Statement

Due to the anticipated low number of cases statewide, the probability that most local areas would not be affected by this rule and the likelihood that any affected area would have minimal impact on employment, no substantial job impact, if any, is expected.

It is noted that OTDA's Bureau of Refugee and Immigrant Assistance (BRIA) will employ one individual in the position of Special Assistant-Human Trafficking Coordinator.

Workers' Compensation Board

EMERGENCY RULE MAKING

Pharmacy and Durable Medical Equipment Fee Schedules

I.D. No. WCB-17-08-00006-E

Filing No. 314

Filing date: April 7, 2008

Effective date: April 7, 2008

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

Action taken: Addition of Parts 440 and 442 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: Claimants are unduly burdened by having to pay out-of-pocket for prescription medications thus reducing the amount of benefits available to them to pay for cost of living expenses.

Subject: Pharmacy and durable medical equipment fee schedules.

Purpose: To adopt pharmacy and durable medical equipment fee schedules.

Substance of emergency rule: Chapter 6 of the Laws of 2007 added Section 13-o to the Workers' Compensation Law ("WCL") mandating the Chair to adopt a pharmaceutical fee schedule. WCL Section 13(a) mandates that the Chair shall establish a schedule for charges and fees for medical care and treatment. Part of the treatment listed under Section 13(a) includes medical supplies and devices that are classified as durable medical equipment. The proposed rule adopts a pharmaceutical fee schedule and durable medical equipment fee schedule to comply with the mandates. This rule adds a new Part 440 which sets forth the pharmacy fee schedule and procedures and rules for utilization of the pharmacy fee schedule and a new Part 450 which sets forth the durable medical equipment fee schedule.

Section 440.1 sets forth that the pharmacy fee schedule is applicable to prescription drugs or medicines dispensed on or after July 11, 2007.

Section 440.2 provides the definitions for brand name drugs, controlled substances, generic drugs, and rural areas.

Section 440.3 provides that a carrier or self-insured employer may designate a pharmacy or pharmacy network which an injured worker must use to fill prescriptions for work related injuries. This section sets forth the requirements applicable to pharmacies that are designated as part of a pharmacy network at which an injured worker must fill prescriptions. This section also sets forth the procedures applicable in circumstances where an injured worker is not required to use a designated pharmacy or pharmacy network.

Section 440.4 sets forth the requirements for notification to the injured worker that the carrier or self-insured employer has designated a pharmacy or pharmacy network that the injured worker must use to fill prescriptions. This section provides the information that must be provided in the notice to the injured worker including time frames for notice and method of delivery as well as notifications of changes in a pharmacy network.

Section 440.5 sets forth the fee schedule for prescription drugs. The fee schedule in uncontroverted cases is equivalent to the New York State Medicaid fee schedule for prescription drugs plus a dispensing fee of five dollars for generic drugs and four dollars for brand name drugs, and in controverted cases is ten percent above the New York State Medicaid fee schedule plus a dispensing fee of seven dollars and fifty cents for generic drugs and six dollars for brand-name drugs.

Section 440.6 provides that generic drugs shall be prescribed except as otherwise permitted by law.

Section 440.7 sets forth a transition period for injured workers to transfer prescriptions to a designated pharmacy or pharmacy network. Prescriptions for controlled substances must be transferred when all refills for the prescription are exhausted or after ninety days following notification of a designated pharmacy. Non-controlled substances must be transferred to a designated pharmacy when all refills are exhausted or after 60 days following notification.

Section 440.8 sets forth the procedure for payment of prescription bills or reimbursement. A carrier or self-insured employer is required to pay any

undisputed bill or portion of a bill and notify the injured worker by certified mail within 45 days of receipt of the bill of the reasons why the bill or portion of the bill is not being paid, or request documentation to determine the self-insured employer's or carrier's liability for the bill. If objection to a bill or portion of a bill is not received within 45 days, then the self-insured employer or carrier is deemed to have waived any objection to payment of the bill and must pay the bill. This section also provides that a pharmacy shall not charge an injured worker or third party more than the pharmacy fee schedule when the injured worker pays for prescriptions out-of-pocket, and the worker or third party shall be reimbursed at that rate.

Section 440.9 provides that if an injured worker's primary language is other than English, that notices required under this part must be in the injured worker's primary language.

Part 442 sets forth the fee schedule for durable medical equipment.

