

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Importation of Cattle

I.D. No. AAM-04-08-00007-P

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

Proposed action: Repeal of section 53.3 and addition of new section 53.3 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 72, 74 and 76

Subject: Importation of cattle to a specifically approved stockyard or a recognized slaughtering establishment.

Purpose: To establish the conditions under which cattle may be imported into the State and moved to a specifically approved stockyard or a recognized slaughtering establishment.

Public hearing(s) will be held at: 10:30 a.m., March 11, 2008 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY.

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

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable

time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: Section 53.3 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed.

A new section 53.3 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is adopted to read as follows:

53.3 Importation of cattle to a specifically approved stockyard or a recognized slaughtering establishment.

Notwithstanding any other provision of this Part, cattle may be imported into the State and moved directly to a specifically approved stockyard, as defined in section 53.1(r) of this Part, or to a recognized slaughtering establishment, as defined in section 53.1(o) of this Part, without a certificate of veterinary inspection under the following conditions:

(a) The cattle shall be accompanied by a waybill.

(b) At any time after entry of the cattle into the State, an authorized representative of the commissioner may direct the person transporting the cattle to a designated location for the following purposes: unloading, restraint, inspection, identification, tagging, testing or quarantine.

(c) The cattle shall be moved directly to the specifically approved stockyard or recognized slaughtering establishment named as the destination or consignee on the waybill. Cattle which are not subsequently qualified under subdivision (e) of this Section shall be sold only to a recognized slaughtering establishment and after the sale moved by the most direct route to the slaughtering establishment.

(d) Cattle moved to a recognized slaughtering establishment shall be slaughtered within six days (144 hours) after entry into this State.

(e) Cattle moved to a specifically approved stockyard may be moved without restriction following, as provided herein, segregation, examination by an accredited veterinarian and the preparation of an approved certificate of veterinary inspection; provided that the following conditions are met:

(1) the stockyard has been approved by the commissioner to receive cattle pursuant to this Section and has agreed to comply with all the requirements of this Section including, but not limited to, the maintenance of a segregation facility with appropriate handling and restraint equipment; the reading of eartags; and the conducting of physical examinations of cattle by an accredited veterinarian;

(2) the cattle must originate in a state or zone which:

(i) borders New York State;

(ii) has been recognized by the USDA as Brucellosis Certified Free for at least five years.

(iii) has been recognized by the USDA as Tuberculosis Accredited Free for at least five years; and

(iv) has not been recognized by the Commissioner as having any other disease of cattle which does not naturally occur in New York.

(3) the federally assigned premises identification numbers of all premises of origin of the cattle shall be included on the entry waybill, with the premises of origin being the farm or ranch in the bordering state or zone where the animals originated and not a livestock market or dealer;

(4) the cattle shall enter the State with individual, uniquely numbered eartags approved for identification by the USDA and the eartag numbers shall be included on the entry waybill;

(5) prior to the required veterinary inspection and the preparation of an approved certificate of veterinary inspection, cattle that enter under this Section shall always be segregated at least 30 feet from cattle that originated in New York State and from cattle that entered the State with a certificate of veterinary inspection;

(6) prior to the release from segregation pens, an accredited veterinarian shall physically examine all animals in the pen and shall prepare an approved certificate of veterinary inspection for those animals not going to immediate slaughter. If any animal shows signs of infectious, contagious or communicable disease that animal, and all animals exposed to that animal shall be quarantined and directed to an approved slaughtering establishment for immediate slaughter, or at the discretion of the Commissioner, may be returned to the place of origin or be quarantined in isolation from all other animals at the owner's expense until the Commissioner determines that the animals are not a threat to New York livestock.

(f) The recognized slaughtering establishment or specifically approved stockyard shall maintain records that include the name and address of the consignor, identification numbers and the destination of all cattle handled under this Section. These records shall be kept for a period of five years and be made available for examination upon the request of a representative of the Department or of the USDA.

Text of proposed rule and any required statements and analyses may be obtained from: John Huntley, DVM, State Veterinarian, Director, Division of Animal Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3502

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 18(6) 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.

Section 72 of the Agriculture and Markets Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Agriculture and Markets Law also provides in part, that whenever any infectious or communicable disease affecting domestic animals shall exist or have recently existed outside this State, the Commissioner shall take measures to prevent such disease from being brought into the State.

Section 74 of the Agriculture and Markets Law authorizes the Commissioner, after public hearing, to adopt and promulgate rules and regulations to implement and give full effect to the provisions of said Section, which governs the importation of domestic or feral animals.

2. Legislative Objectives:

The statutory provisions pursuant to which this regulation is proposed are aimed at regulating the importation of domestic animals to prevent infectious or communicable diseases from being brought into the State, to control, suppress or eradicate such diseases in domestic animals and to prevent the spread of infection and contagion. The Department's proposed repeal of 1 NYCRR section 53.3 and the adoption of a new 1 NYCRR section 53.3 will further these goals by regulating the importation into the State of cattle that are not accompanied by a certificate of veterinary inspection in a manner that will help to prevent infectious or communicable diseases affecting domestic animals from being brought into the State and to control, suppress and eradicate such diseases and prevent the spread of infection and contagion.

3. Needs and Benefits:

The proposed regulation would allow, under certain conditions, cattle to be imported into New York State without a certificate of veterinary inspection and to be moved directly to a specifically approved stockyard or a recognized slaughtering establishment. A specifically approved stockyard, as defined in 1 NYCRR section 53.1(r), means an establishment where cattle are handled under permit or license issued by the Department which has been jointly approved by the Department and the United States Department of Agriculture (U.S.D.A.) to handle out-of-state cattle. A recognized slaughtering establishment, as defined in 1 NYCRR section 53.1(o), means any abattoir at which meat inspection service is provided by the U.S.D.A. Under existing regulations, cattle being imported for immediate slaughter may enter the State accompanied by a waybill, rather than a certificate of veterinary inspection, but cattle being imported for purposes other than immediate slaughter, such as for dairy or beef operations, must be accompanied by an approved certificate of veterinary inspection. A waybill, as defined in 1 NYCRR section 53.1(w), is a document prepared by the owner or shipper of animals that contains information about the animals being shipped. An approved certificate of veterinary inspection, as defined in 1 NYCRR section 53.1(b), is a docu-

ment issued by an accredited veterinarian who has examined the animals being shipped and found them to not show signs of infectious, contagious or communicable disease. Presently, producers outside New York wishing to consign a few non-slaughter cattle to one of the 28 licensed New York State livestock markets find the cost of approximately \$175-\$200 associated with having an accredited veterinarian come to their farm, examine the cattle and issue a certificate of veterinary inspection to be prohibitive. Without such a certificate, such cattle cannot enter the State and be consigned to livestock markets for purchase by New York dairy or beef producers in need of replacement cattle. As a result, New York producers lose access to these cattle for their farms and New York livestock markets lose the business that would be generated by the consignment of these cattle to their markets. Instead, the cattle must be sold within their state of origin or sent to states that do not require a certificate of veterinary inspection. Currently Arkansas, California, Colorado, Florida, Iowa, Illinois, Kentucky, Louisiana, Mississippi, Nebraska, North Dakota, Tennessee, Texas, West Virginia and Wyoming allow the movement of non-slaughter animals into their state without a certificate of veterinary inspection. Vermont allows the importation of dairy calves under 14 days of age by any cattle dealer without a certificate of veterinary inspection.

The proposed regulation also seeks to address the problem of out-of-state cattle that have entered New York without a certificate of veterinary inspection being misrepresented as having originated in New York. In such cases, the lack of a veterinary examination either before or after the entry of the cattle into New York creates a risk that diseases will be introduced into the State via unhealthy animals. This rule seeks to facilitate the legal importation into New York State of non-slaughter cattle in a more cost effective manner and under conditions that will help to ensure that veterinary examinations will be conducted once the cattle are in the State, so that New York dairy and beef producers will have access to additional healthy replacement animals for their herds and New York livestock markets will receive additional business from an increase in the consignment of out-of-state cattle. The cattle, accompanied by a waybill, would have to originate in a state bordering New York with an animal health status equivalent to New York's. It is anticipated that due to their geographic proximity and the nature of their livestock industries, producers in the states bordering New York: Pennsylvania, New Jersey, Connecticut, Massachusetts and Vermont, are most likely to avail themselves of the opportunity to move non-slaughter cattle to approved stockyards in New York without a certificate of veterinary inspection. The limitation of such movement to cattle from the states bordering New York will reduce potential animal health risks and facilitate the monitoring of the animal health status of the states of origin of the cattle by both the Department and the specifically approved stockyards receiving them. It is estimated that between 20 and 200 additional cattle will enter New York State each week as a result of the proposed regulation.

