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.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

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

I.D. No. ASA-30-08-00001-E
Filing No. 645
Filing date: July 2, 2008
Effective date: July 2, 2008

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

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

Statutory authority: Mental Health Law, sections 19.07(b), (e), 19.21(b), 19.40, 32.01, 32.05(b), 32.07(a) and 32.09(b)

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

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

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

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

Text of emergency rule: PART 828

Amendment to: Requirements for the operation of chemotherapy substance abuse programs.

§ 828.1 Definitions.

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire September 29, 2008.

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

Regulatory Impact Statement

The proposed emergency revision to Part 828 - Requirements for the operation of chemotherapy substance abuse programs will revise methadone regulations that have existed for 24 years without change. The amendment to the definitions of Part 828 are being adopted by emergency because the need to allow alternative chemotherapy options to methadone clinics is in the interest of the publics health, safety and welfare.

Opioid addiction is a chronic illness which can be treated effectively with medications that are administered under conditions consistent with their pharmacological efficacy, and when treatment includes necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, medical services and, when appropriate, vocational rehabilitation. Medication assisted treatment can be effective in facilitating recovery from opioid addiction for many patients. The proposed regulation sets forth standards to guide opioid addiction treatment.

1. Statutory Authority:

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services ("the

Commissioner") to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 19.21 (b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to evaluate chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32.

Section 32.05 of the Mental Hygiene Law requires providers to obtain an operating certificate issued by the Commissioner in order to operate chemical dependence services including but not limited to methadone.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner the power to adopt regulations to effectuate the provisions and purposes of Article 32.

Section 32.09(b) of the Mental Hygiene Law gives the Commissioner the power to withhold an operating certificate for a Methadone provider until statutory requirements are satisfied.

The relevant sections of the Mental Hygiene Law cited above, allow the Commissioner to regulate how chemical dependency services are administered. This regulation will alter the way those services are administered, providing greater flexibility within the State regulations in alignment with Federal rules promulgated by SAMHSA in 2003. The objective is in line with the legislative intent behind the enactment of Sections 19, 22 and 32 of the Mental Hygiene Law, allowing the Commissioner to certify, inspect, license and establish treatment standards for all facilities that treat chemical dependency. Revising policy and procedures with regard to opioid treatment, will establish a standard for all facilities, which is in the best interest of the patient, and will assist opioid treatment programs to provide better health care services and recovery from opioid addiction.

2. Legislative Objectives:

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the State to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The legislature enacted Section 19, enabling the Commissioner to establish best practices for treating chemical dependency.

3. Needs and Benefits:

Research supports that opioid addiction is a chronic illness that can be treated effectively with medications when administered under conditions consistent with their pharmacological efficacy and when treatment includes necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, medical services and when appropriate vocational rehabilitation (CSAT, 2001). Medication assisted treatment can be effective in facilitating recovery from opioid addiction for many patients.

Approximately 40,000 patients, who represent 36% of patients currently being served in addiction treatment, are in opioid treatment programs in New York State. OASAS Part 828 regulations were written more than 24 years ago and have not been revised despite the fact that SAMHSA promulgated an amendment to the rules in 2003 that allowed opioid treatment programs to offer Buprenorphine treatment along with methadone. The proposed emergency regulation would allow chemotherapy programs to provide Buprenorphine for the maintenance or detoxification treatment of dependence on opioids such as heroin or prescription pain relievers. Consistency between Federal and State regulations is a benefit to providers.

In addition, New York State law currently allows Buprenophine to be administered by physicians in their private practices in addition to OTP clinics. However, the current OASAS regulation Part 828 does not permit Buprenophrine administration. Buprenorphrine treatment for opioid dependence is well served in the OTP setting, since clients will receive additional services such as counseling, toxicology and medical support. The proposed emergency revision will address this problem and patients will benefit from this added service.

4. Costs:

Additional costs are expected to be minimal. Any costs incurred by providers or the State will be offset by better treatment outcomes and healthier patients, which will result in lower costs for medical and other services.

a. Costs to regulated parties:

Regulated parties include patients and providers of substance abuse services. Patients should not incur additional costs as Buprenorphine is covered by Medicaid. Cost to providers remains the same.

There should be no additional costs for materials.

b. Costs to the agency, state and local governments:

OASAS is not expected to see increased cost related to administering the rule. The decision to provide buprenorphine is voluntary, and the current Part 828 methadone clinics will not be forced to provide it. There will be anticipated cost increases for state and local governments due to the weekly rate of Bupenorphine which is $ 235.00 and the difference of a weekly rate for Methadone of $136.02. In addition, providers may need some addition staffing for the induction phase of Buprenophine. However, it is important to realize that the number of people treated is not changing only their options about treatment. Patients may opt to be placed on Buprenorphine while receiving other services such as toxicology testing and counseling whereas Medicaid patients who opt for Bupenorphine treatment at physicians offices do not receive the benefit of these additional services. There will be no additional costs to counties, cities, towns or local districts.

5. Local Government Mandates:

There are no new mandates or administrative requirements placed on local governments.

6. Paperwork

Amended Part 828 regulations would not change the paperwork currently required.

7. Duplications:

There is no duplication of other state or federal requirements.

8. Alternatives:

The only other alternative is to keep the existing regulation in place. This would be detrimental to both the opioid treatment providers and patients being served.

9. Federal Standards:

The CSAT Federal regulations preserve States' authority to regulate OTPs. The Federal regulations are considered minimal and the States are authorized to determine appropriate additional regulations. Federal regulations for dispensing Bupenorphine in opioid treatment programs are more restrictive than minimal Federal regulations for dispensing in physicians. In support of reducing opioid dependence it is demonstrated that there are numerous benefits which include improved retention in treatment for patients, making OTP's more attractive to new patients, and giving patients more control over their treatment experience. In addition, patient quality of life may be improved through the reduction in daily attendance at an OTP clinic.

10. Compliance Schedule:

It is expected that full implementation of Part 828 will be completed within three months of the adoption of the regulation.

Regulatory Flexibility Analysis

Effect of the Rule: The proposed amendments to Part 828 will impact certified and or funded providers. It is expected that the amendment of the methadone regulation will result in better patient care. Local Government will not be effected by the rule. Business that provide Buprenorphine may benefit from increased sales of the drug because of a wider distribution.

Compliance Requirements: Providers will document the use of Burprenorphine in compliance with federal standards. This rule is voluntary and does not place any additional requirements on small businesses or local governments. It is not expected that there will be significant changes in compliance requirements. Since providers are already required to provide utilization review, it is not expected that this regulation, will have significant additional costs.

Professional Services: it is not expected that programs will need to utilize additional professional services.

Compliance Costs: No additional costs are expected. This rule is voluntary, therefore compliance is not mandatory.

Economic and Technological Feasibility: The economic and technological feasibility of compliance with this voluntary rule by small businesses and local governments is such that the implementation may require certain businesses to increase their sale and production of Buprenorhine in order to comply with the demand for the drug.

Minimizing Adverse Impact: Part 828 has been carefully reviewed to ensure minimum adverse impact to providers. Any impact this rule may have on small businesses and the administration of State or local government, will either be a positive impact or the minimal costs for materials and compliance are so small that they will be absorbed into the already existing economic structure.

Small Business and Local Government Participation: These amendments were adopted on an emergency basis.

Rural Area Flexibility Analysis

A rural flexibility analysis is not provided since these proposed regulations would have no adverse impact on public or private entities in rural areas. The majority of Methadone providers are located in NYC. There are a few others upstate, but they are in cities, of various sizes. There are only three providers located in Ulster, Broome and Montgomery which may be considered a rural area however they are in towns where the density is greater than 150 people per square mile. The compliance, recordkeeping and paperwork requirements are the minimum needed to insure compliance with state and federal requirements and quality patient care.

Job Impact Statement

The implementation of emergency regulation Part 828 will have a minimal impact on jobs in that it may require some additional staffing during the induction phase of Buprenorphine. This regulation will not adversely impact jobs outside of the agency.

Department of Correctional Services

NOTICE OF ADOPTION

Access to Records Subject to the Personal Privacy Protection Law

I.D. No. COR-18-08-00001-A
Filing No. 690
Filing date: July 2, 2008
Effective date: July 23, 2008

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

Action taken: Amendment of sections 6.2(c) and 6.3(b) 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 change the employee job title designated as deputy privacy compliance officer and custodian of bureau of personnel records.

Text or summary was published: in the notice of proposed rule making, I.D. No. COR-18-08-00001-P. Issue of April 30, 2008.

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, Executive Deputy Commissioner, NYSDOCS, 1220 Washington Ave., Bldg. 2 - State Campus, Albany, NY 12226-2050, (518) 457-4951, e-mail: AJAnnucci@DOCS.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sentence of Death to be Carried Out at Green Haven Correctional Facility

I.D. No. COR-30-08-00003-P

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

Proposed Action: This is a consensus rule making to repeal Section 100.21 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 70 and 130

Subject: Sentence of death to be carried out at Green Haven Correctional Facility.

Purpose: To remove this regulation in accordance with recent litigation.

Text of proposed rule: The Department of Correctional Services seeks to repeal section 100.21 of 7NYCRR for the reason stated in the consensus rulemaking statement.

Text of proposed 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) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed action to repeal as the Department is ensuring the consistency of 7NYCRR with the ruling made by the New York State Court of Appeals in People v. Taylor, 9 N.Y.3d 129 (2007), which determined that the New York State death penalty sentencing statute enacted in 1995 violates the New York State Constitution on its face and it is not within the power of the judiciary to save the statute.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities.

Department of Environmental Conservation

ERRATUM

A Notice of Emergency/Proposed Rule Making, I.D. No. ENV-21-08-00003-EP, pertaining to Recreational Harvest and Possession of Summer Flounder and Scup, published in the May 21, 2008 issue of the *State Register* contained an error in the text of the rule. Following is the correct text:

Section 40.1(f) is amended to read as follows:

(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	Licensed Party/ Charter Boat anglers 28" TL	2
		All other anglers 28" to 40" TL	1
		>40" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Jan. 17-April 30 and Oct. 1-Dec. 17	14" TL	4
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	19" TL	No limit
Atlantic cod	All year	22" TL	No limit
Summer flounder	[None (closed as of September 17, 2007)] *May 15-Sept. 1*	*20.5" TL*	*4*
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	17" TL 11" tail length #	No limit
Weakfish	All year	16" TL 10" Fillet length+	6

		12" Dressed length**	
Bluefish	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	15, no more than 10 of which shall be less than 12" TL.
Winter Flounder	April 1 - May 30	12" TL	10
Scup (porgy) licensed Party/ Charter Boat anglers ****	June [1] *12*-Aug. 31 Sept. 1-Oct. [31] *15*	[10.5"] *11"*TL [10.5"] *11"*TL	[25] *10* [60] *45*
Scup (porgy) All other anglers	[June 1 - Oct. 31] *May 24-Sept. 26*	10.5" TL	[25] *10*
Black Sea Bass	All year	12" TL	25
American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum size limit	5
Oyster toadfish	Jan 1 - May 14 and July 16 - Dec 31	10" TL	3
Large & Small Coastal Sharks ##, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Pelagic Sharks ++, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

\+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

++Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

***Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

###Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999, and as amended in volume 68, Number 247, pages 74746-74789, December 24, 2003. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, New York, 11733.

