RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Food Offered for Sale in Retail Food Stores

I.D. No. AAM-40-03-00006-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 271 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16(1), 18(2), (6) and 214-b

Subject: Food offered for sale in retail food stores.

Purpose: To ensure that food offered for sale in retail food stores is safe for human consumption.

Public hearing(s) will be held at: 11:00 a.m., Dec. 10, 2003 at Department of Agriculture and Markets, 55 Hanson Place, Third Fl., Brooklyn, NY; and 11:00 a.m., Dec. 17, 2003 at Department of Agriculture and Markets, One Winners Circle, Capital Plaza, Colonie, NY.

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

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

Substance of proposed rule: The Department proposes to amend existing regulations governing the sanitary conditions and food handling practices of retail food stores. The purpose of the amendments is to reduce the number of foodborne illnesses in the State, thereby helping to further ensure that food offered for sale at retail food stores is safe and wholesome for human consumption.

In efforts to combat outbreaks of foodborne illnesses, the Food and Drug Administration (FDA) and Centers For Disease Control (CDC), in conjunction with state regulators and members of the health and food industries, have developed a federal food code. The food code addresses five risk factors contributing to foodborne illnesses and five interventions to help prevent foodborne illnesses. The five risk factors are as follows: improper holding temperature; inadequate cooking; contaminated equipment; unsafe food source; and poor personal hygiene. The five interventions are as follows: time/temperature relationship; employee health; management knowledge; hands as a vehicle of contamination; and consumer education.

The proposed amendments to the Department's retail food store regulations will incorporate provisions of the federal food code which address these risk factors and interventions. The proposed amendments also contain new requirements for the processing and packaging of foods and well as the sale of bulk foods.

A summary of the proposed amendments is as follows:

Subpart 271-1. General Provisions.

This Subpart sets forth definitions relating to sanitation regulations of retail food stores. Many of the definitions remain unchanged. Definitions of "bulk food" and "sanitization" have been changed as part of the proposal. The definition of "potentially hazardous food" has also been changed to exclude air-cool hard boiled eggs or shell eggs which have been treated to destroy salmonella. A new definition of "variance" has been added. Other definitions are also new, such as the definitions for "comminuted," "especially vulnerable consumer," "fish," "game animal," "HACCP Plan," "hazard," "ready-to-eat food," "reduced oxygen packaging," "scheduled process" and "whole-muscle intact beef." These new definitions are among terms that are defined in the federal food code. Various sections of this Subpart have been renumbered to accommodate the addition of new provisions.

Subpart 271-2. Food Supplies.

This Subpart sets forth requirements governing the storage, handling, preparation, offering for sale and sale of food by retail food stores.

Section 271-2.2 Special requirements.

The proposed amendments require that shell eggs which have not been treated to destroy salmonella shall be stored, displayed and transported in a temperature of 45 degrees Fahrenheit or less.

The proposed amendments also include restrictions governing mushrooms picked in the wild and game animals. Under the proposal, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert prior to sale. Under the proposal, game animals shall be slaughtered in accordance with applicable laws and regulations governing sanitation and good manufacturing practices and the establishments which slaughter such animals shall be routinely inspected by the Department or participate in a voluntary inspection program administered by the United States Department of Agriculture (USDA). Game animals are defined in the proposal to include reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat

and nonaquatic reptiles such as land snakes. The requirement would not apply to deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting and donated, possessed, prepared or served pursuant to section 11-0917 of the environmental conservation law.

Section 271-2.7 Hot storage.

The proposed amendments require that hot foods be held at a minimum hot-holding temperature of 135 degrees Fahrenheit. The current regulations require a hot-holding temperature of 140 degrees Fahrenheit. The proposed amendments also require that food which is cooked be cooled to a temperature of 41 degrees Fahrenheit. The current regulations require such food to be cooled to 45 degrees Fahrenheit. It has been determined that each of these new holding temperatures are adequate to prevent the growth of harmful organisms. The proposal also requires that within ten years of the adoption of these regulations, regulated parties shall upgrade their refrigeration units or replace them with units capable of maintaining food at 41 degrees Fahrenheit.

Section 271-2.10 Cooking potentially hazardous foods.

The proposed amendments include a new requirement for the cooking of game animals. The proposal requires that game animals commercially raised for food shall be cooked to a minimum temperature of 155 degrees Fahrenheit for 15 seconds, 150 degrees Fahrenheit for 1 minute or 145 degrees Fahrenheit for 3 minutes.

The proposal also requires that ground beef be cooked to a minimum temperature of 158 degrees Fahrenheit. The current regulations require that ground beef be cooked to a minimum temperature of 157 degrees Fahrenheit. It has been determined that 158 degrees Fahrenheit is adequate to prevent the growth of harmful organisms, including E. Coli, and is consistent with the New York State Department of Health's requirements for restaurants and other eateries.

The proposed amendments provide that a whole-muscle intact beef steak may be served or offered for sale in ready-to-eat form if it is labeled as a whole-muscle intact beef steak and the steak is cooked on both the top and bottom to a surface temperature of 145 degrees Fahrenheit or above and a cooked color change is achieved on all external surfaces.

The proposed amendments also require that the overall or product temperature of the food, rather than the food's internal temperature, be used to determine when the food has been adequately cooled. This is because it has been determined that due to evaporative cooling, the internal temperature of a food may not be indicative of the food's actual overall temperature.

Finally, the proposal changes the format of the current time/temperature requirements from a narrative description to a chart, thereby making the regulations easier to interpret.

Section 271-2.11 Cooling.

This section is new. It provides that cooked potentially hazardous food shall be cooled to 70 degrees Fahrenheit or less within two hours and to 41 degrees Fahrenheit or less within four hours. This section also sets forth the acceptable methods for cooling the food, such as placing the food in shallow pans, separating the food into smaller or thinner portions, using rapid cooling equipment, or adding ice as an ingredient.

Section 271-2.12 Bakery product fillings.

This section remains unchanged, but is renumbered section 271-2.12 from section 271-2.11.

Section 271-2.13 Reheating.

This section, previously numbered section 271-2.12, is renumbered section 271-2.13. The proposed amendments include new requirements for reheating potentially hazardous foods, including ready-to-eat foods taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant.

Section 271-2.14 Freezing.

This section is new. It requires that raw, raw-marinated, partially cooked or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of minus-4 degrees Fahrenheit or less for 168 hours (7 days) or to a temperature of minus-31 degrees or less Fahrenheit for at least 15 hours in a blast freezer.

Section 271-2.15 Food product thermometers.

This section remains unchanged, but is renumbered section 271-2.15 from section 271-2.13.

Section 271-2.16 Thawing potentially hazardous food.

This section, previously numbered section 271-2.14, is renumbered section 271-2.16. The proposed amendments include new requirements and procedures for proper thawing of potentially hazardous food.

Section 271-2.17 Food display — potentially hazardous food.

This section, previously numbered section 271-2.15, is renumbered section 271-2.17. The proposed amendments provides that potentially hazardous food shall be held at a temperature of 41 degrees Fahrenheit or below, or 135 degrees Fahrenheit or above. The current regulations require holding temperatures of 45 degrees Fahrenheit or below and 140 degrees Fahrenheit or above. Again, as set forth in section 271-2.10, the proposal also requires that the overall or product temperature of the food rather than the food's internal temperature be used.

Section 271-2.18 Frozen foods.

This section, previously numbered section 271-2.16, is renumbered section 271-2.18.

Section 271-2.19 Food display — general.

This section, previously numbered section 271-2.17, is renumbered section 271-2.19.

Section 271-2.20 Dispensing utensils.

This section, previously numbered section 271-2.18, is renumbered section 271-2.20.

Section 271-2.21 Food sample demonstrations and food promotions.

This section, previously numbered section 271-2.19, is renumbered section 271-2.21.