Presently, producers outside New York wishing to consign a few non-slaughter cattle to one of the 28 licensed New York State livestock markets find the cost of approximately \$175-\$200 associated with having an accredited veterinarian come to their farm, examine the cattle and issue a certificate of veterinary inspection to be prohibitive. Non-slaughter cattle entering New York State under the proposed regulation will have to move to a specifically approved stockyard where they will be assembled with other out-of-state cattle accompanied by waybills and segregated from New York cattle and cattle that entered the State with certificates of veterinary inspection. The cattle must then be examined by an accredited veterinarian who will issue certificates of veterinary inspection for qualifying animals. The cost of the examinations and the issuance of the certificates, billed at an hourly rate estimated to be \$125 an hour, will be shared by the out-of-state producers consigning cattle to the stockyard without certificates of veterinary inspection. An individual out-of-state producer's share of that cost is anticipated to be as low as \$12.50 for the examination of a few animals, compared to the \$175 to \$200 cost of having an accredited veterinarian visit their farm, examine their animals and issue an approved certificate of veterinary inspection. Any animal showing signs of infectious, contagious or communicable disease and all animals exposed to that animal must be quarantined and directed to an approved slaughtering establishment for immediate slaughter or at the discretion of the Commissioner, may be returned to the place of origin or be quarantined in isolation from all other animals at the owner's expense until the Commissioner determines that the animals are not a threat to New York livestock.

The non-slaughter cattle entering New York pursuant to the proposed regulation would have to originate in a border state that has been recognized by the United States Department of Agriculture (USDA) as Brucellosis Certified Free for at least five years; recognized by the USDA as

Tuberculosis Accredited Free for at least five years and has not been recognized by the Commissioner as having any other disease of cattle which does not naturally occur in New York. The federally assigned premises identification numbers of all premises of origin of cattle must be included on the way bill. The cattle must have individual, uniquely numbered eartags approved by the USDA and the eartag numbers must also be included on the entry waybill. These requirements will help to ensure that the non-slaughter cattle entering the State pursuant to this regulation have a health status equal to cattle originating in New York State and are traceable to their farm or ranch of origin.

The stockyards to which out-of-state non-slaughter cattle are moved pursuant to the proposed regulation must be approved by the Commissioner and must agree to comply with all of the requirements of the regulation including the maintenance of a segregation facility with appropriate handling and restraint equipment; the reading of eartags and the conducting of physical examinations by an accredited veterinarian. The cattle must be segregated at least thirty feet from other cattle and, prior to their release from segregation, must be examined by an accredited veterinarian prior to issuance of a certificate of veterinary inspection. Cattle which do not qualify shall be sold only to a recognized slaughtering establishment and after sale moved by the most direct route to that establishment. These requirements will help to ensure that the cattle entering the State under the proposed regulation go only to properly equipped stockyards that follow the procedural safeguards in the regulations designed to help ensure that only healthy animals are imported into and remain in the State.

The specifically approved stockyards receiving out-of-state animals under this regulation must maintain records that include the name and address of the consignor, identification numbers and destination of all cattle handled under 1 NYCRR section 53.3. These records must be kept for five years and made available for examination upon the request of a representative of the Department or the USDA. This will help to ensure that the cattle entering the State pursuant to the regulation are properly accounted for and can be traced to both their farm or ranch of origin and their destination within New York State.

The proposed regulation also allows, as does the current regulation, slaughter cattle to enter the State accompanied by a waybill. The cattle must move directly to a recognized slaughtering establishment named as the destination or the consignee on the waybill and must be slaughtered within six days (144 hours) after entry into the State. The recognized slaughtering establishment must maintain records that include the name and address of the consignor, identification numbers and the destination of all cattle. These records shall be kept for a period of five years and be made available for examination upon the request of a representative of the Department or the USDA. The requirements relating to cattle that enter the State on a waybill and go to recognized slaughter establishments will help to ensure that such cattle are properly identified and moved promptly and directly to such facilities. They will also help ensure that records are being made and maintained that will permit the cattle to be traced to their farm or ranch of origin and their destination within New York State.

The proposed regulation also provides that at any time after entry of the cattle into the State accompanied by a waybill, an authorized representative of the Commissioner may direct the person transporting the cattle to a designated location for unloading, restraint, inspection, identification, tagging, testing or quarantine. This will enable the Department to exercise regulatory oversight over cattle entering the State pursuant to the proposed regulation and to monitor compliance with the conditions established by the regulation to help ensure that only healthy animals enter and remain in the New York State.

4. Costs:

(a) Costs to regulated parties

Presently, producers outside New York wishing to consign a few non-slaughter cattle to one of the 28 licensed New York State livestock markets find the cost of approximately \$175-\$200 associated with having an accredited veterinarian come to their farm, examine the cattle and issue a certificate of veterinary inspection to be prohibitive. Out-of-state producers moving non-slaughter cattle into New York State under the proposed regulation will be able to have their cattle assembled with other out-of-state cattle at recognized slaughtering establishments in New York and examined by an accredited veterinarian at an hourly rate estimated at \$125/hour. Sharing the cost of such an examination with other out-of-state producers will result in a reduced cost to each producer. If ten groups of animals are examined in an hour, an individual producer's share of the cost may be as low as \$12.50 compared to the \$175 - \$200 cost of having a

veterinarian visit the out-of-state producers farm, examine the cattle and issue a certificate of veterinary inspection.

Specifically approved stockyards will be required to have a suitable remote concentration facility in which to segregate cattle prior to their examination by an accredited veterinarian and the issuance of a certificate of veterinary inspection. For stockyards that have suitable remote concentration facilities and those that do not and do not wish to become specifically approved stockyards under the proposed regulation, there will be no additional cost. For those that do not have suitable remote concentration facilities, but wish to become specifically approved stockyards the cost of constructing such a facility is estimated to be \$5,000.

(b) Costs to the agency, state and local governments:

There will be no cost to the agency, the State or local governments.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Local Government Mandates:

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

6. Paperwork:

Each stockyard seeking to become a specifically approved stockyard will make such request to the Department's Division of Animal Industry. A Division inspector will inspect the facility and if it is approved, the operator will be notified and an additional validation will appear on their Domestic Animal Health Permit.

The federally assigned Premises Identification numbers of all premises of origin of the cattle must be included on the entry waybill that accompanies the cattle, as must the individual, uniquely numbered eartag numbers approved for identification by the USDA. Recognized slaughtering establishments and specifically approved stockyards must make and maintain, for five years, records that include the name and address of the consignor, identification numbers and the destination of all cattle handled under the regulation.

7. Duplication:

None.

8. Alternatives:

The alternatives of continuing to prohibit non-slaughter cattle from entering New York State without a certificate of veterinary inspection and of allowing such cattle to enter the State without a subsequent veterinary examination were considered. The proposed regulation, allowing the movement of non-slaughter cattle into the State to specifically approved stockyards for examination by a veterinarian and issuance of a certificate of veterinary inspection was determined to provide New York dairy and beef producers with greater access to replacement animals for their herds and New York livestock markets with additional business from an increase in the consignment of out-of-state cattle while helping to ensure that only healthy animals enter and remain in the State.

9. Federal Standards:

The rule does not exceed minimum standards of the federal government for the same or similar subject areas. 9 CFR section 78.9(3)(i) and 9 CFR section 77.8 permit the movement of cattle provided for by this rule.

10. Compliance Schedule:

It is anticipated that regulated parties can immediately comply with the rule.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are 28 licensed livestock markets in New York State, most, if not all of which, are small businesses. The rule would have no impact on local governments.

2. Compliance Requirements:

In order to be designated a specifically approved stockyard, a stockyard must agree to maintain a segregation facility with appropriate handling and restraint equipment; read eartags and to have an accredited veterinarian examine cattle imported without a certificate of veterinary inspection. The federally assigned premises identification numbers of all premises of origin, as well as the eartag numbers of the cattle, must be included on the entry waybill. The recognized slaughtering establishment or specifically approved stockyard must maintain records that include the name and address of the consignor, identification numbers and the destination of all cattle handled under the proposed regulation. These records must be kept for a period of five years and be made available for adoption upon the request of a representative of the Department or of the USDA.

3. Professional Services:

Under the proposed regulation, in order to move without restriction, non-slaughter cattle entering the State accompanied by a waybill must be examined by an accredited veterinarian at a specifically approved stockyard and a certificate of veterinary inspection must be prepared. This will require the services of an accredited veterinarian. The proposed rule would have no impact on local governments.