****See Special Regulations contained in 6NYCRR 40.1(h)(3).

The Department of State apologizes for any confusion this may have caused.

Department of Health

EMERGENCY RULE MAKING

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

I.D. No. HLT-30-08-00005-E
Filing No. 692
Filing date: July 7, 2008
Effective date: July 7, 2008

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

Action taken: Amendment of Part 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 analyses of blood, urine, breath or saliva for alcoholic content.

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

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

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

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

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

Conforming Products List

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

(i) Alert J3AD.
(ii) Alert J4X.ec.
[(ii)] *(iii)* PBA3000C.

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

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

(4) CMI, Inc., Owensboro, KY:

(i) Intoxilyzer 200.
(ii) Intoxilyzer 200D.
(iii) Intoxilyzer 300.
(iv) Intoxilyzer 400.
(v) Intoxilyzer 400PA.
[(v)] *(vi)* Intoxilyzer 1400.
[(vi)] *(vii)* Intoxilyzer 4011.
[(vii)] *(viii)* Intoxilyzer 4011A.
[(viii)] *(ix)* Intoxilyzer 4011AS.
[(ix)] *(x)* Intoxilyzer 4011AS-A.
[(x)] *(xi)* Intoxilyzer 4011AS-AQ.
[(xi)] *(xii)* Intoxilyzer 4011AW.
[(xii)] *(xiii)* Intoxilyzer 4011A27-10100.
[(xiii)] *(xiv)* Intoxilyzer 4011A27-10100 with filter.
[(xiv)] *(xv)* Intoxilyzer 5000.
[(xv)] *(xvi)* Intoxilyzer 5000 (with Cal. Vapor Re-Circ.).
[(xvi)] *(xvii)* Intoxilyzer 5000 (with 3/8" ID hose option).
[(xvii)] *(xviii)* Intoxilyzer 5000CD.

[(xviii)] *(xix)* Intoxilyzer 5000CD/FG5.
[(xix)] *(xx)* Intoxilyzer 5000EN.
[(xx)] *(xxi)* Intoxilyzer 5000 (CAL DOJ).
[(xxi)] *(xxii)* Intoxilyzer 5000 VA.
(xxiii) Intoxilyzer 8000.
[(xxii)] *(xxiv)* Intoxilyzer PAC 1200.
[(xxiii)] *(xxv)* Intoxilyzer S-D2.
(xxvi) Intoxilyzer S-D5.

[(5) Decator Electronics, Decator, IL: Alco-Tector model 500 (nonmobile only).]

[(6)] *(5)* Draeger Safety, Inc., Durango, CO:
(i) Alcotest 6510.
(ii) Alcotest 6810.
[(i)] *(iii)* Alcotest 7010.
[(ii)] *(iv)* Alcotest 7110.
[(iii)] *(v)* Alcotest 7110 MKIII.
[(iv)] *(vi)* Alcotest 7110 MKIII-C.
[(v)] *(vii)* Alcotest 7410.
[(vi)] *(viii)* Alcotest 7410 Plus.
[(vii)] *(ix)* Breathalyzer 900.
[(viii)] *(x)* Breathalyzer 900A.
[(ix)] *(xi)* Breathalyzer 900 BG.
[(x)] *(xii)* Breathalyzer 7410.
[(xi)] *(xiii)* Breathalyzer 7410-II.

[(7)] *(6)* Gall's Inc., Lexington, KY: Alcohol Detection System-A.D.S. 500.

(7) Guth Laboratories, Inc., Harrisburg, PA:
(i) Alcotector BAC-100.
(ii) Alcotector C2H5OH.

(8) Intoximeters, Inc., St. Louis, MO:
(i) Photo Electric Intoximeter (nonmobile only).
(ii) GC Intoximeter MK II.
(iii) GC Intoximeter MK IV.
(iv) Auto Intoximeter.
(v) Intoximeter 3000.
(vi) Intoximeter 3000 (rev B1).
(vii) Intoximeter 3000 (rev B2).
(viii) Intoximeter 3000 (rev B2A).
(ix) Intoximeter 3000 (rev B2A) w/FM option.
(x) 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 does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 4, 2008.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

In 1986, the Commissioner of Health adopted the Conforming Products List of Evidential Breath Measurement Devices, as established by the National Highway Traffic Safety Administration, under 10 NYCRR Sections 59.1(c) and 59.4(b). The Traffic Safety Administration's list is periodically revised to include additional approved testing devices. Affected parties are law enforcement agencies that train police organizations in the use of breath testing devices and the organizations/agencies whose staff conduct testing, including the New York State Police; the State Division of Criminal Justice Services' Office of Public Safety; and the Police Departments of Nassau County, Suffolk County, and the City of New York.

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

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

evidentiary challenge to prosecution, and will ensure effective enforcement of the laws against driving while intoxicated.

COSTS:

Costs to Private Regulated Parties:

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

Costs to State Government:

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

Costs to Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternative Approaches:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

NOTICE OF ADOPTION

Non-Prescription Emergency Contraceptive Drugs

I.D. No. HLT-04-08-00003-A
Filing No. 706
Filing date: July 8, 2008
Effective date: July 8, 2008

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

Action taken: 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.

Purpose: FDA approved non-prescription contraceptive drugs dispensed by a pharmacy without a fiscal order to women 18 years of age and older.

Text or summary was published in the January 23, 2008 issue of the Register, I.D. No. HLT-04-08-00003-P.

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

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

Assessment of Public Comment

The Department received three letters and one e-mail communication commenting on the proposed emergency contraception regulation. The Family Planning Advocates of New York State (FPA) submitted the first letter. In its letter, FPA supported the regulations as promoting the public health and generating cost savings. FPA stated that the regulation reflected a patient-centered approach by removing an unnecessary barrier to accessing a time-sensitive medication that can prevent an unintended pregnancy.

The Department received a second letter from the New York City Department of Mental Hygiene (NYC DOHMH) strongly supporting the proposed regulations but expressing several concerns. The City agency questioned the coverage limits set for emergency contraception. The dispensing limit for over-the-counter (OTC) emergency contraceptive drugs is six courses of treatment per twelve-month period. The Department developed this dispensing limit in consultation with Department pharmacists and physicians, family planning professionals, and family planning advocacy groups. The Department is satisfied that the dispensing limit proposed in the regulation is adequate to meet emergency needs. If a woman requests more frequent courses of treatment, the Department believes that the woman should be seeking a family planning consultation concerning the use of reliable and consistent methods of birth control. The New York State Education Department, through its Board of Pharmacy, has informed pharmacists that when emergency contraceptive drugs are dispensed to women over the age of 18, pharmacists are not required to counsel because the packaging for the drug contains adequate information approved by the Federal Food and Drug Administration. Women may, however, request such counseling.

The City agency also strongly recommended that the requirement for a fiscal order for condoms be suspended as well. NYC DOHMH stated that restricting condom availability through this unnecessary barrier compromises the indigent Medicaid recipient's ability to protect him or herself from unwanted pregnancy and disease. By eliminating the requirement for a fiscal order for emergency contraceptive drugs, the Department is foregoing federal financial participation in the cost of those drugs. Federal regulations require that each claim for payment for an OTC drug be supported by a written order of a qualified practitioner. The Department will be paying for the emergency contraceptive drugs with 100 percent state funds. The federal government also requires written orders from a

practitioner to support claims for coverage of condoms under the Medicaid program. If the Department were to remove the fiscal order requirement for condoms, Medicaid would also have to pay for those items with 100 percent State funds. The Department has no plan to incur the additional State expenditure that this policy would require at this time. The City mental health agency also expressed general concerns about barriers to access that uninsured women and teens under the age of 18 are facing and asked that the Department consider requiring pharmacists to inform women who cannot afford to purchase contraceptive services and teens under 18 years of age that there are Title X clinics where they can access the various contraceptive services for free or on a sliding scale. This larger concern is beyond the scope of the regulation. The Department does not plan on imposing any additional obligations on pharmacies, through the Medicaid program, to educate clients at this time.

The third letter was a letter of support for the proposed regulation from the New York State Association of Licensed Midwives.

The last set of comments was submitted by a consultant to FPA concerning how the Department calculated the proposed regulation's fiscal impact. The consultant asked how we estimated that the cost of implementation of the regulation to the state would $1.5 million. The State costs for dispensing OTC emergency contraceptive drugs were determined from past Medicaid utilization of these drugs. The consultant asked how we determined that 2 in 100 claims for OTC emergency contraceptives would have resulted in a birth and delivery. In addition to reviewing the pharmaceutical inserts which accompany emergency contraceptive medication, the Department's staff studied the effectiveness of trials of emergency contraceptive drugs as reported in several publications, including *The Lancet, Obstetrics and Gynecology, Contraception, The Journal of Midwifery & Women's Health, The Australian and New Zealand Journal of Obstetrics and Gynaecology* and the emergency contraception website operated by the Office of Population Research at Princeton University and by the Association of Reproductive Health Professionals. (http://ec.princeton.edu/questions/eceffect.html) The website is peer reviewed by a panel of independent experts and is not associated with any pharmaceutical company or for-profit organization. The pregnancy rates with the use of the emergency contraceptive drugs reported in the studies ranged from 0.69 percent to 2.0 percent. The Department chose to estimate pregnancies at the higher range, 2.0 percent or 2 births per 100, in order to avoid overestimating savings. The consultant asked how we estimated the cost of a birth and delivery in 2006 and asked whether this was the cost to Medicaid for a birth and delivery. The Department calculated costs for 2006 associated with birth and delivery (the year for which data was available at the time of preparation of the estimate) by using actual Medicaid expenditures for birth and delivery from the Medicaid DataMart database. The estimated costs were approximately $11,700 per birth. Finally, the commentator asked why the cost for abortions averted was not included in the calculation of savings. The Department used only birth and delivery costs to determine savings because the Department did not want to over-estimate savings and create a potential unfunded liability for the State.