Section 271-2.22 Food transportation by retail food stores — general.

This section, previously numbered section 271-2.20 is renumbered section 271-2.22.

Section 271-2.23 Specialized processing methods.

Section 271-2.24 Reduced oxygen packaging.

These sections, which pertain to the processing and packaging of certain foods, are new. Section 271.2.23 requires that an establishment obtain a variance from the Department prior to smoking or curing food; using a reduced oxygen method; or custom processing animals for personal use. Section 271-2.24 requires that prior to engaging in reduced oxygen packaging of food, an establishment shall obtain a Hazard Analysis Critical Control Point (HACCP) Plan, developed by the National Advisory Committee on Microbiological Criteria for Foods, which set forth procedures and practices for packaging of the food.

Section 271-2.25 Consumer advisory.

This section is new. It requires that if a raw or undercooked animal food such as beef, eggs, fish, lamb, milk, pork, poultry or shellfish is offered in a ready-to-eat form as a deli, menu or other item, or as a raw ingredient in another ready-to-eat food, the establishment operator shall inform consumers in writing of the health risks associated with eating such foods in raw or undercooked form.

Section 271-2.26 Bulk foods.

This section is new. It repeals under section 271-2.3, the existing requirement that only stores may provide carry-out containers for bulk food, and provides that a consumer may use his or her own carry-out container, provided the container is clean and made of food grade material.

Subpart 271-3. Personnel.

Under the proposal, this Subpart is renamed Management and Personnel.

Section 271-3.1 Demonstration of knowledge.

This section is new. It provides that the person-in-charge of a food-processing establishment shall demonstrate his or her experience to operate the establishment in a safe and competent manner. If the Commissioner is not satisfied that the person-in-charge is competent to operate the establishment, the Commissioner may require the person-in-charge to demonstrate such competency by successfully completing a food safety course approved by the Department. The existing sections of Subpart 271-3 have been renumbered to accommodate the addition of the new section 271-3.1.

Subpart 271-4 Equipment and Utensils.

Section 271-4.2 Solder.

The proposed amendments require that the lead levels in solder used on food-contact surfaces not exceed 0.2 percent.

Subpart 271-5 Cleaning, Sanitization, and Storage of Equipment and Utensils.

Section 271-5.1 Cleaning frequency.

The proposed amendments include a new requirement regarding cleaning frequency of utensils and food-contact surfaces of equipment used in the processing of different species of meat. Under the proposal, cleaning and sanitizing of equipment and utensils is not required if the succession of raw animal food requires a higher cooking temperature.

Subpart 271-6 Sanitary Facilities and Controls.

Section 271-6.1 Water supply — general.

The proposed amendments provide that establishments which use water from a nonpublic water system shall have the water system sampled and tested as required for a noncommunity water system, as defined by the

New York State Department of Health regulations (10 NYCRR Part 5). These regulations require that noncommunity water systems be tested quarterly for microbiological contamination, annually for nitrate and once for nitrite (10 NYCRR section 5-1.52). The proposed amendments also require establishments to retain on file the results of their most recent water test. The current regulations do not contain this testing requirement, although restaurants and other food service establishments under the jurisdiction of the Department of Health are subject to these requirements.

Subpart 271-8 Food Display and Service at Salad Bars.

Section 271-6.16 Handwashing facility installation.

The proposed amendments clarify this section by requiring installation and location of handwashing facilities in or immediately adjacent to toilet rooms and in food preparation and warewashing areas or in an otherwise readily accessible location for use by all employees working in these areas. The proposal also provides that sinks used for food preparation or warewashing may be used for other purposes where such use would not adversely affect public health and safety and has been approved by an authorized Department representative.

Section 271-8.1 Food protection—potentially hazardous foods.

As set forth elsewhere in the proposal, the proposed amendments provides that potentially hazardous food shall be held at a temperature of 41 degrees Fahrenheit or below, or 135 degrees Fahrenheit or above. The current regulations require holding temperatures of 45 degrees Fahrenheit and 140 degrees Fahrenheit at salad bars.

Subpart 271-9 Procedure When Infection Is Suspected.

Under the proposal, this Subpart is renamed Compliance and Enforcement.

Section 271-9.2 Modification and waivers.

Section 271-9.3 Documentation of proposed variance and justification.

Section 271-9.4 Conformance with approved procedures.

Section 271-9.5 When a HACCP Plan is required.

Section 271-9.6 Contents of a HACCP Plan.

All of these sections are new. These sections generally set forth the required contents of a HACCP Plan as well as circumstances under which a HACCP Plan is required.

Text of proposed rule and any required statements and analyses may be obtained from: J. Joseph Corby, Director, Division of Food Safety and Inspection, Department of Agriculture and Markets, One Winners Circle, Capital Plaza, Albany, NY 12235, (518) 457-4492

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

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

Summary of Regulatory Impact Statement

1. Statutory authority:

Agriculture and Markets Law Sections 16(1), 18(2), 18(6) and 214-b.

2. Legislative objectives:

The proposal is consistent with legislative objectives in that it will help protect the food supply of the State from adulteration by requiring that foods be processed and handled in a manner which will help to ensure that such foods are and remain wholesome.

3. Needs and benefits:

The proposal will amend the Department's retail food store regulations in an effort to reduce the number of foodborne illnesses in the State. The United States Department of Agriculture (USDA) has identified the three most common foodborne pathogens as Listeria monocytogenes; Salmonella; and E. Coli. All three of these pathogens are bacteria which cause a variety of gastrointestinal illnesses. In efforts to combat these and other foodborne illnesses, the Food and Drug Administration (FDA) and Centers For Disease Control (CDC), in conjunction with state regulators and members of the health and food industries, have developed a federal food code, which addresses five risk factors contributing to foodborne illnesses and five interventions to help prevent foodborne illnesses.

The proposed amendments to the Department's retail food store regulations will incorporate provisions of the federal food code which address the following risk factors and interventions.

Risk factor 1: improper holding temperature –

The proposed amendments lower the minimum hot-holding temperature to 135 degrees Fahrenheit (down from 140 degrees Fahrenheit). The proposal also requires that food which is cooked be cooled to a temperature of 41 degrees Fahrenheit or below (down from 45 degrees Fahrenheit). With regard to the hot-holding of food, it has been determined that the lower hot-holding temperature of 135 degrees Fahrenheit is sufficient to prevent the growth of harmful organisms. With regard to the cold-holding of food, it has been determined that the lower cold-holding temperature of 41 degrees Fahrenheit will prevent the growth of Listeria monocytogenes to levels of public health significance during the shelf life of the food. Finally, the proposal requires regulated parties to upgrade their refrigeration units or replace them with units capable of maintaining food at 41 degrees Fahrenheit within 10 years of the adoption of these regulations.

Risk factor 2: inadequate cooking –

The proposed amendments require that ground beef be cooked to a temperature of 158 degrees Fahrenheit or above (down from 157 degrees Fahrenheit). It has been determined that while E. Coli is destroyed after cooking ground beef to 157 degrees Fahrenheit for 15 seconds, this harmful organism is immediately destroyed after cooking ground beef to a temperature of 158 degrees Fahrenheit. In addition, the 158 degree Fahrenheit requirement is consistent with the New York State Department of Health's requirements for restaurants and other eateries.

The proposed amendments also provide that a whole-muscle intact beef steak may be served or offered for sale in ready-to-eat form if it is labeled as a whole-muscle intact beef steak and the steak is cooked on both the top and bottom to a surface temperature of 145 degrees Fahrenheit or above and a cooked color change is achieved on all external surfaces.