4. Compliance Costs:

Presently, producers outside New York wishing to consign a few non-slaughter cattle to one of the 28 licensed New York State livestock markets find the cost of approximately \$175-\$200 associated with having an accredited veterinarian come to their farm, examine the cattle and issue a certificate of veterinary inspection to be prohibitive. Out-of-state producers moving non-slaughter cattle into New York State accompanied by a waybill must have their cattle examined by an accredited veterinarian in New York at an hourly rate estimated at \$125/hour. If ten groups of animals are examined in an hour, an individual producer's share of the cost may be as low as \$12.50 for a few animals compared to the \$175-\$200 cost of having a veterinarian visit the out-of-state producers farm, examine the cattle and issue a certificate of veterinary inspection.

Specifically approved stockyards will be required to have a suitable remote concentration facility in which to segregate cattle prior to their examination by an accredited veterinarian for the issuance of a certificate of veterinary inspection. For stockyards that have suitable remote concentration facilities and those that do not and do not wish to become specifically approved stockyards under the proposed regulation, there will be no additional cost. For those that do not have suitable remote concentration facilities but do wish to become specifically approved stockyards the cost of constructing such a facility is estimated to be \$5,000. The rule would have no impact on local governments.

5. Economic and Technological Feasibility:

The economic and technological feasibility of the proposed regulation has been assessed. The regulation is economically feasible. It will reduce the costs associated with importing non-slaughter cattle into New York and in so doing it will facilitate the legal importation of such cattle under the conditions that will help to ensure that veterinary examinations of such cattle will be conducted and that New York dairy and beef producers will have access to additional replacement animals for their herds and New York livestock markets will receive additional business from an increase in the consignment of out-of-state cattle. The rule is technologically feasible. The examination of cattle by an accredited veterinarian and the issuance of a certificate of veterinary inspection is a standard practice already in use in New York. The recordkeeping requirements and requirements relating to eartags, waybills and remote concentration facilities involve existing technologies that are already in use.

6. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses, by limiting the requirements for all regulated parties to those which are necessary to prevent disease from being brought into or spreading within the State, while giving New York dairy and beef producers increased access to replacement animals for their herds and New York State livestock markets additional business from an increase in the consignment of out-of-state cattle. In addition, the importation of non-slaughter cattle accompanied by a waybill is permissive and persons importing such cattle may continue to utilize the existing practice of having cattle examined by an accredited veterinarian prior to entry into New York State.

7. Small Business and Local Government Participation:

In developing the rule the Department has received input from representatives of the dairy producers and livestock markets that are the small businesses affected by this rule. The Department will be receiving additional input as a result of the public notice and hearing that will be provided pursuant to the State Administrative Procedure Act as part of the rulemaking process.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The livestock markets, slaughterhouses and dairy and beef farms affected by this rule are located throughout the rural areas of New York State.

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

Each stockyard seeking to become a specifically approved stockyard will make such a request to the Department's Division of Animal Industry.

A Division inspector will inspect the facility and if it is approved, the operator will be notified and an additional validation will appear on their Domestic Animal Health Permit. The federally assigned premises identification numbers of all premises of origin of cattle must be included on the entry waybill that accompanies the cattle, together with their eartag numbers. Recognized slaughtering establishments and specifically approved stockyards must make and maintain, for five years, records that include the name and address of the consignor, identification numbers and the destination of all cattle handled under the regulation. In order to be designated a specifically approved stockyard, a stockyard must agree to maintain a segregation facility with appropriate handling and restraint equipment, read eartags and to have an accredited veterinarian examine non-slaughter cattle imported without a certificate of veterinary inspection.

3. Costs:

Presently, producers outside New York wishing to consign a few non-slaughter cattle to one of the 28 licensed New York State livestock markets find the cost of approximately \$175-\$200 associated with having an accredited veterinarian come to their farm, examine the cattle and issue a certificate of veterinary inspection to be prohibitive. Out-of-state producers moving non-slaughter cattle into New York State accompanied by a waybill must have their cattle examined by an accredited veterinarian in New York at an hourly rate estimated to be \$125/hour. If ten groups of animals are examined in an hour, an individual producer's share of the cost may be as low as \$12.50 for a few animals, compared to the \$175 to \$200 cost of having a veterinarian visit the out-of-state producer's farm, examine the cattle and issue a certificate of veterinary inspection.

Specifically approved stockyards will be required to have a suitable remote concentration facility in which to segregate cattle prior to their examination by an accredited veterinarian and the issuance of a certificate of veterinary inspection. For stockyards that have suitable remote concentration facilities and those that do not and do not wish to become specifically approved stockyards under the proposed regulation, there will be no additional cost. For those that do not have suitable remote concentration facilities but wish to become specifically approved stockyards, the cost of constructing such a facility is estimated to be \$5,000. The rule would have no impact on local governments.

4. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize any adverse impact on rural areas by limiting the requirements for all regulated parties to those which are necessary to prevent disease from being brought into or spreading within the State, while giving New York dairy and beef producers increased access to replacement animals for their herds and New York livestock markets additional business from an increase in the consignment of out-of-state cattle. In addition, the importation of non-slaughter cattle accompanied by a waybill is permissive and persons importing such cattle may continue to utilize the existing practice of having cattle examined by an accredited veterinarian prior to their entry into New York State.

5. Rural Area Participation:

In developing the rule the Department received input from representatives of the dairy producers and livestock markets that are affected by this rule and are located throughout the rural areas of the State. The Department will be receiving additional input as a result of the public notice and hearing that will be provided pursuant to the State Administrative Procedure Act as part of the rule making process.

Job Impact Statement

1. Nature of Impact:

The rule, by increasing the number of cattle imported into New York State and consigned at livestock markets within the State will have a positive impact on jobs and employment opportunities at those markets.

2. Categories and Numbers Affected:

The number of people currently employed at the 28 licensed livestock markets in the State is not known.

3. Regions of Adverse Impact:

The rule will not have an adverse impact on jobs or employment opportunities.

4. Minimizing Adverse Impact:

The rule is designed to minimize any unnecessary adverse impacts on existing jobs and to promote the development of new employment opportunities by giving New York dairy and beef producers increased access to replacement animals for their herds and New York livestock markets additional business from an increase in the consignment of out-of-state cattle.

Department of Correctional Services

NOTICE OF ADOPTION

Access to Records Subject to the Personal Privacy Protection Law

I.D. No. COR-44-07-00005-A

Filing No. 13

Filing date: Jan. 2, 2008

Effective date: Jan. 23, 2008

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

Action taken: Amendment of section 6.2(c) of Title 7 NYCRR.

Statutory authority: Public Officers Law, section 94; and Correction Law, sections 29(2), 71 and 112

Subject: Access to records subject to the Personal Privacy Protection Law.

Purpose: To reflect the appropriate employee job title that has been designated as the department's deputy privacy compliance officer.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-44-07-00005-P, Issue of October 31, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

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-04-08-00002-E

Filing No. 12

Filing date: Jan. 8, 2008

Effective date: Jan. 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, section 1194(4)(c); and 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 National Highway Traffic Safety Administration.

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, Decatur, 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) Intodximeter 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.
 [(xviii)] *Alco-Sensor IV-XL*.
 [(xvii)] (xix) Alco-Sensor AZ.
 [(xx)] *Alco-Sensor FST*.
 [(xviii)] (xxi) RBT-AZ.
 [(xix)] (xxii) RBT III.
 [(xx)] (xxiii) RBT III-A.
 [(xxi)] (xxiv) RBT IV.
 [(xxii)] (xxv) RBT IV with CEM (cell enhancement module).
 [(xxiii)] (xxvi) Intox EC/IR.
 [(xxvii)] *Intox EC/IR II*.
 [(xxiv)] (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 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 April 6, 2008.
- Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, Department of Health, Office of Regulatory Affairs, Rm. 2438, ESP Tower Bldg., Albany, NY 12237, (518) 473-7488, email: 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 instru-

ment 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.

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

**Non-Prescription Emergency Contraceptive Drugs
I.D. No. HLT-04-08-00003-P**

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

Proposed Action: Amendment of section 505.3(b)(1) of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201(1)(v) and 206; and Social Services Law, section 363-a(2)

Subject: Non-prescription emergency contraceptive drugs to be dispensed by a pharmacy without a fiscal order to women 18 years of age and older.

Purpose: To allow access to Federal Drug Administration approved non-prescription contraceptive drugs to be dispensed by a pharmacy without a fiscal order to women 18 years of age and older.

Text of proposed rule: Paragraph (1) of subdivision (b) of Section 505.3 is amended to read as follows:

(b) Written order required. (1) Drugs may be obtained only upon the written order of a practitioner, except for *non-prescription emergency contraceptive drugs as described in subparagraph (i) of this paragraph, and for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910.*

(i) *Non-prescription emergency contraceptive drugs for recipients 18 years of age or older may be obtained without a written order subject to a utilization frequency limit of 6 courses of treatment in any 12 month period.*

(i) (ii) The ordering/prescribing of drugs is limited to the practitioner's scope of practice.