Section 442.1 sets forth that the fee schedule is applicable to durable medical goods and medical and surgical supplies dispensed on or after July 11, 2007.

Section 442.2 sets forth the fee schedule for durable medical equipment as indexed to the New York State Medicaid fee schedule. This section also provides for the rate of reimbursement when Medicaid has not established a fee payable for a specific item.

Section 442.3 provides for adjustments to the fee schedule by the Chair as deemed appropriate in circumstances where the reimbursement amount is grossly inadequate to meet a pharmacies or providers costs.

Appendix A provides the form for notification to be posted in designated pharmacies listing the insurance carriers that are served by the pharmacy.

Appendix B provides the form for notifying injured workers that the claim has been contested and that the carrier is not required to reimburse for medications while the claim is being contested.

Appendix C provides the form for notification of injured workers that the self-insured employer or carrier has designated a pharmacy that must be used to fill prescriptions.

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 July 5, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: regulations@wcb.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Workers' Compensation Law (WCL) § 117 authorizes the Chair of the Workers' Compensation Board (Board) to adopt reasonable rules consistent with the provisions of the WCL. Chapter 6 of the Laws of 2007 added Section 13-o to the WCL mandating that the Chair adopt a pharmaceutical fee schedule. Chapter 6 amended WCL Section 13 to add new subdivision (i). Paragraph (5) of said new subdivision requires the adoption of regulations defining the reasonable distance for a claimant to travel to obtain prescriptions. WCL Section 13(a) was amended by Chapter to mandate that the Chair establish a schedule for charges and fees for medical care and treatment. Part of the treatment listed under Section 13(a) includes medical supplies and devices that are classified as durable medical equipment. Finally, Section 80 of Chapter 6 authorizes the Chair, in consultation with the Superintendent of Insurance, to adopt regulations relating to the procedural requirements necessary to implement the provisions of Chapter 6.

2. Legislative Objectives: The proposed regulations provide fee schedules to govern the cost of prescription medicines and durable medical equipment in order to control the cost of workers' compensation insurance. Additionally, the proposed regulations provide process and guidance for claimants, employers, insurance carriers, third party administrators and self-insured employers regarding the operation of pharmacy networks and the payment of prescription bills and durable medical equipment bills according to a uniform standard so that delays in reimbursement or payment to claimants or pharmacies are reduced or eliminated.

3. Needs and Benefits: Chapter 6 of the Laws of 2007 enacted sweeping reforms of the New York workers' compensation system. Among other things, the legislation requires the Chair to adopt a pharmacy fee schedule and a fee schedule to govern durable medical equipment. In a major shift, the legislation authorizes insurance carriers and self-insured employers to require claimants to obtain prescriptions from a pharmacy that participates in the network the carrier or self-insured employer may contract with. Prior to this legislation, carriers and self-insured employers were prohibited from directing claimants as to where to obtain medicines, unless the carrier

or self-insured employer utilized a Preferred Provider Organization (PPO). Even then claimants could opt out of the PPO after thirty days. To ensure claimants do not have to travel long distances to reach a network pharmacy, WCL Section 13(i)(5) requires a pharmacy location to be within a "reasonable distance" of the claimant's home if the option of a mail order pharmacy is not available. The term "reasonable distance" is to be defined in regulations. Finally, new WCL '13(i) (2) sets forth the time period and process by which bills for pharmaceuticals must be paid.

The purpose of the rule is to comply with the requirements of the legislation. The rule sets forth the fee schedules for prescription medicines and durable medical equipment. Currently, there is no set fee for prescriptions and durable medical equipment. Instead, the pharmacies and other providers of durable medical equipment charge the price they set. The carrier or self-insured employer must then pay the billed cost or object to the portion which is determined to be excessive or greater than the charges that prevail in the claimant's community. In the past a particular pharmacy has charged more than twice what is considered the customary charge. Disputes over the payment for prescription medications to pharmacies must, in many cases, be decided by a Workers' Compensation Law Judge (WCLJ). Using hearings to resolve these disputes is very costly and time consuming. The time a WCLJ spends deciding the correct payment to a pharmacy is time not spent adjudicating claims for benefits. By having a set fee schedule, there is no dispute over the proper payment for a prescription.

The fee schedule also provides savings to carriers, and ultimately to employers by reducing the cost of workers' compensation insurance. These entities will indirectly benefit from the savings afforded by Medicaid's negotiating power with drug manufacturers. Those carriers and self-insured employers paying currently paying average wholesale price will realize savings of approximately 14 percent for brand name medications and 25 percent for generic medications.