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

Insurance Department

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Standards for the Management of Various New York State Retirement Systems

I.D. No. INS-30-08-00004-P

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

Proposed Action: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 314, 7401(a) and 7402(n)

Subject: Standards for the management of various New York State retirement systems.

Purpose: To establish high ethical standards, strengthen internal controls and governance, and enhance the operational transparency.

Public hearing(s) will be held at: 9:00 a.m.-12:00 p.m., Sept. 10, 2008 at Insurance Department, Neil Levin Hearing Rm., 25 Beaver St., Fifth Fl., New York, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired 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.

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

Substance of proposed rule (Full text is posted at the following State website: www.ins.state.ny.us): The following is a summary of the substance of the rule:

Part 136 is retitled: "Public Retirement Systems"

The present Part 136 is renumbered to be Subpart 136-1 and titled: "Standards For Certain Actuarially Funded Public Retirement Systems". The use or the reference of "Part" has been changed to "Subpart" throughout Subpart 136-1. The New York State Employees' Retirement System and the New York State Policemen's and Firemen's Retirement System have been removed from Subpart 136-1 and included in the new Subpart 136-2.

A new Subpart 136-2, entitled "Standards for the New York State and Local Employees' Retirement System, the New York State and Local Police and Fire Retirement System and the New York State Common Retirement Fund" has been added.

Section 136-2.1 sets forth the main purposes of Subpart 136-2, including establishing standards to assure the conduct of the business of the state employees' retirement systems, the New York State Common Retirement Fund ("the Fund", which holds the assets of the retirement system), and of the State Comptroller (as administrative head of the retirement system and as sole trustee of the Fund) are consistent with the principles.stipulated therein.

Section 136-2.2 contains the definitions for the Subpart.

Section 136-2.3 sets forth the fiduciary responsibilities for the Comptroller.

Section 136-2.4 provides guidance on governance responsibilities and ethics provisions for persons or entities having a fiduciary responsibility to the Fund.

Section 136-2.5 provides guidance on the disclosure, recordkeeping and reporting requirements.

Section 136-2.6 requires the Comptroller to establish an actuarial committee.

Section 136-2.7 indicates what is considered a breach of fiduciary responsibility, and the actions to be taken in the event of such a breach.

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

Data, views or arguments may be submitted to: Micheal Maffei, 25 Beaver St., New York, NY 10004, (212) 480-5023, e-mail: mmaffei@ins.state.ny.us

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 314 requires every public retirement and pension system to file an annual report pursuant to section 307 of the Insurance Law. It also vests the Superintendent the authority to promulgate certain standards with respect to the public retirement and pension systems of the State of New York or of a municipality thereof, and to make an examination into the affairs of every system at least once every five years in accordance with sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in Matter of *Dinallo v. DiNapoli*, 9 N.Y. 3rd 94, 846 N.Y.S. 2d 593 (2007), the Superintendent operates in two distinct capacities. The first is his role as the general regulator. The second is his role as a statutory receiver of distressed entities. Article 74 sets forth the Superintendent's role and responsibilities in this latter capacity.

Section 7401(a) lists the entities, including the public retirement systems, to which Article 74 (Rehabilitation, Liquidation, Conservation and Dissolution of Insurers) applies.

Section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Section 314 of the Insurance Law authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, certain standards with respect to the public retirement and pension systems of the State of New York or a municipality thereof. This proposed amendment is in accordance and consistent with the public policy objectives the Legislature sought to advance when enacting Section 314 by providing the Superintendent the powers to promulgate standards with respect to actuarial assumptions, accounting practices, administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness. Sections 7401(a) and 7402(n) of the Insurance Law apply the provisions of Article 74 to the public retirement systems and provide for the commencement of a rehabilitation proceeding, respectively. This proposed amendment is consistent with and in accordance with the Legislature's public policy objectives underlying the enactment of sections 7401(a) and 7402(n) in that it provides a means whereby, in the event of an unlikely and extreme case of misfeasance, the court may order the Superintendent to take control of a public retirement system.

3. Needs and benefits: Certain new standards governing actuarial assumptions, administrative efficiency, investment policies and financial soundness will be established by this amendment. The new Subpart specifically establishes standards for the management of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System ("the Retirement System"), and the New York State Common Retirement Fund ("the Fund"), which was established pursuant to Section 422 of the Retirement and Social Security Law and which holds the assets of the Retirement System. These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles set forth in the rule.

In view of recent events surrounding how investment managers, consultants or advisors, and especially placement agents have conducted business with clients, including exploiting weaknesses in internal controls that may result in conflicts of interest and mishandling of funds, the Superintendent has decided that there is an important and immediate need to strengthen the Fund's control environment to protect the integrity of the state employees' retirement systems. The rule requires the establishment and disclosure of new standards of behavior with respect to investment of the Fund's assets, conflicts of interest, and procurement. In addition, it creates new audit and actuarial committees, and strengthens the investment advisory committee. The rule sets high ethical standards, strengthens internal controls and governance, and enhances the operational transparency of the Fund. This rule will also strengthen supervision by the Insurance Department and will greatly improve the protection afforded to the Fund's members and beneficiaries.

4. Costs: The rule imposes additional requirements and standards on the State Comptroller. It is thus anticipated that additional costs will result from its implementation. According to the Comptroller's office, the costs should run about $500,000 per year. The monies will provide for new audit and actuarial committees, and for the strengthening of the investment advisory committee. These costs will not be drawn from revenue appropriations but will be borne by the Common Retirement Fund. The Superintendent and the State Comptroller firmly believe that the benefits, as described in paragraph 3 above, far outweigh any additional costs.

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

6. Paperwork: It is also anticipated that paperwork will result from additional reporting requirements imposed by the rule. For example, the Comptroller will be required to establish new committees. The operation of these committees will entail the creation and maintenance of minutes and reports. In addition, the Comptroller will be required to compile and post on its website a number of compliance-related reports, statements, policies and procedures. However, the benefits, as described in the paragraph 3 above, more than adequately justify the additional paperwork required.

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

8. Alternatives: Alternate methods were considered to achieve the goal of improving the protections for the Fund's members and beneficiaries. The Superintendent and State Comptroller considered, among other things, mandating the creation of an independent governance committee; requiring that an independent fiduciary review be conducted on an annual basis (ultimately, it was determined that a tri-annual review is appropriate); and changing the accounting standard to be applied in investment of the funds assets (i.e., requiring the use of FASB standards instead of GASB standards). In developing the rule, the Superintendent and State Comptroller also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. The standards set forth in the proposed rule will be subject to comment and discussion at the public hearing required by section 314 of the Insurance Law.

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

10. Compliance schedule: This rulemaking will be effective upon publication in the *State Register* after final adoption. However, the State Comptroller's office has already made significant progress in adopting the mandates required by this regulation. Currently, the State Comptroller's public website discloses information concerning investment manager contracts, placement agent fees, and investment portfolio information. The State Comptroller's public website also provides information concerning its desire to be more transparent by outlining new procurement guidelines and procedures with respect to procurement of all investment managers, and consultants and advisors.

Investment managers, consultants or advisors contracting with the Comptroller will become subject to the relevant provisions of this rulemaking upon entering into a contract with the Comptroller. All affected parties will have prior notice and opportunity to comment on the proposed rule at a public hearing, which necessarily will be held before final adoption.

Regulatory Flexibility Analysis

1. Small businesses: The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose significant reporting, recordkeeping or other compliance requirements on small businesses.

This amendment sets standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund"). These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Among all the affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted most by the amendment. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act,

This rule is also directed to individuals and entities having a fiduciary responsibility to the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund"). Investment managers, consultants or advisors that do business with the Fund may fall within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or less individuals. The amendment requires such entities to disclose to the Fund in writing any conflict of interest they may have which could reasonably be expected to impair their ability to render unbiased and objective advice. The rule also requires investment managers and consultants or advisors to file annually with the Fund a statement acknowledging that they are aware of, and that they are in compliance with, the above standard.

Additionally, whenever the Fund engages, hires, invests with, or commits to an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the Fund, or who is otherwise doing business with the Fund, investment managers are required to disclose payments made to any such placement agent or intermediary.

While the amendment imposes new disclosure and filing requirements with respect to investment managers and consultants or advisors who may be small businesses, there is no indication that the amendment will have any significant adverse impact, economic or otherwise, on small businesses.

2. Local governments: The Insurance Department finds that this rule will not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; committees required by statue, regulation or executive order; employees of the Office of State Comptroller; and investment managers, consultant or advisors - none of which are local governments.

Rural Area Flexibility Analysis

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas.

Among the entities covered by this regulation, the Comptroller of the State of New York, investment managers, consultants or advisors, committees required by statue, regulation or executive order, and employees of Office of the State Comptroller - only investment managers, consultants or advisors may do business in various counties in the state, including rural areas as defined under State Administrative Procedure Act Section 102(13). While the amendment imposes new disclosure and filing requirements with respect to investment managers and consultants or advisors who may do business in rural areas, there is no indication that the amendment will have any significant adverse impact, economic or otherwise, on such parties.

The Insurance Department anticipates that costs of complying with the new disclosure and filing requirements by investment managers and consultants or advisors doing business in rural areas will be relatively insignificant. Affected parties should be able to comply with the requirements without the need to hire new personnel or engage outside consultants.

Job Impact Statement

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This amendment sets standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund"). These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Among all the affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is affected most by the amendment. The regulation is unlikely to impact jobs and employment opportunities. To the extent that the State Comptroller may be required to engage outside entities, such as investment managers, consultants or advisors, to assist in fulfilling its audit function, the only possible impact on jobs and employment opportunities will be positive.

Nor should the rule have a measurable impact on self-employment opportunities.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Net Metering

I.D. No. LPA-30-08-00011-P

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

Proposed Action: To amend and add to Long Island Power Authority's tariff for electric service with regard to net metering.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Net metering.

Purpose: To revise Long Island Power Authority's tariff for electric service with regard to net metering.