Risk factor 3: unsafe food source –

The proposal requires that shell eggs untreated to destroy salmonella shall be held and transported at a temperature of 45 degrees Fahrenheit or less. It has been determined that a temperature of 45 degrees Fahrenheit or less is necessary to prevent the propagation of Salmonella in untreated shell eggs. Containers of such untreated eggs packaged for direct sale to consumers shall be labeled with safe handling instructions.

The proposed amendments also include restrictions governing wild mushrooms. Under the proposal, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert prior to sale.

Finally, the proposal provides that game animals shall be slaughtered in accordance with applicable laws and regulations governing sanitation and good manufacturing practices. This requirement would not apply to deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting and donated, possessed, prepared or served pursuant to section 11-0917 of the environmental conservation law.

The proposed amendments also provide that establishments which use water from a nonpublic water system shall have the water system tested quarterly for microbiological contamination, annually for nitrate and once for nitrite. These requirements are set forth in the New York State Department of Health regulations for testing of noncommunity water systems. The proposal also requires establishments to retain on file the results of their most recent water test.

Intervention 1: time/temperature relationship-

The proposed amendments require that raw, raw-marinated, partially cooked or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of minus-4 degrees Fahrenheit or less for 168 hours (7 days) or to a temperature of minus-31 degrees Fahrenheit or less for at least 15 hours in a blast freezer.

The proposal also requires that game animals commercially raised for food shall be cooked to a minimum temperature of 155 degrees Fahrenheit for 15 seconds, 150 degrees Fahrenheit for 1 minute or 145 degrees Fahrenheit for 3 minutes.

Finally, the proposal changes the format of the current time/temperature requirements from a narrative description to a chart, thereby making the regulations easier to interpret.

Intervention 2: management knowledge-

The proposed amendments include a new requirement whereby the person-in-charge of a food-processing establishment shall demonstrate his or her experience to operate the establishment in a safe and competent manner. If the Commissioner is not satisfied that the person-in-charge is competent to operate the establishment, the Commissioner may require the person-in-charge to demonstrate such competency by successfully completing a food safety course approved by the Department.

Intervention 3: consumer education-

The proposed amendments require that if a raw or undercooked animal food is offered in a ready-to-eat form or as a raw ingredient in another ready-to-eat food, the establishment operator shall inform consumers in writing of the health risks associated with eating such foods.

The proposal also includes amendments to the existing definitions of "bulk food," "sanitization" and "potentially hazardous food." There is a new definition of "variance." Other definitions such as "comminuted", "especially vulnerable consumer," "fish", "game animal", "HACCP Plan", "hazard", "ready-to-eat food", "reduced oxygen packaging," "scheduled

process" and "whole-muscle intact beef" are also new and are among terms which are defined in the federal food code.

In addition to addressing the risk factors and interventions set forth in the federal food code, the proposed amendments also contain new requirements for the processing and packaging of foods to help prevent Clostridium botulinum, a bacteria which causes botulism. Symptoms of foodborne botulism include double or blurred vision, drooping eyelids, slurred speech, difficulty in swallowing, dry mouth and muscle weakness. Left untreated, botulism could result in paralysis or death. Since this bacteria thrive in low or no oxygen environments, it is essential that establishments which engage in the reduced oxygen packaging of foods follow approved practices and procedures in order to ensure that the food does not become contaminated with Clostridium botulinum.

Accordingly, the proposed amendments require that an establishment obtain a variance from the Department prior to smoking or curing food; using a reduced oxygen method; or custom processing animals for personal use. The proposed amendments also requires that prior to engaging in reduced oxygen packaging of food, an establishment shall obtain a Hazard Analysis Critical Control Point (HACCP) Plan, developed by the National Advisory Committee on Microbiological Criteria for Foods, which set forth procedures and practices for packaging of the food. Finally, the proposed amendments set forth the required contents of a HACCP Plan as well as circumstances under which a HACCP Plan is required.

The proposal also amends the regulations governing the sale of bulk food, by repealing the existing requirement that only stores may provide carry-out containers for bulk food. Under the proposal, a consumer may use his or her own carry-out container, provided the container is clean and made of food grade material.

The proposal also amends the regulations governing the installation of handwashing facilities, by clarifying the existing regulations to require installation and location of handwashing facilities in or immediately adjacent to toilet rooms and in food preparation and warewashing areas or in an otherwise readily accessible location for use by all employees working in these areas. The proposed amendments also provides that sinks used for food preparation or warewashing may be used for other purposes where such use would not adversely affect public health and safety and has been approved by an authorized Department representative.

Finally, various sections and subdivisions of the regulations have been renumbered to accommodate the addition of new provisions or the amendment of existing ones.

In addition to the reasons set forth above, the proposed amendments are necessary to help reduce the threat of outbreaks of foodborne illnesses in New York State. Regulated parties and consumers alike will benefit by the proposed amendments. Regulated parties will be required to comply with new and improved practices and procedures in food handling and sanitation, thereby being better able to produce and sell safe and wholesome food. Since the amendments incorporate national standards from the federal food code which have been adopted by other states, regulated parties who transact business in New York and those other states will also benefit by the uniform requirements. This is particularly true for supermarket chains which have stores in New York and other states. Since the amendments will help reduce the threat of outbreaks of foodborne illnesses, consumers will benefit by knowing that the food they are buying and eating is safe and wholesome.

4. Costs:

(a) Regulated parties:

Risk factor 1: improper holding temperature –

It is anticipated that regulated parties will incur greater energy costs in order to refrigerate food to a temperature of 41 degrees Fahrenheit or less. However, it is also anticipated that regulated parties will save in energy costs since the proposal lowers the minimum hot-holding temperature to 135 degrees Fahrenheit. Regulated parties will also incur capital costs of either upgrading their refrigeration units or replacing them with units capable of maintaining food at 41 degrees Fahrenheit or less. Since refrigeration units manufactured since 1993 are capable of maintaining food at 41 degrees Fahrenheit or less, it is anticipated that the majority of units in use today are already capable of meeting this requirement. For regulated parties who do not have refrigeration units capable of maintaining food at 41 degrees Fahrenheit or less, the proposed amendment gives regulated parties 10 years in which to obtain a unit capable of meeting a cold-holding temperature of 41 degrees Fahrenheit or less. Given the useful life of such refrigeration units (5 years), it is anticipated that regulated parties would have to repair or replace their refrigeration units in any event.

Risk factor 2: unsafe food source –

It is anticipated that regulated parties who use a nonpublic water system will incur costs of $80 to $100 per year for sampling and testing their water. This cost is predicated on performing the test four times a year at a cost of $20 to $25 per test.

It is anticipated that regulated parties who package eggs which have not been specifically treated to destroy salmonella will incur costs associated with labeling egg containers with safe handling instructions for consumers. However, since the proposal does not require any specific type or format for the instructions, it is anticipated that regulated parties will incur minimal printing costs in complying with the requirement.

Intervention 1: management knowledge-

Under the proposal, successful completion of a food safety course will not be required of all regulated parties. However, for those regulated parties required to send an employee to such a course, it is anticipated that regulated parties will incur costs of $225 per person. This cost is predicated on course tuition of $125, $80 in worker salary ($10 per hour x 8 hours) and travel expenses of $20.

Intervention 2: consumer education-

It is anticipated that regulated parties will incur costs for providing consumers written notice of health risks inherent in eating raw or undercooked food. However, since the proposal gives regulated parties a wide array of inexpensive options in providing that notice (menu, counter placard, etc.), it is anticipated that regulated parties will incur minimal printing costs in complying with the requirement.

Processing and packaging of food-

Since the Department has HACCP Plans for the reduced oxygen packaging of foods and makes these plans available to regulated parties at no charge, it is anticipated that regulated parties will not incur any costs in complying with these requirements.

Carry-out containers for bulk food-

Since consumers will be able to use their own carry-out containers, it is anticipated that regulated parties may actually save on the cost of providing carry-out containers. The amount of cost savings, however, is difficult to determine, since it is unknown how many consumers will use their own containers in lieu of the carry-out containers provided by the store.