Additionally, the rule requires carriers to provide notice to a claimant that a network pharmacy has been designated and the procedures for filling prescriptions at the designated network pharmacy. The rule sets forth the information that must be included in the notice and the time frame within which notification must be given to the claimant and by the proper means to deliver such notice. The rule also facilitates direct billing of the carrier by the network pharmacy. This benefits the carrier as well as the claimant by reducing the delays inherent in submitting bills to the carrier by the claimant. Direct billing benefits the claimants by eliminating the out-of-pocket costs when they use a network pharmacy. Pharmacies benefit by the reduction or elimination of delay in payment. The rule also provides an incentive to pharmacies to provide prescription drugs in cases where liability is controverted by the carrier by providing an extra dispensing fee, as well as an increase in price of 10 percent.

The rule will benefit self-insured employers and/or carriers by providing a set fee at which the pharmacy or claimant is to be reimbursed. A uniform standard for pricing will reduce the claims litigation which arises when there is a price difference between the price a carrier will pay and the actual costs incurred by a pharmacy or claimant. This rule also allows self-insured employers, carriers and their agents to select a pharmacy that can provide a cost savings and provide the same or better service to a claimant. The rule will benefit workers' compensation claimants by reducing the cost of prescriptions that a claimant pays for out of pocket, increasing timeliness as to the amount they will be reimbursed for prescription drug costs or durable medical equipment, increasing the use of direct billing to the carrier rather than out of pocket payments by a claimant.

The rule will also benefit the Board as it is anticipated that there will be a reduction in the number of hearings held to determine the proper amount of reimbursement to claimants for prescription drugs or durable medical equipment. The rule is also a benefit because it mitigates any adverse impact by using an existing fee schedule (the Medicaid pharmacy fee schedule) that is familiar to state agencies and insurance carriers. It promotes a uniform standard across state agencies utilizing a pharmacy fee schedule and by preventing the need to change multiple systems to administer claims.

4. Costs: There are additional costs for carriers or self-insured employers. They are liable for the cost of medications if they do not respond to a bill for prescription drugs sent by a pharmacy or claimant within 45 days. This cost does not apply if carriers or self-insured employers respond in a timely fashion as provided by the rule. This cost is also imposed by the legislation. There are costs associated with sending the required notices, such as those set forth as Appendices B and C to the claimant that a network pharmacy has been designated and the procedures to follow in utilizing the network pharmacy. However, in many cases the required

notices can be sent with currently required forms so there should be limited additional postage necessary.

Pharmacies will have a minimal cost associated with posting a notice that they are part of a designated network and the procedures for the claimant to follow. The fee schedule will also reduce the amount that a pharmacy can charge for a drug, but that cost is offset by the savings to the Workers' Compensation system as a whole. It should be noted that fee schedules are used in many other areas such as Medicare, Medicaid, and No Fault Insurance which were implemented to reduce costs associated with these programs. Pharmacies will also see this cost offset by the reduction in administrative expenses associated with seeking reimbursement from the carrier since the carrier must pay or object within forty-five days and the fee schedule will eliminate controversies regarding the reimbursement cost of a drug. Overall, workers' compensation prescriptions comprise 3 percent of average pharmacy sales, and thus the impact of the savings from these regulations on overall pharmacy business are limited, and offset by the reduction in administrative expenses for reimbursement and by faster reimbursement from carriers. The procedures for processing bill payment and reimbursement are anticipated to remain the same; therefore, no additional costs associated with record keeping or processing claims will be incurred. The new rule will allow carriers, self-insured employers and their agents to contract with a pharmacy or network of pharmacies to provide prescription drugs or durable medical equipment, thus allowing them to negotiate for the lowest cost of providing such drugs or durable medical equipment. The use of a uniform price standard will reduce the number of hearings necessary to determine what amounts are due and owing to a claimant thus reducing the costs necessary for legal representation at the hearing. It is anticipated that costs will be reduced for claimants.

5. Local Government Mandates: A municipality or governmental agency that is self-insured is required to comply with the rules for reimbursement for prescription drugs and the rules for notice of a designated network pharmacy. Municipalities or governmental agencies have the option to designate a pharmacy network; however, the fee schedule will still afford substantial savings to a municipality or governmental agency if a pharmacy network is not designated. It is expected that the regulation will actually reduce costs by allowing self-insured local governments to negotiate for lower prescription costs with contracted pharmacies.