Public hearing(s) will be held at: 10:00 a.m., Sept. 10, 2008 at Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY; and 3:00 p.m., Sept. 10, 2008 at H. Lee Dennison Bldg., Hauppauge, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to amend and add to its Tariff for Electric Service in order to expand net metering for certain customer owned renewable resources used at their premises. The tariff would be revised to: (1) authorize net metering for a non-residential solar or wind customer-generator, equivalent in size to the lesser of the customer's highest peak demand in the prior 12 months, or 2 MW; (2) increase the size limit on eligibility for net metering on a residential solar and wind customer; (3) increase the size limit on eligibility for net metering on a Farm Service wind customer-generator and; (4) increase the total amount of solar and wind net metering on LIPA's transmission and distribution system. As a result, certain existing terms and conditions for residential net metering will be extended to non-residential customer-generators, including net metering within the month and the carry-over of excess generation to subsequent months ("banking") for credit at retail rates. In addition, the dollar amounts that LIPA would be able to recover from customer-generators for certain interconnection and transformer costs would be increased. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, e-mail: amccabe@lipower.org

Data, views or arguments may be submitted to: Kevin S. Law, President and CEO, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700

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

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.

Office of Mental Health

NOTICE OF ADOPTION

Rights of Patients

I.D. No. OMH-20-08-00026-A
Filing No. 691
Filing date: July 3, 2008
Effective date: July 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 527 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, arts. 7, 33

Subject: Rights of patients.

Purpose: To make Part 527 applicable to persons confined/committed to secure treatment facilities operated by Office of Mental Health as defined in Mental Health Law 10.03.

Text of final rule: 1. Paragraph (1) of Subdivision (a) of Section 527.1 of Title 14 NYCRR is amended as follows:

(1) Except as otherwise indicated by the specific context, and with the exception of sections 527.4 and 527.6, this Part shall apply to all psychiatric hospitals operated by the Office of Mental Health, all residential treatment facilities for children and youth, and to all psychiatric hospital services required to have an operating certificate from the Office of Mental Health, *and provided further that section 527.8 shall also apply to all secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law*.

2. Subdivision (b) of Section 527.1 of Title 14 NYCRR is amended as follows:

(b) The intent of this Part is to define the rights of patients receiving treatment at psychiatric hospitals *and to extend certain rights provided in section 527.8 of this Part to persons confined or committed to secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law*.

3. Section 527.2 of Title 14 NYCRR is amended to read as follows:

(a) [Mental Hygiene Law, section 7.07(c),] *Section 7.07 of the Mental Hygiene Law* gives the Office of Mental Health responsibility for seeing that the personal and civil rights of mentally ill persons receiving care and treatment are adequately protected.

(b) Section [7.09(c)] *7.09 of the Mental Hygiene Law* authorizes the [commissioner] *Commissioner* to adopt regulations necessary and proper to implement any matter under his jurisdiction. [Section 7.09(i)] *Such section also* requires the [commissioner] *Commissioner* to promulgate regulations to address the communications needs of non-English-speaking individuals seeking or receiving services in facilities operated or licensed by the Office of Mental Health.

(c) Sections 10.06 and 10.10 of the Mental Hygiene Law give the Office of Mental Health responsibility for providing care, treatment, and control to sex offenders confined or committed to a secure treatment facility, as defined in Section 10.03 of such law.

[(b)] *(d)* Article 31 of the Mental Hygiene Law authorizes the commissioner to visit and inspect all services for [the mentally ill] *persons with mental illness* in the State, and requires providers of certain mental health services to have an operating certificate issued by the Office of Mental Health. Section 31.04 *of such law* further empowers the [commissioner] *Commissioner* to issue regulations setting standards for licensed programs for the rendition of services for [the mentally ill] *persons with mental illness*.

[(c)] *(e)* Section 33.02 of the Mental Hygiene Law establishes statutory rights of mentally disabled persons and requires the [commissioner] *Commissioner* to publish regulations informing residents of facilities or programs operated or licensed by the Office of Mental Health of their rights under law.

[(d)] *(f)* Section 33.05 of the Mental Hygiene Law provides that each patient in a facility shall have the right to communicate freely and privately with persons outside the facility as frequently as he wishes, subject to regulations of the [commissioner] *Commissioner* designed to assure the safety and welfare of patients and to avoid serious harassment to others.

[(e)] *(g)* Article 29-C of the Public Health Law establishes the right of competent adults to appoint an agent to make health care decisions in the event they lose decision-making capacity. Article 29-C further empowers the Office of Mental Health to establish regulations regarding the creation and use of health care proxies in mental health facilities.

[(f)] *(h)* The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, sections 4206 and 4751) requires that institutional providers participating in the Medicare or Medical Assistance programs inform patients about their rights, under State law, to express their preferences regarding health care decisions.

5. Paragraphs (3) and (6) of Subdivision (a) of Section 527.8 of Title 14 NYCRR are amended as follows:

(3) Clinical director means the individual in charge of clinical services at the hospital *or a secure treatment facility operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law*, where the patient is receiving care and treatment, or a physician designated by that individual to carry out the responsibilities of the clinical director described in this section.

(6) Patients on involuntary status for the purposes of this section includes patients retained on an involuntary basis pursuant to article 9 of the Mental Hygiene Law, patients retained pursuant to the Criminal Procedure Law, Family Court Act or Correction Law, patients on voluntary status for whom application to a court for involuntary retention has been made, [and] minors, other than those admitted on their own application, for whom consent of a parent or guardian cannot be obtained , *and persons confined or committed to a secure treatment facility operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law*.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 527.2(d) and 527.8(a)(3).

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

Revised Regulatory Impact Statement

1. Statutory authority: Section 7.07 of the Mental Hygiene Law gives the Office of Mental Health responsibility for seeing that the personal and civil rights of mentally ill persons receiving care and treatment are adequately protected. Section 7.09 authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his jurisdiction.

Article 33 of the Mental Hygiene Law establishes statutory rights of mentally disabled persons. Section 33.02 of such law requires the Commissioner to publish regulations informing patients of their rights under the law.

Article 29-C of the Public Health Law establishes the right of the competent adults appoint an agent to make health care decisions in the event they lose decision making capacity. Article 29-C furthur empowers the Office of Mental Health to establish regulations regarding the creation and use of health care proxies in mental health facilities.

The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, sections 4206 and 4751) requires that institutional providers participating in the Medicare or Medical Assistance programs inform patients about their rights, under State law, to express their preferences regarding health care decisions.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. In 2007, the Legislature enacted Article 10 of the Mental Hygiene Law to provide for the civil management of sex offenders who suffer from a "mental abnomality". Such offenders who are predisposed to engage in repeated sex offenses may be involuntarily confined or committed to secure treatment facilities. Such secure treatment facilities were newly created by this legislation and could not have been contemplated when Section 527.8 of Part 527 of Title 14 NYCRR was promulgated. This emergency amendment clarifies that such persons are afforded the same rights to object to care and treatment as those non-sex offenders who are committed to hospitals.

3. Needs and benefits: Section 527.8 of Part 527 of Title 14 was originally promulgated in response to the 1986 Court of Appeals decision Rivers v. Katz, 67 NY2d 485. There, the Court held that, absent an emergency, persons held involuntarily at psychiatric facilities could only be treated with antipsychotic medication over their objection following a judicial finding that, first, the person lacks the mental capacity to make a reasoned decision with respect to proposed treatment, and second, the proposed treatment is narrowly tailored to give substantive effect to the patient's liberty interest. The rights provided by the Court apply with equal force to persons committed to psychiatric hospitals under Article 9 of the Mental Hygiene Law.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. Local government mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of those affected.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative considered was not addressing whether persons determined to be detained or dangerous sex offenders who are involuntarily confined or committed to secure treatment facilities are afforded the same rights to object to care and treatment as those non-sex offenders who are involuntarily committed to hospitals. This alternative was necessarily rejected.

9. Federal standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulatory amendments could be implemented immediately.

Regulatory Flexibility Analysis

Because it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

It is clear from the nature of this regulatory amendment, which simply clarifies the rights of persons who are confined or committed to secure treatment facilities operated by the Office of Mental Health, that there will be no adverse impact on jobs or employment opportunities in New York State.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Assistance Payments for Comprehensive Psychiatric Emergency Programs

I.D. No. OMH-30-08-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 591 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 7.15, 31.04, 31.27 and 43.02

Subject: Medical assistance payments for comprehensive psychiatric emergency programs.

Purpose: To increase rates for comprehensive psychiatric emergency programs as required by the enacted State budget for FY 2008-09.

Text of proposed rule: 1. Subdivisions (a) and (c) of section 591.2 of Title 14 NYCRR are amended to read as follows:

(a) Sections 7.09(b), 7.15 and 31.04(a) of the Mental Hygiene Law give the [commissioner] *Commissioner* the power and responsibility to plan, establish and evaluate programs and services for the benefit of [the mentally ill] *persons with mental illness*, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(c) Section 31.27 of the Mental Hygiene Law gives the [commissioner] *Commissioner* the authority to establish and license comprehensive psychiatric emergency programs.

2. Section 591.5 of Part 591 of 14 NYCRR is amended to read as follows:

Reimbursement for comprehensive psychiatric emergency programs under the medical assistance program shall be in accordance with the following fee schedule:

Brief emergency visit $[82.02] *84.64*
Full emergency visit [481.65] *497.06*
Crisis outreach service visit [481.65] *497.06*
Interim crisis service visit [481.65] *497.06*

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, 8th Floor, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

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

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

Consensus Rule Making Determination This rulemaking is filed as a Consensus rule on the grounds that its purpose is to implement or conform to non-discretionary statutory provisions. No person is likely to object to this rulemaking since it merely increases rates for Comprehensive Psychiatric Emergency Programs (CPEP) as required by the enacted budget for State Fiscal Year 2008-09. This amendment provides a cost of living adjustment (COLA) for the Office of Mental Health's CPEP program. Such COLA is required by Chapter 54 of the Laws of 2008, the enacted budget for State Fiscal Year 2008-09. The language authorizing the 2008-09 COLA for CPEP and certain other programs appears on pages 391-392 and 402 of Chapter 54 of the Laws of 2008. As required by the language of the Mental Hygiene Law, these rate increases have been approved by the Director of the Division of Budget.

There are no costs to providers or local governments associated with these amendments. Implementation of the 2008-09 COLA was budgeted to cost New York State $183,216 annually, and appropriations for the state share of Medicaid were included on page 393, line 12, of Chapter 54 of the Laws of 2008 and page 403, line 43, of Chapter 54 of the Laws of 2008.

These regulatory amendments will be effective upon their adoption and the COLA associated with the 2008-09 enacted budget shall be deemed to have been effective on April 1, 2008. The chart details these rate changes.

Visit Type - code	Rate effective 4/1/08
Brief emergency visit - 4007	$ 84.64
Full emergency - 4008	$497.06
Crisis outreach service - 4009	$497.06
Interim crisis service- 4010	$497.06

Statutory Authority: Sections 7.09(b), 7.15 and 31.04(a) of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the power and responsibility to plan, establish and evaluate programs and services for the benefit of persons with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards of medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health and others.