Installation of handwashing facilities –

Since the proposal merely clarifies existing requirements for installation and location of handwashing facilities, it is anticipated that regulated parties will not incur any additional compliance costs.

(b) The agency, the state and local government:

The Department will incur initial expenses totaling $33,640 for the printing and distribution of the amended regulations to 23,000 retail food stores and food processing establishments. The Department will also have to review and evaluate food safety courses for the new demonstration of knowledge requirement. However, it is anticipated that the Department will be able to do this with existing personnel.

There should be no additional costs to the state and local governments.

(c) Source:

Costs are based upon observations of business practices in the industry as well as the Department's business practices and records.

5. Local government mandates:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

Two alternatives were considered but rejected as ineffectual or unenforceable.

The first alternative considered was to not amend the regulations. This alternative was rejected as ineffectual because the current regulations have not adequately reduced the threat of outbreaks of foodborne illnesses in the State.

The second alternative considered was to require the person-in-charge of all retail establishments, not just food processing establishments, to demonstrate his or her experience to operate the establishment in a safe and competent manner by taking a food safety course and passing an exam. This alternative was rejected as unenforceable, since the Agriculture and Markets Law does not give the Commissioner authority to require training in the absence of a licensing requirement. The requirement that the person-in-charge pass an exam was also abandoned as too burdensome on regulated parties.

9. Federal standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule:

60 days of adoption.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposal will amend the Department's retail food store regulations in an effort to reduce the number of foodborne illnesses in the State. There are approximately 23,000 retail food stores throughout the State that will be affected by the proposed amendments. Many of these establishments are small businesses.

These amendments would have no effect on local governments.

2. Compliance requirements:

Regulated parties including small businesses will have to comply with new holding temperatures (no less than 135 degrees Fahrenheit for hot-holding; no more than 41 degrees Fahrenheit for cooling) and new cooking temperatures for roast beef (no less than 158 degrees Fahrenheit). There are also new requirements for the freezing of certain fish, the cooking of game animals and the selling or offering for sale of whole-muscle intact beef steak in raw or undercooked form.

Regulated parties including small businesses will have to comply with new requirements governing the sale of wild mushrooms and game animals and the storage, display and transportation of shell eggs which have not been treated for salmonella.

Regulated parties including small businesses will have to comply with new requirements governing water tests. Establishments which use water from a nonpublic water system shall have the water system sampled and tested as required for a noncommunity water system, as defined by 10 NYCRR Part 5. These regulations require that noncommunity water systems be tested quarterly for microbiological contamination, annually for nitrate and once for nitrite (10 NYCRR section 5-1.52). Regulated parties including small businesses will also have to retain on file the results of their most recent water test.

Regulated parties including small businesses will have to comply with a new provision which requires the person-in-charge of a food processing establishment to attend a food safety course if he or she fails to satisfy the Commissioner of their ability to operate the establishment in a safe and competent manner.

Regulated parties including small businesses will have to comply with new provision which requires establishment operators to inform consumers in writing of the health risks associated with eating certain foods (beef, eggs, fish, lamb, milk, pork, poultry and shellfish) in raw or undercooked form.

Regulated parties including small businesses will have to comply with new requirements for the processing and packaging of food. Those requirements include obtaining a variance from the Department prior to smoking or curing food, using a reduced oxygen method, or custom processing animals for personal use. The requirements also include obtaining and utilizing a HACCP Plan when engaging in the reduced oxygen packaging of food.

Regulated parties including small businesses will have to comply with a new provision which allows a consumer to use his or her own carry-out containers when purchasing bulk food.

Regulated parties including small businesses will have to comply with a new provision, which clarifies the existing regulations to require installation and location of handwashing facilities in or immediately adjacent to toilet rooms and in food preparation and warewashing areas or in an otherwise readily accessible location for use by all employees working in these areas. These proposed amendments also provide that sinks used for food preparation or warewashing may be used for other purposes where such use would not adversely affect public health and safety and has been approved by an authorized Department representative.

These amendments would have no effect on local governments.

3. Professional services:

None, except for those regulated parties who are required to send an employee to a food safety course. Professional services would include the services of a teacher who is instructing the course.

4. Compliance costs:

a. Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule:

Risk factor: improper holding temperature-

Under the proposal, regulated parties will incur capital costs of either upgrading their refrigeration units or replacing them with units capable of maintaining food at 41 degrees Fahrenheit or less. However, the proposed amendment also gives regulated parties 10 years in which to do this. Given the useful life of such refrigeration units (5 years), it is anticipated that regulated parties would have to repair or replace their refrigeration units in any event.

Since the proposed amendments do not affect local governments, local governments would not incur any initial capital costs in complying with the proposed amendments.

b. Annual costs for continuing compliance with the proposed rule:

Risk factor: improper holding temperature –

It is anticipated that regulated parties will incur greater energy costs in order to refrigerate food to a temperature of 41 degrees Fahrenheit or less rather than to a temperature of 45 degrees Fahrenheit or less. However, it is also anticipated that regulated parties will save in energy costs since the proposal lowers the minimum hot-holding temperature from 140 degrees to 135 degrees Fahrenheit.

Risk factor: unsafe food source-

It is anticipated that regulated parties who use a nonpublic water system will incur costs of $80 to $100 per year for sampling and testing their water. This cost is predicated on performing the test four times a year at a cost of $20 to $25 per test.

It is anticipated that regulated parties who package eggs which have not been specifically treated to destroy salmonella will incur costs associated with labeling egg containers with safe handling instructions for consumers. However, since the proposal does not require any specific type or format for the instructions, it is anticipated that regulated parties will incur minimal printing costs in complying with the requirement.

Intervention: management knowledge-

Under the proposed amendments, successful completion of a food safety course will not be required of all regulated parties. However, for those regulated parties required to send an employee to such a course, it is anticipated that regulated parties will incur costs of $225 per person per day. This cost is predicated on course tuition of $125 per day, $80 in worker salary ($10 per hour × 8 hours) and travel expenses of $20.

Intervention: consumer education

It is anticipated that regulated parties will incur costs for providing consumers written notice of health risks inherent in eating raw or undercooked food. However, since the proposal gives regulated parties a wide array of inexpensive options in providing that notice (menu, counter placard, etc.), it is anticipated that regulated parties will incur minimal printing costs in complying with the requirement.

Processing and packaging of food-

Since the Department has HACCP Plans for the reduced oxygen packaging of foods and makes these plans available to regulated parties at no charge, it is anticipated that regulated parties will not incur any costs in complying with these requirements.

Carry-out containers for bulk food-

Since consumers will be able to use their own carry-out containers, it is anticipated that regulated parties may actually save on the cost of providing carry-out containers. The amount of cost savings, however, is difficult to determine, since it is unknown how many consumers will use their own containers in lieu of the carry-out containers provided by the store.

Installation of handwashing facilities –

Since the proposal merely clarifies existing requirements for installation and location of handwashing facilities, it is anticipated that regulated parties will not incur any additional compliance costs.

Since the proposed amendments do not affect local governments, local governments would not incur any annual costs in complying with the proposed amendments.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed.

The proposed amendments are economically feasible, since regulated parties will be able to comply with new requirements with minimal costs. The proposed amendments are also technologically feasible, since regulated parties will have ready access to the equipment, services, practices and procedures necessary in order to comply with the new requirements.

The proposed amendments do not affect local governments.

6. Minimizing adverse impact:

In conformance with State Administrative Procedure Act Section 202-b(1), the amendments to Part 271 were drafted to minimize economic impact and reporting and testing requirements for all regulated parties, including small businesses.

The amendments will have no economic impact on local governments.