6. Paperwork: There are notification requirements that must be met by carriers, employers and pharmacies. Carriers are required by Section 13(i)(5) of the new legislation to provide notice to claimants that a pharmacy network has been designated and that claimants are required to use it to fill their prescriptions. The regulations specify the notice in Appendices B and C. Additionally, notice must be given to all employees when a carrier or self-insured employer contracts with a network so that when an employee is injured he or she knows to use a network pharmacy. This will eliminate the need for the claimant to pay out of pocket and to maximize the savings for the carrier or self-insured employer. When contracting with a network, a carrier or self-insured employer also has the option to establish a streamlined method of payment, eliminating the receipt of multiple bills for prescriptions. In addition, carriers are required to respond to a prescription bill within 45 days or they will waive any objection to payment of a prescription bill. Carriers are also required to certify annually to the Board that the pharmacies in the designated network are in compliance with the regulation. Employers are required to post notice in the workplace that a network pharmacy has been designated and the procedures for utilizing the network pharmacy as well as providing notice to the claimant. Pharmacies are required to post notice that the pharmacy has been designated as a network pharmacy and the procedures for filling prescriptions at that pharmacy. The existing procedure of submitting bills and reimbursement requests to the carrier, third party administrator, or self-insured employer will remain the same. While the regulation requires a number of notices, this is to ensure the claimant is aware of the arrangement with a network and the requirement to use the network to benefit carriers, claimants and employers through lower costs.

7. Duplication: There is no duplication.

8. Alternatives: Based upon the mandate of the Legislature to establish fee schedules, the Board is essentially required to promulgate regulations in order to ensure the orderly implementation of the proposed fee schedules. To fail to delineate the responsibilities of all participating parties would be imprudent as it would lead to confusion on the issue of timely payment and cause an increase in the number and length of hearings required to resolve this issue. An alternative pharmacy fee schedule was developed using other states fee schedules as a model. Other states generally use a formula consisting of the average wholesale price ("AWP") plus

or minus a percentage which varies between plus 40% and minus 12%. The formula may or may not include a dispensing fee which varies between \$3.00 and \$8.70 depending on the state. California has adopted that State's Medicaid fee schedule known as MediCal. The experience in California has produced great savings and there have been no issues regarding claimant's ability to obtain prescription medications.

Initially, the Board considered using the average wholesale price minus 15 percent, or the Medicare fee schedule. It was also suggested by the Pharmacy Alliance that a pharmacy fee schedule be developed to use the average wholesale price plus five dollars for brand name drugs and average wholesale price plus 10 percent plus five dollars for generics. These proposals were judged to be too high to provide significant savings, which would defeat the legislative purpose for the rule.

Rather, it was determined to use the Medicaid fee schedule set by the Department of Health, as it is set for New York, widely known and would generate sufficient savings.

Discussions about the content of the regulations were held with the Assembly and Senate as well as the Business Council of New York State and the AFL-CIO who provided comments and suggestions to be considered in the regulations.

9. Federal Standards: There are no applicable Federal Standards.

10. Compliance Schedule: The proposed regulation is mandatory. All affected carriers and self-insured employers will have to use the proposed fee schedules beginning on July 11, 2007.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. As part of the overall rule, these self-insured local governments will be required to file objections to prescription drug bills or durable medical equipment bills if they object to any such bills. This process is required by statute. This rule affects members of self-insured trusts, some of which are small businesses. Typically a self-insured trust utilizes a third party administrator or group administrator to process workers' compensation claims. A third party administrator or group administrator is an entity which must comply with the new rule. These entities will be subject to the new rule in the same manner as any other carrier or employer subject to the rule. Under the rule, objections to a prescription bill must be filed within 45 days of the date of receipt of the bill or the objection is deemed waived and the carrier, third party administrator, or self-insured employer is responsible for payment of the bill. Additionally, affected entities must provide notification to the claimant if they choose to designate a pharmacy network, as well as the procedures necessary to fill prescriptions at the network pharmacy. If a network pharmacy is designated, a certification must be filed with the Board on an annual basis to certify that the all pharmacies in a network comply with the new rule. The new rule will provide savings to small business and local government by reducing the cost of prescription drugs by utilization of a pharmacy fee schedule instead of retail pricing. Litigation costs associated with reimbursement rates for prescription drugs will be substantially reduced or eliminated because the rule sets the price for reimbursement. Additional savings will be realized by utilization of a network pharmacy and a negotiated fee schedule for network prices for prescription drugs.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers are required by statute to file objections to prescription drug bills or durable medical equipment bills within a forty five day time period if they object to the bill, otherwise they will be liable to pay for the bill if the objection is not timely filed. Notice to the injured worker must be provided outlining that a network pharmacy has been designated and the procedures necessary to fill prescriptions at the network pharmacy. Certification by carriers and self-insured employers must be filed on an annual basis with the Board that all the pharmacies in a network are in compliance with the new rule.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will impose minimal compliance costs on small business or local governments which will be more than offset by the savings afforded by the fee schedule. There are filing and notification requirements that must be met by small business and local governments as well as any other entity that utilizes a pharmacy network. Notices are required to be posted in the workplace informing workers of a designated network phar-