Section 31.27 of the Mental Hygiene Law gives the Commissioner the authority to establish and license comprehensive psychiatric emergency programs.

Section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Program for services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of the Office of Mental Health and approved by the Director of Budget.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it merely increases rates for Comprehensive Psychiatric Emergency Programs (CPEP) as required by the enacted budget for State Fiscal Year 2008-09. As this amendment serves to only provide a cost of living adjustment for the CPEP programs, it is evident that there will be no adverse impact on jobs and employment opportunities.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Motor Vehicle Inspections

I.D. No. MTV-30-08-00006-P

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

Proposed Action: Amendment of 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), 304-a

Subject: Motor vehicle inspections.

Purpose: To create a shared network for inspection stations in the New York metropolitan area.

Substance of proposed rule (Full text is posted at the following State website: www.nysdmv.com): The primary purposed of this regulation is to establish the NYTEST shared network to address the diminishing need for NYTEST equipment in the New York Metropolitan Area. The regulation establishes the criteria for sending and receiving stations that volunteer to participate in the shared network. It also insures that motorist's vehicles will be properly inspected in accordance with Part 79. The proposed rule also:

Makes technical amendments for equipment requirements for all inspection stations.

Sets forth waiver of equipment criteria in heavy vehicle fleet inspection stations.

Broadens the authority of municipalities to inspect vehicles owned by other municipalities.

Establishes the criteria for the issuance of temporary inspector certificates.

Text of proposed rule and any required statements and analyses may be obtained from: Carrie L. Stone, Counsel's Office, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: carrie.stone@dmv.state.ny.us.

Data, views or arguments may be submitted to: Ida L. Traschen, First Assistant Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871

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

Regulatory Impact Statement

1. Statutory authority: Section 301(d) of the Vehicle and Traffic Law authorizes the Commissioner, in consultation with the Commissioner of the Department of Environmental Conservation, to implement a motor vehicle emissions inspection program. Section 302(a) of such Law provides that it shall be the duty of the Commissioner to administer the provisions of Article 5. Section 302(e) of such Law empowers the Commissioner to make reasonable rules and regulations for the administration and enforcement of Article 5 and the periods during which motor vehicles are required to be inspected. Section 302(f) provides that the Commissioner may authorize municipalities to conduct the inspections required by Article 5, if such municipality has the personnel and facilities to conduct such inspections. Section 304(b) of such Law requires the Commissioner to establish procedures for reporting the results of inspections and notifying owners.

2. Legislative objectives: The Federal Clean Air Act of 1990 (42 U.S.C 7401 et. seq.) and the accompanying regulations at 40 CFR Part 51 require states to implement an inspection and maintenance program that conforms to such federal regulations. The Clean Air Act required New York State to establish a dynamometer based emissions inspection program in the New York Metropolitan Area (NYMA). Failure to do so would have cost the State millions of dollars in federal highway funding. Thus, pursuant to Article 5 of the Vehicle and Traffic Law, the Department established such a program in the NYMA in 1998, known as the NYTEST (NY Transient Emissions Short Test) program. Since 2005, with the implementation of the NY Vehicle Inspection Program using the on board-diagnostic equipment (OBDII), the NYTEST program has only applied to pre-1996 vehicles. Thus, the NYTEST equipment is used far less often but is increasingly costly to maintain. As explained below, the Shared Network proposal set forth in this rulemaking, retains the NYTEST system in accordance with the legislative objectives of the Clean Air Act, but also grants inspection stations a potentially less costly way to service customers who own pre-1996 vehicles.

3. Needs and benefits: This proposed rule is necessary to implement the Shared Network concept in order to maintain the viability of the NYTEST high enhanced emissions program, which is mandated by the Clean Air Act of 1990. In order to comply with the Act, DMV is requiring inspection stations to maintain their dynamometers, which conduct the emissions test, for another two to four years. (The timeframe will be determined by DEC in accordance with the State Implementation Plan that documents our compliance with the Act.) DMV consulted closely with DEC in developing this program. Since only pre-1996 vehicles are subject to this test, far fewer vehicles are being tested annually. For example, in 2006, inspection stations in the Bronx inspected 72,319 vehicles. Such stations expect to inspect 18,958 vehicles in 2012. In 2006, stations in Nassau County inspected 202,515 vehicles. They expect to inspect 53,088 vehicles in 2012.

Though the number of inspections continues to dramatically decrease, the cost of maintaining the aging equipment continues to increase. Many stations contract with one of three vendors for the maintenance of the NYTEST system, at a cost ranging from $2,500 to $7,000. As the equipment ages and becomes less reliable, these costs are expected to rise.

Recognizing the NYTEST system's negative business impact on inspection stations, while also cognizant of our Clean Air Act obligations, the Department, in response to industry representatives' requests, has proposed the Shared Network concept. This is a voluntary option open to current inspection stations, that is, stations may continue to operate the NYTEST system under the current rules.

Those stations that choose to participate in the Shared Network shall either be a sending station or receiving station. The sending and receiving stations will sign an agreement requiring the sending to refer customers to a receiving station for the inspection. The receiving station will be required to perform the inspection for the fee established in regulation. The sending station will benefit because it will no longer be required to have the NYTEST inspection equipment, thus saving all costs associated with maintenance of the equipment. The receiving station, which will perform NYTEST inspections, will benefit because it will receive more inspection business and may, as a consequence, gain more regular customers to provide other services, such as repairs. Customers' needs will be satisfied because DMV will cap the number of sending stations to insure that there are a sufficient number of NYTEST stations capable of performing the inspections.

This amendment also allows any state agency or political subdivision licensed as an official fleet inspection station to inspect any vehicle registered in the name of any other state agency or political subdivision. This would facilitate greater cooperation between state agencies and political subdivisions with the added benefit of providing cost savings to local taxpayers.

4. Costs: a. to regulated parties: The Shared Network concept imposes no mandatory costs upon stations because it is a voluntary program. Sending stations will benefit because they will no longer pay costs associated with maintaining the NYTEST system. Receiving stations will benefit because they will draw more customers for inspections. In addition, as part of the agreement between the stations, the receiving station will have the option of charging the sending station a fee for its services.

Stations that choose not to participate in the Shared Network will continue to bear the cost of maintaining the equipment.

b. cost to the State, the agency and local governments: There are no costs to the State, DMV or to local governments. DMV's existing staff will continue to monitor the Clean Air program per current guidelines and protocols.

The amendment that broadens the authority of municipalities to inspect other municipalities vehicles will help streamline the costs of inspections for certain local governments.

c. source: DMV's Office of Vehicle Safety.

d. cost to vehicle registrants. There are no costs to motor vehicle registrants. They will pay the current inspection fees set forth in regulation.

5. Local government mandates: There are no new mandates imposed upon local governments. In fact, the amendment that broadens the authority of municipalities to inspect other municipalities vehicles will help streamline the costs of inspections for certain local governments.

6. Paperwork: This proposal requires sending stations to notify DMV each time that they add or drop a NYTEST receiving station. This will be reported on the shared network application form (MV-253SN). In addition, sending and receiving stations will sign a shared network agreement setting forth the contractual terms of their relationship.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: In trying to address the high cost of the NYTEST system, DMV considered multiple alternatives in consultation with DEC, the vendors and the industry. Although maintaining the status quo would be the simplest solution for DMV, we sought other avenues to meet industry needs. Some of the ideas that DMV considered and rejected include:

Increase the inspection fee for the NYTEST inspection.

NYTEST stations would receive a subsidy.

Stations leaving the NYTEST program would be charged a buyout fee. Remaining stations would receive a subsidy.

Establish a vehicle buyback program of old vehicles

Establish a centralized program.

The Department concluded that in light of fiscal concerns and administrative practicalities, the Shared Network concept best met the needs of all parties. The rule maintains customer service, keeps us in compliance with the Clean Air Act and grants inspection stations the option to participate in a program relieving some of the fiscal burdens of participating in the NYTEST program in light of the declining pre-1996 vehicle population. This proposed rule was distributed to several interested parties for comment. We received responses from SPX Corporation (a vendor), ESP Corporation (a vendor) the Gasoline and Automotive Service Dealers, the Greater New York Automobile Dealers Association, the Service Station Dealers of Greater New York, Inc and the Long Island Gasoline Retailers Association. DMV carefully considered all comments when finalizing this proposed rule.

The Department will publish a Small Business Guide explaining this rule.

9. Federal standards: The rule does not exceed the Federal emission standards set forth in the Clean Air Act of 1990 or its accompanying regulations at 40 CFR Part 51.

10. Compliance schedule: Upon adoption of the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: The Department estimates that there are approximately 3,300 public inspection stations in the New York Metropolitan Area (NYMA). These are small businesses. This amendment would allow any state agency or political subdivision licensed as an official fleet inspection station to inspect any vehicle registered in the name of any other state agency or political subdivision. This would facilitate greater cooperation between state agencies and political subdivisions with the added benefit of providing cost savings to local taxpayers.

2. Compliance requirements: Those stations that choose to participate in the Shared Network program will notify DMV each time that they add or drop a NYTEST receiving station. This will be reported on the shared network application form (MV-253SN). In addition, sending and receiving stations will sign a shared network agreement setting forth the contractual terms of their relationship.

3. Professional services: This regulation would not require inspection stations to obtain new professional services beyond any that they may already use.

4. Compliance costs: The Shared Network concept is a voluntary program and imposes no mandatory costs upon stations. Sending stations will benefit because they will no longer pay costs associated with maintaining the NYTEST system. Receiving stations will benefit because they will draw more customers for inspections. In addition, as part of the agreement between the stations, the receiving station will have the option of charging the sending station a fee for its services.

Stations that choose not to participate in the Shared Network will continue to bear the cost of maintaining the equipment.

5. Economic and technological feasibility: This proposal will not impose any new technological requirements for inspection stations. The receiving stations will already have the NYTEST equipment. The sending stations will be relieved of the cost of maintaining the equipment but, most likely, will pay a contractual fee to the receiving stations.

6. Minimizing adverse impact: As explained in the Regulatory Impact Statement's "Alternatives" section, DMV considered many alternatives to the current NYTEST program and consulted widely with DEC, the vendors and the industry. The current program, with the declining pre-1996 vehicle population is producing an economic hardship for many inspection stations due to the high cost of maintaining the aging NYTEST equipment. The Shared Network proposal offers an option to relieve some of these stations of the burden of maintaining the equipment. At the same time, DMV will insure that there will be sufficient operational NYTEST stations to satisfy customer.