7. Small business and local government participation:

On October 20, 2000 and October 26, 2000, Department personnel conducted outreach meetings with representatives of the New York Association of Convenience Stores (NYACS) and the greater New York Metro-

politan Food Council, respectively. Outreach meetings were also conducted with representatives of the Food Industry Alliance (FIA) on October 24, 2000 and July 12, 2001. During each of these meetings, Department personnel briefed members of industry on the proposed amendments and requested industry to provide input on the proposal. Members of industry have been receptive to the proposal and have expressed support for it. Some industry representatives have offered comments on the proposed amendments, which were considered in the drafting of this rulemaking.

Since the proposed amendments will have no impact on local governments, there has been no outreach with local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are approximately 23,000 retail food stores throughout New York State. These stores are located throughout the rural areas of New York.

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

It is anticipated that the proposed amendments will not result in any reporting or recordkeeping requirements for regulated parties, including regulated parties in rural areas.

The proposed amendments will result in compliance requirements, however.

Regulated parties including those in rural areas will have to comply with new holding temperatures (no less than 135 degrees Fahrenheit for hot-holding; no more than 41 degrees Fahrenheit for cooling) and new cooking temperatures for roast beef (no less than 158 degrees Fahrenheit), as well as new requirements for the freezing of certain fish, the cooking of game animals and the selling or offering for sale of whole-muscle intact beef steak in raw or undercooked form.

Regulated parties including those in rural areas will have to comply with new requirements governing the sale of wild mushrooms and game animals and the storage, display and transportation of shell eggs which have not been treated for salmonella.

Regulated parties including those in rural areas will have to comply with new requirements governing water tests. Establishments which use water from a nonpublic water system shall have the water system sampled and tested as required for a noncommunity water system, as defined by 10 NYCRR Part 5. These regulations require that noncommunity water systems be tested quarterly for microbiological contamination, annually for nitrate and once for nitrite (10 NYCRR section 5-1.52). Regulated parties including those in rural areas will also have to retain on file the results of their most recent water test.

Regulated parties including those in rural areas will have to comply with a new provision which requires establishment operators to inform consumers in writing of the health risks associated with eating certain foods (beef, eggs, fish, lamb, milk, pork, poultry and shellfish) in raw or undercooked form.

Regulated parties including those in rural areas will have to comply with new requirements for the processing and packaging of food. Those requirements include obtaining a variance from the Department prior to smoking or curing food, using a reduced oxygen method, or custom processing animals for personal use. The requirements also include obtaining and utilizing a HACCP Plan when engaging in the reduced oxygen packaging of food.

Regulated parties including those in rural areas will have to comply with a new provision which allows a consumer to use his or her own carry-out containers when purchasing bulk food.

Regulated parties including those in rural areas will have to comply with a new provision, which clarifies the existing regulations to require installation and location of handwashing facilities in or immediately adjacent to toilet rooms and in food preparation and warewashing areas or in an otherwise readily accessible location for use by all employees working in these areas. These proposed amendments also provide that sinks used for food preparation or warewashing may be used for other purposes where such use would not adversely affect public health and safety and has been approved by an authorized Department representative.

The proposed amendments will result in a requirement for professional services, but only for those regulated parties who are required to send an employee to a food safety course. In that case, the professional services would include the services of a teacher who is instructing the course.

3. Costs:

Risk factor: improper holding temperature-

It is anticipated that regulated parties will incur greater energy costs in order to refrigerate food to a temperature of 41 degrees Fahrenheit or less, rather than to a temperature of 45 degrees Fahrenheit or less. However, it is also anticipated that regulated parties will save in energy costs since the proposal lowers the minimum hot-holding temperature from 140 degrees to 135 degrees Fahrenheit.

Under the proposal, regulated parties will incur capital costs of either upgrading their refrigeration units or replacing them with units capable of maintaining food at 41 degrees Fahrenheit. However, the proposed amendment also gives regulated parties 10 years in which to do this. Given the useful life of such refrigeration units (5 years), it is anticipated that regulated parties would have to repair or replace their refrigeration units in any event.

Risk factor: unsafe food source-

It is anticipated that regulated parties who use a nonpublic water system will incur costs of $80 to $100 per year for sampling and testing their water. This cost is predicated on performing the test four times a year at a cost of $20 to $25 per test.

It is anticipated that regulated parties who package eggs which have not been specifically treated to destroy salmonella will incur costs associated with labeling egg containers with safe handling instructions for consumers. However, since the proposal does not require any specific type or format for the instructions, it is anticipated that regulated parties will incur minimal printing costs in complying with the requirement.

Intervention: management knowledge-

Under the proposed amendments, successful completion of a food safety course will not be required of all regulated parties. However, for those regulated parties required to send an employee to such a course, it is anticipated that regulated parties will incur costs of $225 per person per day. This cost is predicated on course tuition of $125 per day, $80 in worker salary ($10 per hour x 8 hours) and travel expenses of $20.

Intervention: consumer education–

It is anticipated that regulated parties will incur costs for providing consumers written notice of health risks inherent in eating raw or undercooked food. However, since the proposal gives regulated parties a wide array of inexpensive options in providing that notice (menu, counter placard, etc.), it is anticipated that regulated parties will incur minimal printing costs in complying with the requirement.

Processing and packaging of food-

Since the Department has HACCP Plans for the reduced oxygen packaging of foods and makes these plans available to regulated parties at no charge, it is anticipated that regulated parties will not incur any costs in complying with these requirements.

Carry-out containers for bulk food-

Since consumers will be able to use their own carry-out containers, it is anticipated that regulated parties may actually save on the cost of providing carry-out containers. The amount of cost savings, however, is difficult to determine, since it is unknown how many consumers will use their own containers in lieu of the carry-out containers provided by the store.

Installation of handwashing facilities–

Since the proposal merely clarifies existing requirements for installation and location of handwashing facilities, it is anticipated that regulated parties will not incur any additional compliance costs.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act Section 202-bb(2), the amendments were drafted to minimize reporting and testing requirements for all regulated parties, including those in rural areas.

5. Rural area participation:

On October 20, 2000, Department personnel conducted an outreach meeting with representatives of the New York Association of Convenience Stores (NYACS), who represent member stores in rural areas. In addition, on October 24, 2000 and July 12, 2001, Department personnel conducted outreach meetings with representatives of the Food Industry Alliance (FIA), who also represent member stores in rural areas on October 24, 2000 and July 12, 2001. During each of these meetings, Department personnel briefed members of industry on the proposed amendments and requested industry to provide input on the proposal. Members of industry have been receptive to the proposal and have expressed support for it. Some industry representatives have offered comments on the proposed amendments, which were considered in the drafting of this rulemaking.

Job Impact Statement

The proposed amendments would improve the sanitary conditions and food handling practices of retail food stores to help ensure that food offered for sale in these establishments is safe and wholesome for human consumption.

The proposed amendments will have no impact on jobs and employment opportunities in New York State.

Banking Department

EMERGENCY RULE MAKING

High Cost Home Loans

I.D. No. BNK-39-03-00020-E
Filing No. 1070
Filing date: Sept. 12, 2003
Effective date: Sept. 12, 2003

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

Action taken: Repeal of emergency rule I.D. No. BNK-36-03-00002-E adopted on Aug. 20, 2003; and amendment of Part 41 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 6-i and 6-l

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

Specific reasons underlying the finding of necessity: Chapter 626 of the Laws of 2002 is effective April 1, 2003. Provisions of chapter 626, by the enactment of section 6-l of the Banking Law, will affect the making of certain home mortgage loans, known as high cost home loans, on and after the effective date. Part 41 of Title 3 NYCRR has governed the making of such loans prior to the effective date and is not in conformity with certain provisions of chapter 626. Also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by chapter 626. Mortgage lenders and brokers and consumers should be aware of the revised regulatory requirements prior to the effective date of chapter 626 in order that mortgage loans made on and after April 1, 2003 conform legally to the statutory and regulatory requirements.