macy. Additionally, a certification must be filed with the Board on an annual basis certifying that all pharmacies within a network are in compliance with the rule.

5. Economic and technological feasibility:

There are no additional implementation or technology costs to comply with this rule. The New York State Department of Health Medicaid Office has the fee schedule posted on the Medicaid website. Since the Board stores its claim files electronically, it has provided access to case files through its eCase program to parties of interest in workers' compensation claims. Most insurance carriers, self-insured employers and third party administrators have computers and internet access in order to take advantage of the ability to review claim files from their offices. Further, the Board already provides information for the general public on its website. The Board will provide access to the fee schedule through its website or by providing a link to the Department of Health Medicaid Office. No other additional equipment or software is needed for access to the fee schedule other than an existing web browser and a computer with internet access.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts to all insurance carriers, employers, self-insured employers and claimants. The rule provides a process for reimbursement of prescription drugs as mandated by WCL section 13(i). Further, the notice requirements are to ensure a claimant uses a network pharmacy to maximize savings for the employer as any savings for the carrier can be passed on to the employer. The costs for compliance are minimal and are offset by the significant savings by using Medicaid as the index for a pharmacy fee schedule instead of reimbursement at retail prices as currently exists.

7. Small business and local government participation:

The Assembly and Senate as well as the Business Council of New York State and the AFL-CIO provided input on the proposed rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all carriers, employers, self-insured employers, third party administrators and pharmacies in rural areas. This includes all municipalities in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file objections to prescription drug bills or durable medical equipment bills within a forty five day time period or will be liable for payment of a bill. The new requirement is solely to expedite processing of prescription drug bills or durable medical bills under the existing obligation under Section 13 of the WCL. Notice to the injured worker must be provided outlining that a network pharmacy has been designated and the procedures necessary to fill prescriptions at the network pharmacy. Carriers and self-insured employers must file a certification on an annual basis with the Board that all the pharmacies in a network are in compliance with the new rule.

3. Costs:

This proposal will impose minimal compliance costs on carriers and employers across the State, including rural areas, which will be more than offset by the savings afforded by the fee schedule. There are filing and notification requirements that must be met by all entities subject to this rule. Notices are required to be posted and distributed in the workplace informing workers of a designated network pharmacy and objections to prescription drug bills must be filed within 45 days or the objection to the bill is deemed waived and must be paid without regard to liability for the bill. Additionally, a certification must be filed with the Board on an annual basis certifying that all pharmacies within a network are in compliance with the rule. The rule provides a reimbursement standard for an existing administrative process.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides a benefit to small businesses and local governments by providing a uniform pricing standard, thereby providing cost savings reducing disputes involving the proper amount of reimbursement or payment for prescription drugs or durable medical equipment. The rule is also a benefit because it mitigates any adverse impact by using an existing fee schedule (the Medicaid fee schedule) that is familiar to state agencies and insurance carriers that encounter the Medicaid pharmacy fee schedule. It promotes a uniform standard across state agencies utilizing a pharmacy fee schedule and by preventing the need to change multiple systems to administer claims.

5. Rural area participation:

Comments were received from the Assembly and the Senate, as well as the Business Council of New York State and the AFL-CIO regarding the impact on rural areas.

Job Impact Statement

The proposed amendment will not have an adverse impact on jobs. This amendment is intended to provide a standard for reimbursement of pharmacy and durable medical equipment bills.