(ii) (iii) The ordering/prescribing of drugs is limited to practitioners not excluded from participating in the medical assistance program.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, Department of Health, Bureau of House Counsel, Regulatory Affairs Unit, Rm. 2438, ESP, Tower Bldg., Albany, NY 12237, (518) 473-7488

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the proposed rule is contained in Sections 363, 363-a and 365-a of the Social Services Law (SSL). Section 363 of the SSL states that the goal of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department of Health (Department) as the single state agency for the administration of the Medicaid program and provides that the Department shall make such regulations, not inconsistent with law, as may be necessary to implement the provisions of the program. Section 365-a(2)(g) of the SSL defines "medical assistance" as including prescription and non-prescription drugs.

Legislative Objective:

The proposed rule meets the legislative objective of providing timely access to medically necessary care for indigent Medicaid recipients 18 years of age and older who require emergency contraception. The proposed rule will exempt Federal Food and Drug Administration (FDA) approved over-the-counter drugs for emergency contraception from the Department's regulations which require that a pharmacy have a written order from a practitioner prior to dispensing drugs to Medicaid recipients.

Needs and Benefits:

Emergency contraceptive drugs have been available for some time by prescription only. In August of 2006, the FDA approved emergency contraceptive drugs as non-prescription drugs ("over-the-counter") when used by women 18 years of age and older. According to current State Medicaid regulations, 18 NYCRR Section 505.3(b)(1), pharmacies must have a written order (also known as a fiscal order) from a practitioner prior to dispensing an over-the-counter drug to a Medicaid recipient. The regulations do provide an exception, however, for telephone orders from a practitioner which comply with the provisions of the Education Law with respect to such orders. The requirement for a written order necessitates that the recipient visit or call a licensed practitioner prior to going to the pharmacy and then either bring the written order to the pharmacy, have the pharmacist and the practitioner talk on the phone, or have the practitioner send the order by fax. The Department wants to avoid any time barriers to accessing emergency contraceptive drugs since the drugs are most effective in preventing pregnancy if taken within 72 hours after an act of unprotected sex. The Department is eliminating the written order requirement specifically for FDA approved over-the-counter emergency contraceptive drugs dispensed for use by women 18 years of age and older.

Women under 18 years of age must still obtain and present a prescription which meets the requirements of section 6810 of the Education Law in order to obtain these drugs.

COSTS:

Costs for Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

There would be no increased costs to the pharmacies for implementation of and continuing compliance with this rule.

Costs to State Government:

Because the Department is eliminating the requirement that there be a written order of a practitioner prior to dispensing this over-the-counter drug, payment for emergency contraceptive drugs under New York's Medicaid program will no longer comply with the federal requirement for such an order. The Department, therefore, proposes using 100% State funds for payment for these drugs. The agency will absorb costs associated with system changes to remove these claims from the federal payment program. These costs are considered minimal. It is estimated that the additional annual cost of payment for emergency contraceptive drugs to the State will be \$1.5 million. These costs to the State will be offset, however, by estimated cost avoidance from reduced births and deliveries attributed to increased access to emergency contraceptive drugs.

The Department examined two years of Medicaid claim data for emergency contraceptive drugs (date of payment from December 1, 2004 to November 30, 2006). The data was extracted from the eMedNY Data warehouse. The Department made the assumption that costs for these drugs would increase after this regulation became effective with 100% of rebate adjusted costs being assumed by the State.

Gross annual savings estimates of approximately \$3.2 million were calculated using birth and delivery costs determined in a recent New York State Department of Health, Office of Medicaid Management study. This study analyzed New York State Department of Health vital statistics and New York State Department of Health Medicaid claim data pertaining to prenatal care, delivery and other associated health care costs. Assuming that eliminating the fiscal order mandate would double prescriptions for contraceptive drugs, the Department used claim data for the one year period December 1, 2005 to November 30, 2006 and assumed that approximately 2 in 100 of these claims would have resulted in a birth and delivery cost. The Department used a two year period to determine the expected ongoing increase in the cost of these drugs. The Department only used the one year period (December 1, 2005 to November 30, 2006) to calculate savings, which had the effect of creating a more conservative savings estimate. The gross annual savings in the cost of prenatal care, delivery and other health care costs associated with delivery using this methodology would be \$3.2 million, with approximately \$1.5 million each representing the federal and state share of savings. There is no local share in savings because of the local share cap which is set at calendar year 2005 (trended) levels.

Costs to Local Government:

There will be no cost to local government.

Local Government Mandates:

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

Paperwork:

This regulatory amendment will decrease paperwork for medical providers and pharmacies since a fiscal order is not needed for this drug for women 18 years of age or older.

Duplication:

This regulatory amendment does not duplicate, overlap or conflict with any other State or federal law or regulations.

Alternatives:

Currently, a written order of a practitioner is required by federal regulations (42 CFR 440.120(a)(3)) and State Medicaid regulations for the dispensing of emergency contraceptive drugs. The Department considered another proposal to eliminate the need for each recipient to obtain an individual written order from a practitioner for emergency contraceptive drugs. That alternative was to replace the requirement for a fiscal order with a "non-patient specific order" as provided for in section 6909(5) of the Education Law. The non-patient specific order would be written by a qualified medical practitioner in agreement with a specific pharmacy to dispense emergency contraception as an over-the-counter drug to any eligible woman 18 years of age and older who requests it. The order is not patient specific so it would eliminate the delay in treatment inherent in requiring the recipient to obtain a written order. The Department determined this alternative would not likely be available without a statutory

amendment because the Education Law and regulations limit its use to situations involving immunizations, emergency treatment of anaphylaxis, purified protein derivative tests and HIV testing.

Federal Standards:

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

Compliance Schedule:

The proposed regulatory amendment will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

Job Impact Statement

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

State Liquor Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

24-Hour Permits

I.D. No. LQR-04-08-00006-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 35 to Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, section 99(1)

Subject: Application processes and review procedures relative to 24 hour permits issued to liquor licensees.

Purpose: To establish application processes and review procedures relative to 24 hour permits issued to liquor licensees.

Text of proposed rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include new Part 35, as follows:

Part 35 – Special Permit to remain open during certain hours of the morning

35.1 Application of rule

This part shall apply to all permits issued under section 99(1) of the Alcoholic Beverage Control Law.

35.2 Filing of application

(a) An application for a permit must be filed with the Authority no less than 45 days prior to the date for which the permit is sought.

(b) Notice of the applicant's intent to apply for the permit must be sent to the police department of the municipality in which the licensed premises is located. If such municipality has no police department, notice must be sent to the County Sheriff's Department.

1) The applicant must submit proof of mailing of such notice with the application;

2) Acceptable proof of mailing shall consist of either: (a) a copy of the notice sent to the police department and the original or a copy of the certified mail receipt card; or (b) the original or a copy of the notice date stamped and signed by the police department.

35.3 Privileges granted by permit

A permit shall allow on premises licensees to serve alcoholic beverages between the hours of 4 a.m., or the closing hour proscribed in the licensee's county, and 8 a.m.

35.4 Restrictions upon issuance and use of permits

(a) A permit shall authorize only the sale and service of those alcoholic beverages which the licensee is authorized to sell under its on-premises license.

(b) In exercising its discretion in determining whether to issue the permit, the Authority shall consider the following:

1) licensee's disciplinary history, including any pending proceedings; and

2) whether, given the nature of the function, occasion or event, the licensee has adequate security plans and facilities.

(c) At all times while the permit is in effect, the permit certificate shall be displayed in a conspicuous place in the room where the particular function, occasion or event is held.

35.5 Review process

(a) Applications shall be reviewed by the Licensing Bureau. A determination on an application shall be made within 10 business days of the Authority's receipt of the application.

(b) In the event that the application is disapproved, the licensee may seek reconsideration of the determination by the Members of the Authority.

(c) Requests for reconsideration shall be submitted in writing to the Office of Counsel, 80 South Swan Street, Suite 900, Albany, New York 12210-8002. Such requests shall then be reviewed by a Member of the Authority. A determination on the request shall be made within 10 business days after receipt of the request.

(d) A decision by a Member of the Authority on a request for reconsideration shall be considered a final determination of the Authority.

Text of proposed rule and any required statements and analyses may be obtained from: Paul S. Karamanol, Senior Attorney, Liquor Authority, 80 South Swan St., Suite 900, Albany, NY 12210, (518) 474-6750, e-mail: pkaramanol@abc.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 State Liquor Authority has statutory authority to promulgate regulations regarding the issuance of special permits for liquor licensees to remain open during certain hours of the morning via the plain language of Alcoholic Beverage Control Law § 99(3), which states, "Such permits and the exercise of the privileges granted thereunder may be subjected by the liquor authority to such rules as it may deem necessary."