Subject: The making of certain residential mortgage loans, referred to as high cost home loans.

Purpose: To conform and clarify various provisions of section 6-l of the Banking Law.

Substance of emergency rule: Section 41.1(a) is amended to revise the definition of a lender subject to Part 41.

Section 41.1(b) is amended to revise the definition of an affiliate.

Section 41.1(c) is amended to make technical revisions.

Section 41.1(d) is amended to revise the definition of a bona fide loan discount point.

Section 41.1(e) is amended to revise the definition of a high cost home loan in regard to the points and fees threshold for determining such loans and limiting the exclusion of certain discount points in the computation of points and fees.

Section 41.1(f) is amended to revise the definition of loan amount.

Section 41.1(h) is amended to revise the definition of points and fees.

Section 41.1(j) is amended to make certain technical revisions.

Section 41.2(a) is amended to clarify the exceptions to the prohibition upon accelerating the indebtedness of high cost home loans.

Section 41.2(b) is amended to increase the term of a balloon mortgage to fifteen years.

Section 41.2(g), relating to modification and deferral fees, is repealed and then added as a new paragraph 2 to section 41.3(d), relating to refinancing of high cost home loans.

Section 41.3(a) is amended by adding a new disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability and to add certain conditions in order to determine that repayment ability has been "corroborated by independent verification."

Section 41.3(c) is amended to revise the percentage of points and fees that may be financed in making a high cost home loan, and to revise the charges that may be excluded from such financed points and fees.

Section 41.3(d) is re-titled and amended to revise the limitations upon points and fees that may be charged by particular lenders when refinancing high cost home loans and to add a previously repealed paragraph (see revisions to section 41.2(g)) relating to modification of an existing high cost home loan.

Section 41.3(f) is amended to delete a reference to median family income.

Section 41.3(g) is added to prohibit the refinancing of special mortgages, except under certain conditions.

Section 41.5(a) is amended to clarify deceptive acts relating to splitting or dividing loan transactions.

Section 41.5(b)(2) is amended to clarify retention of fees by lenders and brokers in relation to unfair, deceptive or unconscionable practices.

Section 41.5(b)(4) is amended to revise the definition of loan flipping, as an unfair or deceptive practice, and to add conditions to determine whether a loan has a net tangible benefit to the borrower.

Section 41.5(b)(6) is amended to clarify the standards to determine that recommending or encouraging default of a home loan or other debt is an unfair or deceptive practice.

Section 41.7 is amended to revise the legend that appears on a high cost home loan mortgage.

Section 41.8 is amended to delete VA and FHA mortgage loans from the definition of exempt products.

Section 41.9 is amended to repeal the current provisions relating to correction of errors and to add new provisions.

Section 41.11, relating to prohibiting the financing of single premium insurance, is re-titled and amended to include other insurance premiums or payments for any cancellation or suspension contract or agreement.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 10, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us, or at the department's website: www.banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Banking Law section 14(1) authorizes the Banking Board to adopt regulations not inconsistent with the law. Section 6-i of the Banking Law specifically states that no banking organization, partnership, corporation exempt organization, or other entity (hereafter "lenders") can make a mortgage loan in New York State unless those entities conform to Banking Law requirements pertaining to mortgage bankers (Article 12-D of the Banking Law) and rules and regulations promulgated by the Banking Board. Section 6-l of the Banking Law imposes new requirements upon the making of certain mortgage loans. Part 41 of the rules and regulations of the Banking Board was adopted pursuant to section 6-i of the Banking Law, and prior to approval of chapter 626 of the laws of 2002, which enacted section 6-l. Provisions of section 6-l, which are inconsistent with certain provisions of Part 41, supercede such regulatory provisions, and the Banking Board, in promulgating the amendments to Part 41, makes Part 41 consistent with section 6-l.

2. Legislative objectives:

Part 41 is intended to provide consumer protections by establishing important consumer disclosure requirements and prohibiting contractual terms and practices that are unfair in the making of residential mortgage loans that are offered on a high-cost basis. Section 6-l is intended to have the same objectives. Since Part 41 provides the broad regulatory scheme under which high cost mortgage loans are made, it is necessary that its provisions be in conformity with section 6-l and also, in limited instances, clarify certain provisions of such section in order that lenders and brokers appropriately make high cost loans in conformity with the intended legislative objectives.

3. Needs and benefits:

Part 41 was intended to regulate the making of residential mortgage loans within a certain segment of the mortgage loan market, referred to as the sub-prime, or non-conventional, mortgage loan market. The regulatory scheme defined by Part 41, by requiring certain disclosures and practices to be followed in the making of such loans, sought to prevent occurrences of predatory lending. Predatory lending occurs when the borrower or debtor does not have sufficient income or other financial resources to pay the monthly principal and interest payments or when equity in a residential property is stripped by repeated re-financings, primarily by the charging of excessive points and fees, when the borrower realizes no economic benefit.

Since the Legislature established a number of different standards regarding disclosures and practices in the making of such residential mortgage loans by enactment of section 6-l of the Banking Law, it is necessary that the comparative standards in Part 41 be made consistent with section 6-l.

Further, it is also necessary that certain provisions of section 6-l be clarified by the amendments to Part 41 in order that lenders and brokers may be in compliance with the requirements section 6-l when making such

loans, given that such provisions are not otherwise defined by section 6-l nor has the Legislature provided any other guidance which would clarify the intended meaning of those provisions. The clarifying provisions of the amendments to Part 41 address determining "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower, both of which are critical standards in assessing whether instances of predatory lending have occurred.

4. Costs:

The amendments to Part 41 should impose no additional cost upon mortgage lenders or brokers not otherwise imposed by the enactment of the comparative provisions of section 6-l of the Banking law to which the amendments conform Part 41. The amendments impose no additional cost upon the Banking Department or any other state agency, or any unit of local government.

5. Local government mandates:

The amendments to Part 41 do not impose any requirements or burdens upon any units of local government.

6. Paperwork:

The amendments to Part 41 do not impose any new paperwork requirements.

7. Duplication:

None.

8. Alternatives:

The Banking Department considered whether to forego amending Part 41 or to repeal Part 41 in light of the enactment of section 6-l of the Banking Law, given that section 6-l may be viewed legally as occupying the field of regulation of high cost home loans in the state of New York. It was determined that Part 41 provides a more extensive regulatory scheme than section 6-l for the making of such mortgage loans, and therefore it is appropriate to make the non-conforming provisions of Part 41 consistent with the comparative statutory provisions of section 6-l. In addition, the provisions of section 6-l that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making of such loans by articulating appropriate conditions, which such lenders and brokers must meet in order to be in compliance with certain non-defined statutory standards established by section 6-l.

9. Federal standards:

In the initial promulgation of Part 41, the Banking Department stated the regulations established thresholds that were lower than the thresholds set by the Home Ownership Equity Protection Act (HOEPA). Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-l of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-l refers and therefore corresponds to the comparative definition in HOEPA. The amendments would adopt the thresholds and definitions established by section 6-l.

10. Compliance schedule:

None. Any modification of existing disclosures or practices by lenders or brokers in regard to any cost home loans made on or after April 1, 2003 are the result of standards established by section 6-l of the Banking Law. Chapter 626, which enacted section 6-l, was approved on October 3, 2002, and brokers and lenders have had sufficient time to familiarize themselves with these standards and subsequently modify their disclosures and practices, if necessary, in order to comply with the standards of 6-l and the proposed amendments to Part 41.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will impose no adverse reporting, recordkeeping or compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic impact upon private entities in rural areas beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic impact upon public entities in rural areas. The proposed amendments will impose no adverse reporting, recordkeeping or compliance requirements private on public entities in rural areas.