The Department will publish a Small Business Guide regarding this rule, which shall assist small businesses in meeting its requirements.

7. Small business and local government participation: This proposed rule was distributed to several interested parties for comment. We received responses from SPX Corporation (a vendor), the Gasoline and Automotive Service Dealers, the Greater New York Automobile Dealers Association, the Service Station Dealers of Greater New York, Inc and the Long Island Gasoline Retailers Association. DMV carefully considered all comments when finalizing this proposed rule.

Since May 2006, DMV has consulted extensively with the vendors and the associations that represent the inspection stations. We have held eight meetings with the industry throughout the State about the Shared Network proposal. We consulted with, among others, SPX Corporation (a vendor), ESP Corporation (a vendor) the Gasoline and Automotive Service Dealers, the Greater New York Automobile Dealers Association, the Service Station Dealers of Greater New York, Inc, the Long Island Gasoline Retailers Association, AAA of New York State, Keyspan, the New York State Automobile Dealers Association and the New York Association of Service Stations and Repair Shops. As the result of these meetings, DMV believes that the Shared Network proposal most fairly addresses the economic problems posed by the current NYTEST programs.

This amendment would allow any state agency or political subdivision licensed as an official fleet inspection station to inspect any vehicle registered in the name of any other state agency or political subdivision. This would facilitate greater cooperation between state agencies and political subdivisions with the added benefit of providing cost savings to local taxpayers. This language was added in response to concerns raised by local governments about streamlining their inspection programs.

Rural Area Flexibility Analysis

A RAFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. In fact, this proposal only affects inspection stations in the New York Metroplitan Area.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because there is no adverse on impact on job creation or development in New York State.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Issues of Stock, Bonds and Other Forms of Indebtedness and Charges

I.D. No. PSC-30-08-00008-P

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

Proposed action: Petition of Pheasant Hill Water Corporation for approval of a loan with the Environmental Facilities Corporation and authority to surcharge customers to pay for the loan.

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

Subject: Issues of stock, bonds and other forms of indebtedness and charges.

Purpose: To allow Pheasant Hill Water to enter into a loan agreement and to charge customers a surcharge.

Substance of proposed rule: The Pubic Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by The Pheasant Hill Water Corporation (the company) to enter into a loan agreement with the New York State Environmental Facilities Corporation for $690,000, and to receive a grant of $2 million. The company has also requested authority to surcharge customers to repay the loan over the next thirty years. The requested loan will be used to perform necessary infrastructure upgrades to the water system. The Commission shall consider all other related matters.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: Leann_Ayer@DPS.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, e-mail: Jaclyn_Brilling@DPS.state.ny.us

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

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

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

(08-W-0775SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Capacity Release Program

I.D. No. PSC-30-08-00009-P

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

Proposed action: A proposal filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY) regarding its Capacity Release Program.

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

Subject: Capacity Release Program.

Purpose: To make revisions to KEDNY's Capacity Release Program to accommodate marketers' needs in the non-winter months.

Substance of proposed rule: The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY) to modify its existing capacity release program to accommodate marketers' needs in the non-winter months. The proposed filing has an original effective date of August 1, 2008 which has subsequently been postponed to October 1, 2008. The Commission may approve, reject or modify, in whole or in part, KEDNY's 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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: Leann_Ayer@DPS.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, e-mail: Jaclyn_Brilling@DPS.state.ny.us

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

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

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

(08-G-0723SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Capacity Release Program

I.D. No. PSC-30-08-00010-P

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

Proposed action: A proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KEDLI) regarding its Capacity Release Program.

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

Subject: Capacity Release Program.

Purpose: To make revisions to KEDLI's Capacity Release Program to accommodate marketers' needs in the non-winter months.

Substance of proposed rule: The Commission is considering a proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KEDLI) to modify its existing capacity release program to accommodate marketers' needs in the non-winter months. The proposed filing has an original effective date of August 1, 2008 which has subsequently been postponed to October 1, 2008. The Commission may approve, reject or modify, in whole or in part, KEDLI's 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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: Leann_Ayer@DPS.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530 e-mail: Jaclyn_Brilling@DPS.state.ny.us

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

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

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

(08-G-0725SA1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Local Government Efficiency Grant Program

I.D. No. DOS-30-08-00012-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 815 to Title 19 NYCRR.

Statutory authority: State Finance Law, section 54(10)

Subject: Local Government Efficiency Grant Program.

Purpose: To establish eligibility requirements and criteria for local government efficiency awards program.

Text of proposed rule: A new Part 815 entitled Local Government Efficiency Award is added to Title 19 to read as follows:

Section 815.1 Purpose.

The purpose of this regulation is to implement the requirements of State Finance Law, section 54(10)(o) which established the Local Government Efficiency grant program beginning in the state fiscal year commencing April 1, 2008. It directed the Secretary of State to adopt rules and regulations to implement the program.

Section 815.2 Definitions

As used in this Part, the following words and terms shall have the stated meaning:

(a) Consolidation means two or more adjoining towns in the same county consolidated as one town pursuant to article 5-B of the Town Law; two or more adjoining villages consolidated as one village pursuant to article 18 of the Village Law; two or more school districts consolidated as one district pursuant to article 31 of the Education Law or; consolidation of two or more special improvement districts, water or sewer authorities, or fire or library districts.

(b) Cooperative agreement means an agreement entered into by two or more municipalities pursuant to article 5-G of the General Municipal Law or other authorizing statutes for the performance among themselves or one for the other of their respective functions, powers and duties on a contract or cooperative basis.

(c) Dissolution means the dissolution of a town pursuant to article 5-A of the Town Law; the dissolution of a village pursuant to article 19 of the Village Law; or the dissolution of a school district pursuant to the Education Law.

(d) Efficiency Implementation Grant means a competitive grant to two or more municipalities to cover costs associated with consolidations, mergers, dissolutions, cooperative agreements and shared services, where demonstrable financial savings would result.

(e) Functional consolidation means one municipality completely providing a service or function for another municipality, which no longer engages in that service or function.

(f) General Efficiency Planning Grant means a competitive grant to two or more municipalities to cover costs associated with plans and studies, which shall include an examination of potential financial savings and management improvements, for potential functional consolidation or shared services involving two or more municipalities.

(g) High Priority Planning Grant means a grant to provide funding for plans and studies, which shall include an examination of the potential savings and management improvements, for:

(1) A single municipality to conduct a city or county charter revision which includes functional consolidation or increased shared services;

(2) A single village to study village dissolution;

(3) To two or more municipalities for mergers, consolidations and dissolutions;

(4) To two or more municipalities for shared services or transfer of functions to be performed on a countywide basis;

(5) To two or more municipalities for conducting services on a multi-county or regional basis;

(6) Additional types of grants as may be identified by the Secretary of State, in consultation with the Commission on Local Government Efficiency and Competitiveness, and included in a request for applications.

(h) Merger means the transfer of functions, powers or duties of a city, town or village within the same county, to each other or to the county,

pursuant to the Alternate County Government Law or pursuant to any other legislative authority which may be enacted after the effective date hereof for such transfers of functions, powers or duties or for the merger of a county, city, town or village with any of such other units of local government.

(i) Municipality mean counties, cities, towns, villages, special improvement districts, fire districts, library districts, water authorities, sewer authorities, regional planning and development boards, school districts, and boards of cooperative educational services; provided, however, that for the purposes of this definition, a board of cooperative educational services shall be considered a municipality only in instances where such board of cooperative educational services advances a joint application on behalf of school districts and other municipalities within the board of cooperative educational services region; provided, however, that any agreement with a board of cooperative educational services:

(1) Shall not generate additional state aid;

(2) Shall be deemed not to be a part of the program, capital and administrative budgets of the board of cooperative educational services for the purposes of computing charges upon component school districts pursuant to subparagraph seven of paragraph b of subdivision four of section 1950 and subdivision one of section 1950 and subdivision one of section 1951 of the Education Law;

(3) Shall be deemed to be a cooperative municipal service for purposes of subparagraph two of paragraph d of subdivision four of section 1950 of the Education Law.

(j) Secretary means the New York State Secretary of State.

(k) Commission on Local Government Efficiency and Competitiveness means the Commission on Local Government Efficiency and Competitiveness created by Executive Order #11 of 2007 or its successor organization.

(l) Shared services means the joint provision, performance or delivery of a service, facility, activity, project or undertaking by two or more municipalities which each may lawfully undertake separately.

(m) Twenty-first Century Demonstration Grant means a competitive grant approved under a plan developed by the Secretary in consultation with the Commission on Local Government Efficiency and Competitiveness and approved by the Director of the Budget to municipalities to cover costs associated with a functional consolidation or shared services agreement with great potential to achieve financial savings and serve as a model for other municipalities, including, but not limited to, the consolidation of services on a multi-county basis, the consolidation of certain services countywide as identified in a plan, the creation of a regional entity empowered to provide multiple functions on a countywide or regional basis, the creation of a regional or city-county consolidated municipal government, the consolidation of school districts or supporting services for school districts encompassing the area served by a Board of Cooperative Educational Services, or the creation of a regional smart growth compact or program.

Section 815.3 Eligibility

(a) Applications for assistance under this Part may be made by one or more municipalities which submit requests on forms established by the Secretary.

(b) Grants may be used to cover costs associated with and including, but not limited to:

(1) High Priority Planning and General Efficiency Planning grants - legal and consultant services and other necessary expenses;

(2) Efficiency Implementation Grants and Twenty-first Century Demonstration Grants- legal and consultant services, transitional personnel costs essential for the implementation of an approved work plan integral to coordinated or consolidated service delivery, capital improvements and joint equipment purchases only where integral to coordinated or consolidated service delivery, and other necessary expenses.

Section 815.4 Grant awards

(a) Subject to annual appropriations by the Legislature, grants will be made to successful applicants pursuant to the review and approval criteria set forth herein, in amounts not to exceed:

(1) Fifty thousand dollars for High Priority Planning grants,

(2) Twenty five thousand dollars for two municipalities with an additional one thousand dollars for each additional municipality participating in the application, the maximum grant award not to exceed thirty five thousand dollars, for General Efficiency Planning Grants,

(3) Two hundred thousand dollars per municipality, the maximum grant award not to exceed one million dollars, for Efficiency Implementation Grants,

(4) Four hundred thousand dollars per municipality for Twenty-First Century Demonstration Project Grants.