2. Legislative objectives: The purpose of the state issuing permits for liquor licensees to remain open during certain hours of the morning is to regulate after-hours alcohol consumption on certain traditionally festive occasions such as New Years Eve.

3. Needs and benefits: A 24 hour permit is a special one time approval to allow licensed premises to operate for extended hours from normal hours of operation, granted pursuant to ABCL § 99(1). Most often this permit is requested for events such as New Years Eve. Since its inception, these permits have been issued on an ad-hoc basis and have not had a structured permit application process. This can cause confusion for licensees as well as for staff that review the applications. This rule will formalize the permit application procedures and standardize the process. The proposal sets forth the filing procedures, the privileges granted thereby, and the review criteria to be utilized by the Authority in processing the applications. It establishes the time frames that need to be considered when application is made and it establishes consistent procedures to be followed. The permit is a voluntary permit and not required, it applies only to those that wish to remain open for extended hours of operation.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None, pursuant to ABCL § 99(1), the permit fee is \$51.00. In 2007 there were 629 permits issued pursuant to ABCL § 99 for a total cost to regulated parties of \$32,079.00. There were no ABCL § 99 permits issued in 2006 as New Year's Eve happened to fall on a Sunday that year. In 2005 there were 596 permits issued pursuant to ABCL § 99 for a total cost to regulated parties of \$30,396.00.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated since the Authority's Bureau of Licensing is already performing the necessary functions and issuing these permits, and since police departments and sheriffs already employ staff to open and process incoming mail.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the State Liquor Authority's experience in ABCL § 99 permit issuance. The permit application process consumes as little as five minutes time for the staff of the Bureau of Licensing - for clean applications from licensees with little or no disciplinary history with the Authority - to as much as several hours of research, review and correspondence for applicants with significant disciplinary histories or other issues of concern to the Authority. In the State Liquor Authority's experience, many ABCL § 99 applicants have significant disciplinary histories.

5. Local government mandates: There is a requirement that all permit applicants notify their local municipal police or sheriff's department, as

applicable, thereby requiring said police agencies to process some additional paperwork. According to the New York State Sheriff's Association, any possible inconvenience to police agencies from processing said notification is more than offset by the advanced notice of an all night event featuring permitted alcohol consumption as well as the inherent opportunity provided by same to inform the State Liquor Authority of the police's opinion of the advisability of granting an ABCL § 99 permit for a particular venue.

6. Paperwork: Other than the requirement that ABCL § 99 applicants provide advanced written notice to their local police department of their intent to file such application with the Authority (and inclusion of proof of mailing of same with the application package), there are no changes in paperwork requirements for applicants.

7. Duplication: None.

8. Alternatives: The State Liquor Authority could have taken no action, but chose to pursue the promulgation of the instant regulation in an effort to forestall issues experienced in past years as a result of the ad-hoc permit issuance process as well as complaints by several applicants of unfair or unequal treatment as a result of same.

The State Liquor Authority could have neglected to include past or pending disciplinary matters as a consideration of the suitability of any applicant pursuant to this part (part 35.4 (b) 1), preferring instead to analyze each such application in a vacuum and without regard to past experience with an applicant. The State Liquor Authority believes to do so would be an abrogation of its regulatory responsibilities under the Alcoholic Beverage Control Law and would undermine the intent of the instant proposal - ensuring only trustworthy and responsible business owners are hosting these all night events in New York State. Additionally, the Authority believes that failing to take into consideration pending disciplinary matters during this process would encourage applicants with pending disciplinary matters to delay, adjourn, discourage and otherwise frustrate administrative hearing processes, as many already do - for years in some cases - in order to preserve their ability to host large crowds of after hours revelers for holidays and special events.

The State Liquor Authority contacted the Empire State Restaurant & Tavern Association, the New York City Nightlife Association and the New York State Sheriff's Association for suggestions and/or alternatives regarding this proposed regulation.

The New York State Sheriff's Association said that the proposed regulations seemed reasonable and helpful in enforcing all laws regarding the serving of alcoholic beverages. Additionally, the Sheriff's Association agrees that the minimal administrative burden placed on police forces by receiving and processing the required notification letters from applicants is outweighed by the benefit of ensuring law enforcement of advanced notice of any all-night event in their jurisdiction.

The Empire State Restaurant & Tavern Association ("ESRTA") said the following: "Overall our response is very positive. We commend the development of this proposed rule and the general guidelines included in the draft proposal." The ESRTA did not agree, however, with the inclusion of pending disciplinary proceedings in the list of factors to be considered by the Authority in determining whether to issue the permit (part 35.4 (b) 1), stating that "Pending proceedings are merely allegations against a licensee that cannot on their face be considered a reason to decline a privilege to a licensee," and suggesting that any pending proceedings ultimately considered be limited to those for which the recommended penalty based on the standard practices of the Authority would be license cancellation or revocation. The ESRTA also suggested that the provision authorizing one member of the Authority to make a final determination on a request for reconsideration (part 35.5 (d)), could be problematic, suggesting that the potential exists that different members of the Authority exercising their discretion under the proposal could develop different standards.

The New York City Nightlife Association ("NYCNA") applauds the attempt to have written procedures and standards in the application process, but disagrees with the inclusion of pending disciplinary charges as one of the items to be considered by the Members of the Authority when determining whether to approve or disapprove an application. The NYCNA also objects to the inclusion of any record of convictions of disciplinary matters as well, stating that, "When an offer of settlement is made and accepted between Counsel and a licensee on a particular charge, let's say a civil penalty of xxx dollars, no one said, 'this may also result in the denial of a New Year's permit.' The penalty offer was considered and agreed to, that should be the end of it. Perhaps the licensee would not have settled if it knew that it could result in the denial of this permit."

9. Federal standards: None.

10. Compliance schedule: This rule will be effective July 1, 2008.

Regulatory Flexibility Analysis

1. Effect of rule:

There are tens of thousands of on-premises liquor licensees in New York State – all of which are potentially impacted by promulgation of this proposed regulation regarding this voluntary permit – and virtually all of which are small businesses.

2. Compliance requirements:

Other than the requirement that ABCL § 99 applicants provide advanced written notice to their local police department of their intent to file such application with the Authority, there is no expected impact on local governments.

3. Professional services:

None.

4. Compliance costs:

Costs to regulated parties for the implementation and continuing compliance with the rule: None, pursuant to ABCL § 99(1), the permit fee is \$51.00. In 2007 there were 629 permits issued pursuant to ABCL § 99 for a total cost to regulated parties of \$32,079.00. There were no ABCL § 99 permits issued in 2006 as New Year's Eve happened to fall on a Sunday that year. In 2005 there were 596 permits issued pursuant to ABCL § 99 for a total cost to regulated parties of \$30,396.00. No additional operating costs are anticipated since the Authority's Bureau of Licensing is already performing the necessary functions and issuing these permits, and since police departments and sheriffs already employ staff to open and process incoming mail.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the proposed regulation have been assessed. Since licensee applicants are already required to provide the State Liquor Authority with certified mail receipts for license renewal applications, applicants are known to possess the requisite ability to perform such mailings and thus comply with the instant proposed regulation. Furthermore, since the permit cost is fixed by statute (ABCL § 99(1)), there is no economic impact of the proposed regulation.

6. Minimizing adverse impact:

In conformance with State Administrative Procedure Act § 202-b(1), the amendments were drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses. The impact on local governments is expected to be positive, as sheriffs will now be assured of advanced notice of any pending all-night events in their jurisdiction, enabling proper regulation and oversight thereof.

7. Small business and local government participation:

The State Liquor Authority contacted the Empire State Restaurant & Tavern Association, the New York City Nightlife Association and the New York State Sheriff's Association for suggestions and/or alternatives regarding this proposed regulation.

The New York State Sheriff's Association said that the proposed regulations seemed reasonable and helpful in enforcing all laws regarding the serving of alcoholic beverages. Additionally, the Sheriff's Association agrees that the minimal administrative burden placed on police forces by receiving and processing the required notification letters from applicants is outweighed by the benefit of ensuring law enforcement of advanced notice of any all-night event in their jurisdiction.

The Empire State Restaurant & Tavern Association ("ERSRTA") said the following: "Overall our response is very positive. We commend the development of this proposed rule and the general guidelines included in the draft proposal." The ERSRTA did not agree, however, with the inclusion of pending disciplinary proceedings in the list of factors to be considered by the Authority in determining whether to issue the permit (part 35.4 (b) 1), stating that "Pending proceedings are merely allegations against a licensee that cannot on their face be considered a reason to decline a privilege to a licensee," and suggesting that any pending proceedings ultimately considered be limited to those for which the recommended penalty based on the standard practices of the Authority would be license cancellation or revocation. The ERSRTA also suggested that the provision authorizing one member of the Authority to make a final determination on

a request for reconsideration (part 35.5 (d)), could be problematic, suggesting that the potential exists that different members of the Authority exercising their discretion under the proposal could develop different standards.