Job Impact Statement

A Job Impact Statement is not attached because the proposed amendments to Part 41 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deprivation Order

I.D. No. COR-40-03-00003-P

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

Proposed action: Addition of section 305.2(f) to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Deprivation order.

Purpose: To create a procedure for distribution of water to inmates in special housing who, because of misbehavior or for other health and safety reasons, are subject to order specifying that the regular water supply to the cell be turned off.

Text of proposed rule: A new subdivision (f) is added to section 305.2 of Title 7, NYCRR, as follows:

(f) If there is an order depriving an inmate of in-cell water, the inmate's cell water shall be turned on for at least ten (10) minutes, five (5) times per day, as follows: approximately thirty (30) minutes prior to the service of each meal, once at the beginning of tour I (nights), and once during tour III (evenings) in accordance with a schedule established by the superintendent. Staff shall notify the inmate prior to turning on the water and record the times that the water is turned on and off in the unit activity log.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 112 of the Correction Law grants to the commissioner of correction the superintendence, management and control of the correctional facilities in the department and of the inmates confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. This section also assigns to the commissioner of correction the power to make rules and regulations for the employees of the department and the duties to be performed by them.

Section 137 of the Correction Law grants to the commissioner the authority to provide for such measures as he may deem necessary or appropriate for the safety, security and control of correctional facilities and the maintenance of order therein and permits an inmate to be confined in a cell apart from the accommodations provided for inmates who are participating in programs for such period as may be necessary for the maintenance of order or discipline.

Legislative Objective:

By vesting the department and the commissioner with this rulemaking authority, the legislature intended the department to create a procedure for distribution of water to inmates in special housing who, because of misbe-

havior or for other health and safety reasons, are subject to orders specifying that the regular water supply to the cell be turned off.

Needs and Benefits:

On occasion inmates open water taps in their cells and plug sink and toilet drains to cause flooding. Such misbehavior results in property damage, waste of resources, disruption of staff functions and programs for inmates and health and safety hazards. Deprivation orders, as authorized in section 305.2(a), provide correctional staff with a tool to respond to floods and other abuses of cell plumbing and water systems. The proposed new subdivision (f) establishes a standard minimum schedule to ensure that adequate water for drinking, hygiene and sanitary purposes is available.

Costs:

a. To State government: None.

b. To local governments: None. The proposed amendment does not apply to local governments.

c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.

d. Costs to the regulating agency for implementation and continued administration of the rule:

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

b. Additions to existing reporting or application forms: None.

c. New or addition recordkeeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

There are no new mandates imposed upon local governments by this proposal. The proposed amendment does not apply to local governments.

Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

Alternatives:

No alternatives are considered feasible. This proposal balances the need to control abuse of the cell water supply while providing water at intervals for flushing the toilet, personal hygiene and drinking.

Federal Standards:

There are no minimum standards of the Federal government for this or a similar subject area.

Compliance Schedule:

The Department of Correctional Services will achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely creates a procedure for distribution of water to inmates in special housing who, because of misbehavior or for other health and safety reasons, are subject to orders specifying that the regular water supply to the cell be turned off.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely creates a procedure for distribution of water to inmates in special housing who, because of misbehavior or for other health and safety reasons, are subject to orders specifying that the regular water supply to the cell be turned off.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely creates a procedure for distribution of water to inmates in special housing who, because of misbehavior or for other health and safety reasons, are subject to orders specifying that the regular water supply to the cell be turned off.

Department of Environmental Conservation

NOTICE OF ADOPTION

Managed Harvest of Big Game Animals and Game Birds

I.D. No. ENV-32-03-00008-A
Filing No. 1069
Filing date: Sept. 23, 2003
Effective date: Oct. 8, 2003

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

Action taken: Amendment of sections 1.18, 1.21, 1.22, 1.31 and 1.40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903, 11-0905, 11-0907, 11-0911 and 11-0913

Subject: Managed harvest of big game animals and game birds.

Purpose: To change muzzleloading hunting regulations in the Northern Zone in response to the severe winter of 2002-2003; create consistent and user-friendly requirements for tagging hunter-harvested bear, deer, and turkeys; and clear up minor regulatory inconsistencies that emerged subsequent to the implementation of the department's automated licensing system (DECALS).

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-32-03-00008-P, Issue of August 13, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Gordon Batcheller, Department of Environmental Conservation, 625 Broadway, 5th Fl., Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatche@gw.dec.state.ny.us

Additional matter required by statute: State Environmental Quality Review Act (ECL art. 8). Establishment of hunting seasons and thinning of wildlife surpluses are covered by a final programmatic impact statement (FPIS) on wildlife game species management (DEC 1980) and supplemental findings (DEC 1994). The proposed action does not involve significant departure from established and accepted practices as described in the FPIS and does not establish any new program or major reordering of priorities. It is therefore a "type II action" pursuant to the department's SEQR regulations (see 6 NYCRR § 618.2[d][5]).

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Adult Day Health Care Regulations

I.D. No. HLT-40-03-00001-E
Filing No. 1065
Filing date: Sept. 17, 2003
Effective date: Sept. 17, 2003

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

Action taken: Repeal of Parts 425, 426 and 427; and addition of new Part 425 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

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

Specific reasons underlying the finding of necessity: The agency finds that immediate adoption of this rule is necessary to preserve the public health and general welfare. These regulations establish additional standards for operation of adult day health care programs. Recent allegations

of large scale Medicaid fraud by an adult day health care provider evidence the need for tighter regulations to assure that quality and necessary services are provided for a dependent and at-risk population and to protect the program from fiscal abuse. The proposed regulations require that registrants of adult day health care programs receive needed care which is based upon an interdisciplinary assessment and an individualized plan of care. This will ensure not only that the individuals are assessed to identify their health needs, but also that their needs are being met with appropriate services and that providers are accountable for a meaningful assessment of the individuals' needs and are accountable and responsible for providing services in accordance with those needs. Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a nonemergency basis including the requirements for a period of time for public comment cannot be met because to do so would be detrimental to the health and general welfare of functionally impaired individuals who are registrants of adult day health care programs and also would permit public funds to be expended for health services that are not really needed by the registrants. Interested parties have had an opportunity for comment on the proposed regulations through public meetings as well as meetings with department staff. The duration of this emergency will extend until permanent regulations are promulgated.

Subject: Adult day health care regulations.

Purpose: To ensure that individuals receive adult day health care when appropriate and that providers are accountable for providing necessary and appropriate care.

Text of emergency rule: Pursuant to the authority vested in the State Hospital Review and Planning Council by section 2803(2) of the Public Health Law, Parts 425, 426 and 427 are repealed and a new Part 425 is added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of New York State to be effective upon filing with the Secretary of State, to read as follows:

Part 425

Adult Day Health Care

425.1 Definitions. As used in this Part:

(a) Adult day health care is defined as the health care services and activities provided to a group of registrants with functional impairments to maintain their health status and enable them to remain in the community.

(b) Registrant is defined as a person:

(1) who is not a resident of a residential health care facility, is functionally impaired and not homebound, and requires supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative or palliative care or services but does not require continuous 24-hour-a-day in patient care and services;

(2) whose assessed social and health care needs can satisfactorily be met in whole or in part by the delivery of appropriate services in the community setting; and

(3) who has been admitted to an adult day health care program based on an authorized practitioner's order and the adult day health care program's interdisciplinary comprehensive assessment.

(c) Program is defined as an approved adult day health care program located at a licensed residential health care facility or an approved extension site.

(d) Operating hours for an adult day health care program are defined as the period of time that the program must be open, operational, and providing services to registrants in accordance with the approval granted by the Department.

(1) Each approved adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, and must provide, at a minimum, nutritional services in the form of at least one meal and necessary supplemental nourishment, planned activities, ongoing assessment of each registrant's health status in order to provide coordinated care planning, case management and other health care services as determined by the registrant's needs.