(b) Applicants will be required to provide matching funds, equal to ten percent of the total cost of activities approved by the Department of State, as follows:

(1) Ten percent matching funds for High Priority Planning Grants,

(2) Ten percent local matching funds for General Efficiency Planning Grants,

(3) Ten percent local matching funds for Efficiency Implementation Grants, except that in the event an applicant is implementing a project that the applicant developed through a successfully completed planning grant funded under the local government efficiency grant program (Part 815) or the shared municipal services incentive grant program (Part 814), the local matching funds required shall be reduced by the local matching funds required by such successfully completed planning grant.

(4) Ten percent local matching funds for Twenty-first Century Demonstration Project Grants.

(c) State assistance shall be available on a reimbursement basis. Grantees shall submit periodic invoices and requests for payment as work is performed and costs incurred. No part of a grant shall be used by the grantee for recurring expenses such as salaries, utilities and fuel, except that for Efficiency Implementation Grants and Twenty-first Century Demonstration Project Grants the salaries of certain personnel essential for the effectuation of the joint activity shall be eligible for a period not to exceed three years.

(d) Prior to the final reimbursement payment, grant recipients shall submit to the Secretary copies of studies, agreements and other products resulting from the grant award.

Section 815.5 General Review and approval criteria

(a) All applications for General Planning, Efficiency Implementation, and 21st Century Demonstration grants will be rated in accordance with the rating system established by the Secretary. Criteria used to rate applications will generally include the following. Different weighting and additional criteria may be applied for 21st Century Demonstration Project grant applications:

(1) Demonstrated need for the project.

(2) The likelihood of timely completion of the project.

(3) The potential for ongoing municipal cost savings, productivity enhancement or streamlined administration.

(4) The number of municipalities involved or the size of the service area.

(5) The likelihood of instituting permanent changes to municipal structure or service delivery resulting in cost savings, enhanced productivity or streamlined administration over the long term.

(6) The ability of the project to serve as a demonstration program for other municipalities to reduce costs, enhance productivity or streamline administration.

(7) Whether the project would advance other State or municipal programs for municipal efficiency and cost savings.

(8) The geographic distribution of other fundable projects in any given application cycle.

(b) High priority planning grants are not subject to the above general review and approval criteria.

(1) In awarding High Priority Planning Grants, the secretary may reserve portions of the money allocated for different categories of plans or studies in order to provide for a variety of types of applications to be funded.

(2) Applicants for High Priority Planning Grants will be required to meet deadlines for actions on development of work plans and execution of contracts with the state in order to retain the grant award. Funding awarded to applicants who do not meet established deadlines may be returned to the funding pool for use by other eligible applicants. Applicants who lose eligibility may reapply for available funds.

(c) In the selection of General Efficiency Planning grant awards, priority shall be given to applications that:

(1) Would result in the complete functional consolidation of a municipal service.

(2) Includes a municipality that meets three of the following fiscal distress criteria:

(i) Full valuation per capita less than fifty percent (50%) of the average full valuation per capita for municipalities in New York State.

(ii) A population at least ten percent (10%) less than the population as reported in the nineteen hundred seventy (1970) federal decennial census.

(iii) Greater than sixty percent (60%) real property tax limit exhausted in the most recent local fiscal year as reported to the Division of the Budget by the State Comptroller.

(iv) A percentage of individuals living below the poverty level, as reported for a municipality in the most recent federal decennial census, in excess of one hundred fifty percent (150%) of the average percentage of individuals living below the poverty level as reported for municipalities in the most recent federal decennial census.

(3)Would result in contractual services between two or more municipal highway departments or the consolidation of two or more municipal highway departments; provided, however, an applicant shall indicate that an objective of the study or plan is to realize financial savings upon implementation.

(4) Consolidate health benefit plans offered by two or more municipalities.

(d) In the selection of Efficiency Implementation Grant awards, priority shall be given to applications that:

(1) Would implement the merger, dissolution or consolidation of municipalities.

(2) Would result in the complete functional consolidation of a municipal service.

(3) Are submitted by applicants that successfully completed a high priority planning grant or a planning grant under the shared municipal services incentive grant program for one of the identified high priority activities.

(4) Include a municipality that meets three of the fiscal distress criteria as described in this Part.

(5) Would result in contractual services between two or more municipal highway departments or the consolidation of two or more municipal highway departments.

(6) Consolidate health benefit plans offered by two or more municipalities.

(e) Awards shall be granted only for services that would otherwise be individually provided by each grantee and for which demonstrable financial savings result from such sharing, unless awards are for feasibility studies.

Section 815.6 Contents of application and procedures

(a) Application for assistance shall be on forms prescribed by the secretary. Applications shall contain the following:

(1) The names and contact information for each municipality applying for assistance;

(2) Designation of contact person or grant administrator;

(3) Identification of key personnel who will work on the project for the municipalities;

(4) A resolution of each municipality's governing body requesting such assistance or a resolution by the municipal governing board stating acceptance of a qualified citizen petition requesting a dissolution study;

(5) A detailed description of the proposed activity to be funded;

(6) A work program including time periods for achieving stated objectives;

(7) A budget including identification of all funding sources and local matching funds;

(8) Any inter-municipal agreements entered into or proposed to be entered into to carry out the activity; and

(9) A description of how the proposal responds to each of the rating and approval criteria described in this Part.

(b) Application information and procedures.

(1) The Department of State will provide outreach services to inform municipalities of the availability of funding and provide information to applicants concerning application preparation and submission.

(2) Project time periods and work programs may be adjusted by the Department of State as a condition of entering into a contract for State assistance to ensure the timely and successful completion of a project for which funds are awarded. The Department of State may, at its discretion, choose not to enter into contracts and cancel grant awards which do not contain mutually established time periods and work programs.

(3) All projects must be undertaken pursuant to a contract with the Department of State which shall require, in addition to the requirements of the Department of State, Attorney General, and State Comptroller, that all contracts not to be performed by the officials and employees of the grantee be entered into in accordance with General Municipal Law, sections 103 and 104-b. Requested grant amounts may be reduced in order to fund a greater number of projects or in order to reflect eligible costs.

Text of proposed rule and any required statements and analyses may be obtained from: Kyle Wilber, Department of State, 99 Washington Ave., Local Government Office, Suite 1015, Albany, NY 12231, (518) 473-3355, e-mail: kyle.wilber@dos.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.

This action was not under consideration at the time this agency's Regulatory Agenda was submitted.

Regulatory Impact Statement

1. Statutory Authority:

Section 54(10) of the State Finance Law, enacted by the Legislature in 2005 as part of the Article VII budget bill (L. 2005, c. 63), established the "shared municipal services incentives award" grant program for two or more municipalities, administered by the Secretary of State. It directed the Secretary to adopt regulations implementing the program prior to accepting applications from eligible municipalities and school districts. In 2007 the Legislature continued the program with some modifications, and again directed the Secretary to adopt regulations prior to accepting applications (Section1 of Part F of Chapter 56 of the Laws of 2007).

In 2008 the Legislature continued the program with substantial modifications, changed the name of the program to "local government efficiency grants", and again directed the Secretary to adopt regulations prior to accepting applications (State Finance Law § 54 [10] [o]; L. 2008, c. 56).

2. Legislative Objectives:

By enacting Section 54 (10) (o) of the State Finance Law, the Legislature sought to establish incentives for municipalities to share services, undertake consolidations, enter into cooperative agreements and study dissolutions. It enacted a voluntary program to cover the costs associated with such actions, including but not limited to legal and consultant services, feasibility studies, capital improvements and other necessary expenses. The Legislature also established four types of grants which correspond to the recommendations of the Commission of Local Government Efficiency and Competitiveness (LGEC). The legislation also substantially broadened the definition of municipality to include, for example, regional planning and development boards, library districts and water and sewer authorities. Establishment of the 2008 program's new grant categories and expanded definition of "municipality" requires promulgation of a new regulation to avoid confusion among grant applicants.

3. Needs and Benefits:

There are 1,607 general purpose local government units in New York, 1,804 special purpose local governments and 1,096 local public authorities. In an effort to cut costs , the previous Shared Municipal Services Incentive Program as well as the current statute and appropriation have established grant programs to encourage sharing of services among municipalities and merge them where appropriate. The LGEC report, *21st Century Government*, issued after the authorizing legislation was enacted, made a number of recommendations, including restructuring the Shared Municipal Services grant program, and substantially expanding the definition of municipality to include libraries, public authorities and regional planning and development boards. These recommendations are reflected in the authorizing legislation as more fully described below. The LGEC held four formal hearings to obtain input, reflecting its recommendations regarding restructuring of the Shared Municipal Services Incentive. The authorizing legislation requires the Secretary of State to promulgate regulations covering award eligibility criteria, and application, review and grant approval procedures prior to acceptance of grant applications. A draft of the regulations was sent to the LGEC.

The four grants established by § 54(10)(o) of the State Finance Law are presented below:

High Priority Planning a grant to provide funding for plans and studies, which shall include an examination of the potential savings and management improvements, for:

(1) a single municipality to conduct city or county charter revision which includes functional consolidation or increased shared services;

(2) a single village to study village dissolution;

(3) two or more municipalities for mergers, consolidations and dissolutions;

(4) shared services or transfer of functions to be performed on a countywide basis;

(5) conducting services on a multicounty or regional basis.

General Efficiency Planning a competitive grant to two or more municipalities to cover costs associated with plans and studies, which shall include an examination of potential financial savings and management improvements, for potential functional consolidation or shared services involving two or more municipalities.

Efficiency Implementation a competitive grant to two or more municipalities to cover costs associated with consolidations, mergers, dissolutions, cooperative agreements and shared services, where demonstrable financial savings would result.

Twenty-first Demonstration Project - a competitive grant to cover costs associated with a functional consolidation or shared services agreement with great potential to achieve financial savings and serve as a model for other municipalities, including the consolidation of services on a multi-county basis, the consolidation of certain services countywide as identified in a plan developed by the Secretary in consultation with the LGEC and approved by the Director of the Budget, the creation of a regional entity empowered to provide multiple functions on a countywide or regional basis, the creation of a regional or city-county consolidated municipal government, the consolidation of school districts or supporting services for school districts encompassing the area served by a Board of Cooperative Educational Services, or the creation of a smart growth compact or program.

There is a maximum statutory grant award of: $50,000 for High Priority Planning Grants; $25,000 with an additional $1,000 per municipality up to $35,000 for General Efficiency Planning Grants; $200,000 per municipality with a maximum of $1,000,000 for Efficiency Implementation Grants and; $400,000 per municipality for a Twenty-first Demonstration Project Grant. All grants require a 10% local match. For Fiscal year 2008-09 the legislature appropriated $4.9 million for High Priority and General Efficiency Planning Grants, $9.8 million for Efficiency Implementation Grants and $8.33 million for 21st Century Demonstration Project Grants. Additional funds of $3.92 million were appropriated for Merger Incentives.