The New York City Nightlife Association applauds the attempt to have written procedures and standards in the application process, but disagrees with the inclusion of pending disciplinary charges as one of the items to be considered by the Members of the Authority when determining whether to approve or disapprove an application. The New York City Nightlife Association also objects to the inclusion of any record of convictions of disciplinary matters as well, stating that, "When an offer of settlement is made and accepted between Counsel and a licensee on a particular charge, let's say a civil penalty of xxx dollars, no one said, 'this may also result in the denial of a New Year's permit.' The penalty offer was considered and agreed to, that should be the end of it. Perhaps the licensee would not have settled if it knew that it could result in the denial of this permit."

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are tens of thousands of on-premises liquor licensees in New York State – all of which are potentially impacted by promulgation of this proposed regulation regarding this voluntary permit – and many of which are located in rural areas.

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

Other than the requirement that ABCL § 99 applicants provide advanced written notice to their local police department of their intent to file such application with the Authority (and inclusion of proof of mailing of same with the application package), there are no changes in paperwork requirements for applicants.

3. Costs:

Costs to regulated parties for the implementation and continuing compliance with the rule: None, pursuant to ABCL § 99(1), the permit fee is \$51.00. In 2007 there were 629 permits issued pursuant to ABCL § 99 for a total cost to regulated parties of \$32,079.00. There were no ABCL § 99 permits issued in 2006 as New Year's Eve happened to fall on a Sunday that year. In 2005 there were 596 permits issued pursuant to ABCL § 99 for a total cost to regulated parties of \$30,396.00. No additional operating costs are anticipated since the Authority's Bureau of Licensing is already performing the necessary functions and issuing these permits, and since police departments and sheriffs already employ staff to open and process incoming mail.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act § 202-b(1), the amendments were drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses. The impact on rural areas is expected to be positive, as rural sheriffs will now be assured of advanced notice of any pending all-night events in their jurisdiction, enabling proper regulation and oversight thereof.

5. Rural area participation:

The New York State Sheriffs' Association is supportive of implementation of this proposed regulation as "reasonable and... helpful in Sheriffs' efforts to enforce all laws regarding the serving of alcoholic beverages."

Job Impact Statement

1. Nature of impact:

There should be no job impact as a result of this rule. A job impact analysis has not been performed because it is anticipated that no jobs will be lost as a result of promulgation of this proposed rule.

2. Categories and numbers affected: There should be no jobs or employment opportunities affected by this rule.

3. Regions of adverse impact: No region of the state should have an impact from this rule.

4. Minimizing adverse impact: Since there should be no job impact as a result of the promulgation of this proposed rule, there are no adverse impacts to minimize.

5. Self-employment opportunities: The proposed rule will not affect self-employment opportunities.

Department of Motor Vehicles

NOTICE OF ADOPTION

Motor Vehicle Inspections

I.D. No. MTV-47-07-00002-A

Filing No. 20

Filing date: Jan. 8, 2008

Effective date: Jan. 23, 2008

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

Action taken: Amendment of Part 79 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301(a), (c), (d), (f), 302(a), (e), (f), 304(b) and 304-a

Subject: Motor vehicle inspections.

Purpose: To clarify safety and emission inspection procedures.

Substance of final rule: This regulation clarifies the procedures related to emissions and safety inspections. The highlights are as follows:

Provides that upon the casual sale of a motor vehicle, an inspection sticker issued prior to the date of the sale shall be deemed invalid.

Provides that the MGW of a vehicle shall be the weight used for a safety inspection.

Requires an inspection station to surrender all certifications when closing a business or when suspended or revoked.

Inspection stations must keep all reports, in chronological order, for two years.

If a station inspects motorcycles, the official motorcycle sign must be displayed.

Provides for the proper placement of signs for motor vehicle inspection stations.

Allows municipalities to inspect motor vehicles owned by other municipalities.

Provides that a person applying for an inspector's license may be required to pass a skills test.

Clarifies that the inspection sticker is placed to the left of the registration sticker.

Clarifies and simplifies the provisions related to emissions inspection without making substantive revisions.

The following non-substantive changes were made to:

79.24(i)(4) - 4. The EGR valve is removed. The vacuum hoses are disconnected or removed. Any visible electrical connector the to EGR, or any visible component of the EGR system, is disconnected or removed.

The words "the to" were changed to "to the" in the third sentence of Part 79.24(i)(4).

79.25(b) - (b) If all of the above conditions are met, the [emissions analyzer system] CVIS will allow the inspector to issue an inspection certificate for the vehicle. If issuing a "Safety/Emissions" sticker VS-1082SE, check the "Repair Waiver Issued" box on the reverse side of the and punch the appropriate expiration month. The NYTEST or NYVIP CVIS will print a waiver certification form that must be filled out by the station, and signed by both the customer and the certified inspector. This form and all repair documentation must be kept by the station for two years for possible review by NYS.

The word "sticker" was added to the second sentence so that such sentence will read as follows:

If issuing a "Safety/Emissions" sticker VS-1082SE, check the "Repair Waiver Issued" box on the reverse side of the sticker and punch the appropriate expiration month.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 79.24(i)(4) and 79.25(b).

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

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

The Department is not submitting a revised statement for the RIS, JIS, RFA and RAFA because no substantial revisions were made.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Monroe County Motor Vehicle Use Tax

I.D. No. MTV-47-07-00003-A

Filing No. 18

Filing date: Jan. 8, 2008

Effective date: Jan. 23, 2008

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

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

Subject: Monroe County motor vehicle use tax.

Purpose: To impose a Monroe County motor vehicle use tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-47-07-00003-P, Issue of November 21, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Driver License Requirements

I.D. No. MTV-47-07-00019-A

Filing No. 19

Filing date: Jan. 8, 2008

Effective date: Jan. 23, 2008

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

Action taken: Amendment of Part 3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 501(2)(c) and 1198

Subject: Driver license requirements.

Purpose: To add an interlock device restriction.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-47-07-00019-P, Issue of November 21, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Deployment of Niagara Mohawk Power Corporation's Customer Service System by National Grid

I.D. No. PSC-35-07-00010-A

Filing date: Jan. 3, 2008

Effective date: Jan. 3, 2008

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

Action taken: The commission, on Dec. 12, 2007, approved, with conditions, Niagara Mohawk Power Corporation d/b/a National Grid's (the company) request for deployment of its customer service system to its New England utility affiliates.

Statutory authority: Public Service Law, section 70

Subject: Deployment of the customer service system.

Purpose: To approve the deployment of the company's New York customer service system to its New England utility affiliates.

Substance of final rule: The Commission approved, with conditions, Niagara Mohawk Power Corporation d/b/a National Grid's request for deployment of its Customer Service System to its New England utility affiliates, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-M-0943SA1)

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

Waiver of Commission's Policy by United Development Corporation

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

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

Proposed action: The Public Service Commission is considering whether to grant or deny, in whole or in part, the petition of United Development Corporation (United) for waiver of the commission's policy prohibiting rent inclusion of electricity in new residential construction contained in Opinion 76-17 and the tariff of Niagara Mohawk Power corporation (NMPC) for a student dormitory located at Niagara County Community College, Sanborn, NY.

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

Subject: United's petition for a waiver of commission policy and tariff of NMPC.

Purpose: To grant or deny, in whole or in part, United's petition for a waiver of commission policy and tariff of NMPC.

Substance of proposed rule: The Public Service Commission is considering whether to grant or deny, in whole or in part, the petition of United Development Corporation for waiver of the Commission's policy prohibiting rent inclusion of electricity in new residential construction contained in Opinion 76-17 and the tariff of Niagara Mohawk Power Corporation for a student dormitory located at Niagara County Community College, Sanborn, New York.

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

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

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

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

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

(07-E-1426SA1)

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

Granting of Easement Rights on Utility Property by Central Hudson Gas & Electric Corporation

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

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Central Hudson Gas & Electric Corporation for approval to grant easement rights on approximately 800 square feet of utility property at its Tuxedo Regulating Station on Long Meadow Rd. to Millennium Pipeline Company, L.L.C. for natural gas transmission pipeline facilities construction and operation purposes.

Statutory authority: Public Service Law, section 70

Subject: Granting of easement rights on utility property.

Purpose: To allow Central Hudson Gas & Electric Corporation to grant easement rights to Millennium Pipeline Company, L.L.C.

Substance of proposed rule: The Public Service Commission (Commission) is considering a request by Central Hudson Gas & Electric Corporation for authority under section 70 of the Public Service Law to allow easement rights on approximately 800 square feet of utility property at Tuxedo Regulating Station to Millennium Pipeline Company, L.L.C. for construction and operation of natural gas transmission pipeline facilities. The Commission may adopt, modify, or reject, in whole or in part, the rights requested.

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.

(07-G-1430SA1)

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

Revocation of Stock Purchase and Other Regulatory Authorizations

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

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

Proposed action: The Public Service Commission is considering whether to approve in whole or in part a "motion to recuse" and "petition for rehearing" concerning the commission's Aug. 23, 2007 abbreviated order authorizing acquisition. The commission is also considering on its own motion the question of whether it should clarify that the annual cap on gas temperature controlled service will be based on the comparable commercial gas heating firm rate.

Statutory authority: Public Service Law, sections 22, 66(12), 70, 99, 100 and 110

Subject: Revocation of stock purchase and other regulatory authorizations.

Purpose: To upset the commission's prior order authorizing National Grid plc to acquire KeySpan Corporation and its subsidiaries and to change prior commission actions in other cases.

Substance of proposed rule: The September 11, 2007 "Motion to Recuse/Rescind And/or Petition for Rehearing" by a member of the public raises concerns about whether Commission rules bar Commissioner contacts with active parties during rulemaking proceedings and, if so, whether the Commission's Aug. 23, 2007 Abbreviated Order authorizing the acquisition of KeySpan Corporation by National Grid should be rescinded. Issues are also raised about a Management Services Agreement between National Grid and the Long Island Power Authority that is said to be "prohibited", individual customer billing and service complaints raised in past or current litigation in Suffolk County and Nassau County court proceedings, alleged misconduct in a separate Commission proceeding (Case 05-E-0098) concerning the Caithness generation facility, and alleged violations of state and federal "False Claims Acts". In electronic messages dated Oct. 22, 2007, Nov. 6, 2007, and Nov. 27, 2007, additional information was filed by the same member of the public "in support" of

various aspects of the petition for rehearing summarized above. Given that the Commission will be considering the referenced motion and petition, it will also take the opportunity to review on its own motion whether it should clarify that the annual cap for gas temperature controlled customers should be based on the comparable rate for firm commercial heating customers.

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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-M-0878SA4)

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

Marketing Practices of Energy Service Companies by the Consumer Protection Board and New York City Department of Consumer Affairs

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

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of the New York State Consumer Protection Board (CPB) and the New York City Department of Consumer Affairs (NYCDCA) regarding the marketing practices of Energy Service Companies (ESCO) and requesting that the commission modify its regulation over the marketing practices of ESCOs selling electricity and natural gas services to residential and small commercial consumers by incorporating within the commission’s Uniform Business Practices (UBP) enforceable rules comparable to those set forth in the industry’s voluntary statement of principles.

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

Subject: Marketing practices of energy services companies.

Purpose: To consider CPB’s and NYCDCA’s request that the commission modify its regulation over the marketing practices of ESCO’s selling electricity and natural gas services to residential and small commercial consumers by incorporating within the commission’s Uniform Business Practices (UBP) enforceable rules comparable to those set forth in the industry’s voluntary statement of principles.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to approve or reject, in whole or in part, the Petition of the New York State Consumer Protection Board (CPB) and the New York City Department of Consumer Affairs (NYCDCA) regarding the marketing practices of Energy Services Companies (ESCO) and requesting that the Commission modify its regulation over the marketing practices of ESCOs selling electricity and natural gas services to residential and small commercial consumers by incorporating within the Commission’s Uniform Business Practices (UBP) enforceable rules comparable to those set forth in the industry’s voluntary Statement of Principles. Among the issues that the Commission may consider are the necessity of incorporating the Statement of Principles into the UBP and modifying the UBP to include termination of ESCO eligibility for failure to comply with the Statement, and the appropriateness of adding language to the UBP, as requested by CPB and NYCDCA, to allow local consumer protection agencies, such as NYCDCA, to proceed against ESCOs under their consumer protection statutes and require ESCOs to cooperate with such agencies.

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. Brillig, 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. (07-M-1514SA1)

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

Routine Water Company Tariff Schedules

I.D. No. PSC-04-08-00013-P

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

Proposed action: The Public Service Commission is considering whether to delegate to the secretary authority to approve the conversion of water company paper tariffs to electronic tariffs with certain rate changes, such as the inclusion of a late payment charge, returned check charge, a fixed level for restoration of service charges; and, certain waivers.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 8, 89-c(1) and (10)

Subject: Delegation of authority to the secretary for approval of routine water company tariff schedules.

Purpose: To consider delegation of authority.

Substance of proposed rule: The Commission is considering delegating to the Secretary authority to approve the conversion of water company paper tariffs to electronic tariffs with certain rate changes and, requests for waivers of newspaper publication and the statutory 30 days filing requirement, if applicable. The rate changes for which approval would be delegated would be limited to: (1) the inclusion of a late payment charge of 1-½% per month on the unpaid balance of any bill as permitted by statute and Commission regulations; (2) a returned check charge equal to the actual bank charge plus a handling fee of \$5 (total not to exceed the \$20 maximum allowed by Section 5-328 of General Obligations Law); and, (3) restoration of service charges as follows: \$50 during normal business hours (8:00 am to 4:00 pm, Monday through Friday); \$75 outside of normal business hours (Monday through Friday); and, \$100 on weekends or holidays. A water utility seeking to convert its paper tariff to an electronic one would be required to verify that the only changes in the electronic tariff were the correction of typographical errors and the addition, if applicable, of the late payment, returned check and restoration of service charges described above. The Commission may approve or reject, in whole or in part, or modify the proposal.

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. Brillig, 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. (07-W-0929SA2)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Child Support Standards Chart

I.D. No. TDA-42-07-00009-A

Filing No. 11

Filing date: Jan. 7, 2008

Effective date: Jan. 23, 2008

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

Action taken: Amendment of section 347.10(a)(8), (9), (b) and (c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3), 111-a and 111-i

Subject: Child support standards chart.

Purpose: To reflect the revised poverty income guidelines amount the revised self-support reserve and the updated child support standards charts.

Text or summary was published in the October 17, 2007 issue of the Register, I.D. No. TDA-42-07-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

NOTICE OF EXPIRATION

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

Access of Overdimensional and Overweight Vehicles

I.D. No.	Proposed	Expiration Date
TRN-01-07-00006-P	January 3, 2007	January 3, 2008

Urban Development Corporation

EMERGENCY RULE MAKING

Restore New York's Communities Initiative

I.D. No. UDC-04-08-00004-E

Filing No. 14

Filing date: Jan. 4, 2008

Effective date: Jan. 4, 2008

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

Action taken: Addition of Part 4245 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); and L. 1968, ch. 174; L. 1994, ch. 169; L. 2001, ch. 471

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of the rule. This assistance is necessary to address the dangers to public health, safety and welfare posed by vacant, abandoned, surplus or condemned buildings in municipalities.

Subject: Economic development and job creation throughout New York State and preservation of public health and public safety via the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

Purpose: To provide the framework for administration of the Restore New York's Communities Initiative, evaluation criteria, terms and conditions, and the application and evaluation process.

Substance of emergency rule: The Restore New York's Communities Initiative (the "Program") was created pursuant to Chapter 109 of the Laws of 2006 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-n of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

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 April 2, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792, e-mail: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Chapter 109, Laws of 2006 (Unconsolidated Laws, Section 6266-n. Another Unconsolidated Laws Section 6266-n was added by another act) authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Need and Benefits:

The Program's legislation assists job creation throughout the State by providing the following types of assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York’s Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

1. Evaluation Criteria – The Corporation, will review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation’s overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation’s clients.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York’s Communities Initiative (the “Program”) to promote economic development in the State by encouraging economic and employment opportunities for the State’s citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York’s Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The Program promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to

municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the proposed Rule.

5. Economic and Technological Feasibility:

The Rule makes the Program assistance feasible for local governments, by expressly stating that municipalities are eligible for certain types of Program assistance while permitting local governments access to all other types of Program assistance for which they may be eligible. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

**EMERGENCY
RULE MAKING**

Economic Development and Job Creation throughout New York State

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

Filing No. 15

Filing date: Jan. 4, 2008

Effective date: Jan. 4, 2008

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

Action taken: Amendment of Part 4243 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); and L. 1968, ch. 174; L. 1994, ch. 169; L. 2001, ch. 471

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires clarification of the rule and elimination of inconsistencies in the rule.

Subject: Economic development and job creation throughout New York State.

Purpose: To provide the framework for administration of the Empire State Economic Development Fund, evaluation criteria, terms and conditions, and the application and evaluation process. The amended rule makes changes to expand the types of program assistance.