4. Costs:

a. Costs to regulated parties.

This is a voluntary program. Municipalities that are awarded a grant are required to contribute a 10% local match. Municipalities are expected to realize cost savings from the program. Savings are expected to be realized through sharing of services, consolidation of governments, dissolution of villages, transferring functions from towns and villages to counties, management improvements, joint equipment purchases and the entire array of eligible grant activities. In addition, each application must demonstrate, except for feasibility studies, that financial savings would result.

b. Costs to the agency.

The Legislature has appropriated $2,450,000 for state administration of the program, including technical assistance to municipalities.

c. Cost information.

The Department of State consulted with municipal associations representing, counties, cities, towns and villages, in 2005 when the regulation was initially promulgated. As noted, this is a grant program which should result in cost savings to municipalities. The basis for the dollar amounts allocated for each type of grant repeat the appropriations contained in the enacted FY 2008-09 NYS Budget as set forth in Chapter 55 of the Laws of 2008. (Public Participation and General Government Budget, Miscellaneous-All State Departments and Agencies-Local Government Assistance-State Operations and Aid to Localities) p.879, lines 44-54 and p.880 lines 1-42.

5. Paperwork:

Pursuant to the legislation, the Department of State is required to prepare an annual report to the governor and the legislature on the effectiveness of the shared municipal services incentive program and the local government efficiency grant program, in addition to standard documentation of expenses incurred in order to receive reimbursement, and documentation of results obtained by grant recipients.

6. Local Government Mandates:

There are no mandates involved in this voluntary grant program.

7. Duplication:

The regulation does not duplicate, overlap or conflict with any other federal, state or local rule or statute.

8. Alternatives:

State Finance Law 54 (10) (o) requires the Secretary to adopt rules and regulations to establish eligibility requirements, application requirements and grant criteria. Therefore, no alternatives are appropriate.

9. Federal Standards:

There are no federal standards relevant to this matter.

10. Compliance schedule:

This is a voluntary program which does not involve compliance requirements.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule establishes criteria pertaining to a municipal grant program and does not affect small businesses. Accordingly, a regulatory flexibility analysis for small businesses is inapplicable and was not prepared.

Local Governments:

The proposed rule does not impose an adverse economic impact on local governments nor does it impose reporting, recordkeeping, or other compliance requirements on local governments. Therefore, pursuant to 202-b (3) (a) of the State Administrative Procedure Act, the Department finds that a Regulatory Flexibility Analysis does not need to be prepared, for the following reasons:

1. Effect of rule:

The rule would establish a voluntary grant program under which municipalities and school districts may receive funds for shared services and other intermunicipal cost-saving measures.

2. Compliance requirements:

There are no compliance requirements except for documentation of work performed by any grantee.

3. Professional services:

Professional services are not required to comply with the grant program. Costs for professional services engaged by a municipality pursuant to a grant would be reimbursed through the grant program.

4. Compliance costs:

No compliance costs are imposed. This is a voluntary grant program.

5. Economic and technological feasibility:

In as much as no compliance is required, there are no economic or technological feasibility issues.

6. Minimizing adverse impact:

There will be no adverse impact on local governments because this is a voluntary grant program designed to result in cost savings for municipalities and school districts.

7. Local government participation:

Notwithstanding that there will be no adverse impact upon local governments, the Department previously consulted with municipal associations when the regulation was initially promulgated in 2005. These associations had no objections to the regulation, and would not be expected to object to this amendment which simply tracks the new provisions of the statute.

Rural Area Flexibility Analysis

Pursuant to § 202-bb (4) (a), the Department has determined that the proposed rule would not have an adverse impact on rural areas and would not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, and that a Rural Area Flexibility Analysis need not be prepared for the following reasons:

1. Types and estimated numbers of rural areas:

The proposed rule would apply uniformly throughout the State.

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

The proposed rule does not impose any recordkeeping or other affirmative acts on municipalities and school districts. Municipalities and school districts that choose to submit grant applications will be required to provide documentation of work performed if they are the recipient of a grant award.

3. Costs:

This is a voluntary grant program which does not involve costs to grant recipients, who can be expected to realize cost savings as a result of the program.

4. Minimizing adverse impact:

Because the proposed rule would establish a voluntary grant program designed to assist municipalities and school districts with shared intermunicipal cost savings, there will be no adverse impact on public or private entities in rural areas.

5. Rural area participation:

The Department previously consulted with municipal associations representing counties, cities, towns and villages in all areas of the State, including rural areas in 2005 when the regulation was initially promulgated. It is unlikely these groups would have any objection to the amended rule, which tracks the new provisions of the statute.

Job Impact Statement

Pursuant to § 201-a (2) (a) of the State Administrative Procedures Act, the Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities, and that a Job Impact Statement need not be prepared, for the following reasons:

The proposed rule would implement a voluntary grant program whereby municipalities and school districts would be eligible for awards for intermunicipal cost-saving measures. Eligible grant activities include costs associated with mergers, consolidations, cooperative agreements, dissolutions and shared services. Covered costs include legal and consultant services, feasibility studies, capital improvements and other necessary

expenses. In some cases this could result in municipalities performing functions jointly or sharing employees which could see a long-term stabilization of the municipal workforce, or a slight decrease through attrition. Any such losses, however, should result in cost savings to municipalities to allow them to continue to provide a sustainable level of services for residents and taxpayers, which will in turn prevent job and employment opportunity losses through annual budget reductions.

The Legislature enacted State Finance Law § 54 (10) to provide municipalities and school districts with incentives to find ways to counter rising municipal budgets and property tax increases. Increasing taxes or reducing services are the two options municipalities have to continue their role to provide public services. The proposed rule would implement the legislation by providing a third option -incentives to seek cost savings on an intermunicipal basis-which could prevent or minimize a reduction in services, thereby positively affecting municipal and school district employment.

Workers' Compensation Board

EMERGENCY RULE MAKING

Pharmacy and Durable Medical Equipment Fee Schedules

I.D. No. WCB-30-08-00007-E
Filing No. 693
Filing date: July 7, 2008
Effective date: July 7, 2008

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

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

Statutory authority: Workers' Compensation Law, sections 117, 13 and 13-o

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

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

Subject: Pharmacy and durable medical equipment fee schedules.

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

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

Section 440.1 sets forth that the pharmacy fee schedule is applicable to prescription drugs or medicines dispensed on or after the most recent effective date of '440.5 and the reimbursement for drugs dispensed before that is the fee schedule in place on the date dispensed.

Section 440.2 provides the definitions for average wholesale price, brand name drugs, controlled substances, generic drugs, independent pharmacy, pharmacy chain, remote pharmacy, rural area and third party payor.

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 average wholesale price minus twelve percent for brand name drugs and average wholesale price minus twenty percent for generic drugs plus a dispensing fee of five dollars for generic drugs and four dollars for brand name drugs, and in controverted cases is twenty-five percent above the fee schedule for uncontroverted claims plus a dispensing fee of seven dollars and fifty cents for generic drugs and six dollars for brand-name drugs. This section also addresses the fee when a drug is repackaged.

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.

Section 440.10 provides penalties for failing to comply with this Part and that the Chair will enforce the rule by exercising his authority pursuant to Workers' Compensation Law '111 to request documents.

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

Section 442.1 sets for 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, except the payment for bone growth stimulators shall be made in one payment. This section also provides for the rate of reimbursement when Medicaid has not established a fee payable for a specific item and for orthopedic footwear. This section also 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 and clarifies that hearing aids are not durable medical equipment for purposes of this rule.

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

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 4, 2008.

Text of rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, email: regulations@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 summary 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 realized by using the pharmacy fee schedule will be approximately 12 percent for brand name drugs and 20 percent for generic drugs from the average wholesale price. This section explains the issues with using the Medicaid fee schedule. 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. This section also sets forth how the Chair will enforce compliance with the rule by seeking documents pursuant to his authority under WCL ’111 and impose penalties for non-compliance.

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 included the Medicaid fee schedule, average wholesale price minus 15% for brand and generic drugs, the Medicare fee schedule and straight average wholesale price.

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 upon adoption.

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. Failure to comply with the provisions of the rule will result in requests for information pursuant to the Chair’s existing statutory authority and the imposition of penalties.

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 small businesses and local governments are already familiar with average wholesale price and regularly used that information prior to the adoption of the Medicaid fee schedule. Further, some of the reimbursement levels on the Medicaid fee schedule were determined by using the Medicaid discounts off of the average wholesale price. The Red

Book is one source for average whole sale prices and it can be obtained for less than $100.00. 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.

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 savings from the fee schedule. The rule sets the fee schedule as average wholesale price (AWP) minus twelve percent for brand name drugs and AWP minus twenty percent for generic drugs. As of July 1, 2008, the reimbursement for brand name drugs on the Medicaid Fee Schedule was reduced from AWP minus fourteen percent to AWP minus sixteen and a quarter percent. Even before the reduction in reimbursement some pharmacies, especially small ones, were refusing to fill brand name prescriptions because the reimbursement did not cover the cost to the pharmacy to purchase the medication. In addition the Medicaid fee schedule did not cover all drugs, include a number that are commonly prescribed for workers' compensation claims. This presented a problem because WCL '13-o provides that only drugs on the fee schedule can be reimbursed unless approved by the Chair. The fee schedule adopted by this regulation eliminates this problem. Finally, some pharmacy benefit managers were no longer doing business in New York because the reimbursement level was so low they could not cover costs. Pharmacy benefit managers help to create networks, assist claimants in obtaining first fills without out of pocket costs and provide utilization review. Amending the fee schedule will ensure pharmacy benefit managers can stay in New York and help to ensure access for claimants without out of pocket cost.

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. If regulated parties fail to comply with the provisions of Part 440 penalties will be imposed and the Chair will request documentation from them to enforce the provision regarding the pharmacy fee schedule. 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 mitigates the negative impact from the reduction in the Medicaid fee schedule effective July 1, 2008, by setting the fee schedule at Average Wholesale Price (AWP) minus twelve percent for brand name prescription drugs and AWP minus twenty percent for generic prescription drugs. In addition, the Medicaid fee schedule did not cover many drugs that are commonly prescribed for workers' compensation claimants. This fee schedule covers all drugs and addresses the potential issue of repackagers who might try to increase reimbursements.

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.