Substance of emergency rule: The Empire State Economic Development Fund (the “Program”) was created pursuant to Chapter 309 of the Laws of 1996 as amended by Chapter 432 of the Laws of 1997 and Chapter 471 of the Laws of 2001 (the “Enabling Legislation”). The general purpose of the Program is to promote economic development in the State by

encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-m and 16-l of the New York State Urban Development Corporation Act (the "UDC Act") which govern the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

b) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

c) Competitiveness Improvement Program for Competitiveness Improvement projects.

d) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

e) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

f) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

g) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

h) Rural Revitalization Program to support community economic development programs and activities including value added small business growth, agricultural, agribusiness and forest products and those projects that promote the family farm, increase or retain employment opportunities and otherwise contribute to the revitalization of local rural areas which are economically distressed.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-l of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be

used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

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 April 2, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792, e-mail: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Chapter 84, Laws of 2002 (Unconsolidated Laws, Section 6266-m), which was originally enacted by Chapter 309, Laws of 1996 and amended by Part M1 Section 5 of the Article VII Bill of the Budget of 2003, authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement The Empire State Economic Development Fund (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers private businesses, government entities and not-for-profit entities various forms of assistance, including loans, loan guarantees and grants. Chapter 471, Laws of 2001, (Unconsolidated Laws, Section 6266-l) authorized the Corporation to extend this type of assistance to eligible beneficiaries in rural areas of the State. Chapter 236, Laws of 2004 added micro business revolving loan assistance for rural development. Section 5(4) of the New York State Urban Development Corporation Act (Unconsolidated Laws, Section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with Section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Need and Benefits:

Currently, the Program's legislation assists job creation throughout the State by providing the following types of assistance:

1) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

2) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

3) Competitiveness Improvement Program for Competitiveness Improvement projects.

4) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

5) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

6) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

7) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

8) Rural Revitalization Assistance grants or contracts for services, on a competitive basis in response to requests for proposals, to eligible entities

and organizations to support community economic development programs and activities which increase or retain employment opportunities in rural New York State and otherwise contribute to the revitalization of local rural areas which are economically distressed through innovative activities designed to generate economic alternatives and opportunities in rural areas.

The proposed change will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

1. Evaluation Criteria – The Corporation, will continue to review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs: The changes should not increase costs for the Program. The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of Rule:

The amended Rule will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

This should not affect the Program's accessibility to small business.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the amended rule.

5. Economic and Technological Feasibility:

The Rule makes The Empire State Economic Development Fund assistance feasible for small businesses, by expressly stating that small businesses are eligible for certain types of program assistance while permitting small businesses access to all other types of program assistance for which they may be eligible, notwithstanding the size of such businesses. The Rule also makes the program assistance feasible for local governments by expressly stating that government entities and municipalities are eligible for program assistance. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts with the program. There are no aspects of the Rule that make The Empire State Economic Development Fund assistance or the Rule technologically infeasible for small business or local government.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Empire State Economic Development Fund emphasizes the effective provision of economic development throughout New York State. Small business may participate by requesting assistance when the requisite eligibility criteria are met. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

Workers' Compensation Board

EMERGENCY RULE MAKING

Pharmacy and Durable Medical Equipment Fee Schedules

I.D. No. WCB-04-08-00001-E

Filing No. 17

Filing date: Jan. 7, 2008

Effective date: Jan. 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 450 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. Adoption of this fee schedule will alleviate this burden to claimants, effectively maximizing the benefits available to them and eliminating the delay associated with requesting reimbursement from the insurance carrier. Adoption of this amendment is necessary to get prescription drugs to claimants faster by allowing pharmacies to directly bill carriers and to eliminate the litigation caused by the differences in cost of prescription drugs and the reimbursement rates paid by carriers. Adoption of this amendment also allow claimants to fill prescriptions by the internet or mail order thus aiding claimants with mobility problems and reducing transportation costs necessary to drive to a pharmacy to fill prescriptions. Accordingly, emergency adoption of this rule is necessary.

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 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 April 5, 2008

Text of rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Worker's Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 486-9564, e-mail: OfficeofGeneralCounsel@wcb.state.ny.us

Summary of Regulatory Impact Statement

Section 1 provides the statutory authority for the Chair to adopt a pharmacy fee schedule pursuant to Workers' Compensation Law Section (WCL) 13-o as added to the WCL by Chapter 6 of the Laws of 2007 which requires the Chair to adopt a pharmaceutical fee schedule. Chapter 6 also amended WCL Section 13(a) to mandate that the Chair establish a schedule for charges and fees for medical care and treatment. Such medical care and treatment includes supplies and devices that are classified as durable medical equipment.

Section 2 sets forth the legislative objectives of the proposed regulations which provide the fee schedules to govern the cost of prescription medicines and durable medical equipment. This section provides a sum-

mary of the overall purpose of the proposed regulation to reduce costs of workers' compensation and the scope of the regulation with regard to process and guidance to implement the rule.

Section 3 explains the needs and benefits of the proposed regulation. This section provides the explanation of the requirement of the Chair to adopt a pharmacy fee schedule as mandated by Chapter 6 of the Laws of 2007. The legislation authorizes carriers and self-insured employers to designate a pharmacy or pharmacy network which requires claimants to obtain their prescription medicines from the designated pharmacy or network. This section explains how prescriptions were filled prior to the enactment of the legislation and the mechanisms by which prescriptions were reimbursed by carriers and self-insured employers. This section also provides the basis for savings under the proposed regulation. The cost savings are provided by the negotiating power of Medicaid with drug manufacturers. The cost savings realized by using the Medicaid fee schedule as a price index for the pharmacy fee schedule will be approximately 14 percent for brand name drugs and 25 percent for generic drugs. The substantive requirements are set forth that carriers must follow to notify a claimant of a designated pharmacy or network. This includes the information that must be included in the notification as well as the time frames within which notice must be provided. This section also describes how carriers and self-insured employers will benefit from a set reimbursement fee as provided by the proposed regulation. This section provides a description of the benefits to the Board by explaining how the proposed regulation will reduce the number of hearings previously necessary to determine proper reimbursement of prescription medications by using a set fee schedule.

Section 4 provides an explanation of the costs associated with the proposed regulation. It describes how carriers are liable for the cost of medication if they do not respond to a bill within 45 days. This section describes how carriers will incur costs for sending the required notices, but also describes how the costs can be offset to a certain degree by sending the notices listed in the Appendices to the regulation concurrently. Pharmacies will have costs associated with the proposed regulation due to a lower reimbursement amount, but the costs are offset by the reduction of administrative costs associated with seeking reimbursement from carriers and self-insured employers. Pharmacies will be required to post notice that they are included in a designated network and a listing of carriers that utilize the pharmacy in the network. This section describes how the rule benefits carriers and self-insured employers by allowing them to contract with a pharmacy or network to provide drugs thus allowing them to negotiate for the lowest cost of drugs and durable medical equipment.

Section 5 describes how the rule will affect local governments. Since a municipality of governmental agency is required to comply with the rules for prescription drug reimbursement and pharmacy or network notification, the savings afforded to carriers and self-insured employers will be substantially the same for local governments.

Section 6 describes the paperwork requirements that must be met by carriers, employers and pharmacies. Carriers will be required to provide notice to employers of a designated pharmacy or network, and employers in turn will provide such notice to employees so that employees will know to use a designated pharmacy or network for prescription drugs. Pharmacies will be required to post notice that they are part of a designated network and a listing of carriers that utilize the pharmacy within the network. The notice posted by pharmacies will include the contact information for the listed carriers. This section also specifies the requirement of a carrier or self-insured employer to respond to a bill within 45 days of receipt. If a response is not given within the time frame, the carrier or self-insured employer is deemed to have waived any objection and must pay the bill. This section sets forth the requirement of carriers to certify to the Board that designated pharmacies within a network meet compliance requirements for inclusion in the network. This section sets forth that employers must post notification of a designated pharmacy or network in the workplace and the procedures for utilizing the designated pharmacy or network.

Section 7 states that there is no duplication of rules or regulations.

Section 8 describes the alternatives explored by the Board in creating the proposed regulation. This section lists the entities contacted in regard to soliciting comments on the regulation and the entities that were included in the development process. The Board studied fee schedules from other states and the applicability of reimbursement rates to New York State. Alternatives such as an average wholesale price plus or minus a certain percentage plus a dispensing fee were examined but it was determined that the New York State Medicaid fee schedule for prescription drugs would provide the savings envisioned by the reform legislation.

Section 9 states that there are no applicable Federal Standards to the proposed regulation.

Section 10 provides the compliance schedule for the proposed regulation. It states that compliance is mandatory and that the proposed regulation takes effect as of 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 pharmacy. 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.