(2) Unless otherwise permitted by the Department, each approved session will consist of the majority of registrants in attendance for at least five hours.

(e) Visit is defined as an individual episode of attendance by a registrant at an adult day health care program during which the registrant receives adult day health care services in accordance with his/her care plan. A registrant's individual visit may be fewer than five hours or longer than five hours depending on the assessed needs of the registrant, but a program may only bill for one visit per registrant per day.

(f) Registrant capacity is defined as the total number of registrants approved by the Department for each session in a 24 hour day.

(g) Operator of an adult day health care program is defined as the operator of a residential health care facility that is approved by the Department to be responsible for all aspects of the adult day health care program.

(h) Department means the New York State Department of Health.

(i) Commissioner means the Commissioner of the New York State Department of Health.

425.2 Application. (a) Prior to operation of an adult day health care program, the proposed operator must apply for and receive Department approval in accordance with Part 710 of this Chapter. Such application must include a description of the proposed program, including but not limited to:

(1) the need for the program, including a statement on the philosophy and objectives of the program;

(2) the range of services to be provided;

(3) the method(s) of delivery of services;

(4) physical space to be utilized and planned use thereof;

(5) number and expected characteristics of registrants to be served;

(6) a description of a typical registrant's program;

(7) personnel to be employed in the program, including qualifications;

(8) intended use of and coordination with existing community resources;

(9) financial policies and procedures;

(10) program budget;

(11) methods for program evaluation; and

(12) proximity to an identified number of potential registrants.

(b) A residential health care facility operator that has been approved by the Department to operate an adult day health care program at its primary site may provide adult day health care services at an extension site only when such use of an extension site has first been approved by the Department under the provisions of Part 710 of this Chapter.

(c) A residential health care facility operator that does not operate an adult day health care program at its primary site may provide such a program at an extension site approved by the Department for such use in accordance with section 710.1 of this Chapter if there is not sufficient suitable space within the residential health care facility to accommodate a full range of adult day health care program activities and services. The Department may conduct an on-site survey of the residential health care facility to determine whether the facility lacks suitable space for an adult day health care program.

425.3 Changes in existing program.

(a) Applications for approval of changes in the program, including but not limited to substantial changes in the physical plant, space and utilization thereof, the extent and type of services provided, and the program's registrant capacity, must be submitted to the Department in writing and must conform with the provisions of Part 710 of this Chapter.

(b) Requests for additional program sessions must be based on the number and needs of registrants and be approved by the Department.

(c) An operator may not discontinue operation of services to registrants without:

(1) notifying each registrant and making suitable plans for alternate services for each registrant; and

(2) receiving written approval from the commissioner in accordance with Part 710 of this Chapter. The application to discontinue services must set forth the specific intended date of discontinuance and the intended plans for alternate services to registrants.

(d) The operator of an approved adult day health care program may apply to the Department for approval to run a session where the majority of the registrants are or will be attending fewer than five hours.

425.4 General requirements for operation.

(a) A residential health care facility operator must:

(1) provide services to registrants consistent with the requirements of this Title and Part and other applicable statutes and regulations;

(2) provide appropriate staff, equipment, supplies and space as needed for the administration of the adult day health care program in accordance with the requirements of this part; and

(3) provide each registrant with a copy of a Bill of Rights specific to operation of the adult day health care program.

These rights include, but are not limited to:

(i) confidentiality, including confidential treatment of all registrant records;

(ii) freedom to voice grievances about care or treatment without discrimination or reprisal;

(iii) protection from physical and psychological abuse;

(iv) participation in developing the care plan; and

(v) freedom to decide whether or not to participate in any given activity.

(b) Administration. Without limiting its responsibility for the operation and management of the program, the operator must designate a person responsible for:

(1) coordinating services for registrants with services provided by community or other agency programs, including but not limited to certified home health agencies, social services agencies, clinics and hospital outpatient departments and services; and

(2) day-to-day direction, management and administration of the adult day health care services, including but not limited to:

(i) assigning adequate and appropriately licensed personnel to be on-duty at all times when the program is in operation to ensure safe care of the registrants;

(ii) assigning and supervising activities of all personnel to ensure that registrants receive assistance in accordance with their plans of care;

(iii) ensuring supervision of direct care staff in accordance with state rules and regulation;

(iv) arranging for in-service orientation, training and staff development; and

(v) maintaining records in accordance with provisions of sections 400.2 and 415.3(d)(1) of this Title.

(c) Policies and procedures for service delivery. The operator must:

(1) establish and implement written policies and procedures, consistent with the approved application for operation of the adult day health care program, concerning the rights and responsibilities of registrants, the program of services provided to registrants, use of physical structures and equipment, and the number and qualifications of staff members and their job classifications and descriptions;

(2) ensure that written policies and procedures, consistent with current professional standards of practice, are developed and implemented for each service and are reviewed and revised as necessary;

(3) develop protocols for each involved professional discipline to indicate when the service of such discipline should be included in the registrant assessment;

(4) ensure that professional personnel are fully informed of, and encouraged to refer registrants to, other health and social community resources that may be needed to maintain the registrant in the community;

(5) establish and implement written policies for the storage, cleaning and disinfection of medical supplies, equipment and appliances;

(6) establish and implement written policies and procedures concerning refunds and prepayment for basic services in accordance with existing rules and regulations;

(7) establish and implement written policies and procedures concerning transfer and affiliation agreements covering registrants that are consistent with the standards specified in section 400.9 of this Subchapter; and

(8) provide in such agreement(s) reasonable assurance of assistance to each registrant in transferring to inpatient or resident status in a residential health care facility whenever the registrant is deemed by a physician to be medically appropriate for such care.

425.5 Adult day health care services.

(a) The operator must provide or arrange for services appropriate to each registrant in accordance with the individual's interdisciplinary needs assessment and comprehensive care plan. At least the following program components must be available:

(1) case management, including health education;

(2) interdisciplinary care planning;

(3) nursing services;

(4) nutrition;

(5) social services;

(6) assistance and supervision with the activities of daily living, such as toileting, feeding, ambulation, bathing including routine skin care, care of hair and nails; oral hygiene; and supervision and monitoring of personal safety, restorative rehabilitative and maintenance therapy services;

(7) planned therapeutic or recreational activities that reflect the interests, cultural backgrounds and the communities of the registrants and provide the registrants with choices;

(8) pharmaceutical services; and

(9) referrals for necessary dental services and sub-specialty care

(b) The following services may also be provided:

(1) specialized services for registrants with HIV or AIDS; and

(2) religious services and pastoral counseling.

425.6 Admission, continued stay and registrant assessment.

(a) The operator must:

(1) select, admit and retain in the adult day health care program only those persons for whom adequate care and needed services can be provided and who, according to their interdisciplinary needs assessments, can benefit from the services and require a minimum of at least one (1) visit per week to the program;

(2) assess each applicant, utilizing an assessment instrument designated by the Department, with such assessment addressing, at a minimum:

(i) medical needs, including the determination of whether the applicant is expected to need continued services for a period of 30 or more days from the date of the assessment. An operator may request approval by the appropriate Department regional office for an exemption, based on special circumstances, to the requirement for determining whether there is a need for continued services for 30 days or more.

(ii) use of medication and required treatment;

(iii) nursing care needs;

(iv) functional status;

(v) mental/behavioral status;

(vi) sensory impairments;

(vii) rehabilitation therapy needs, including a determination of the specific need for physical therapy, occupational therapy, speech language pathology services, and rehabilitative, restorative or maintenance care;

(viii) family and other informal supports;

(ix) home environment;

(x) psycho-social needs;

(xi) nutritional status;

(xii) ability to tolerate the duration and method of transportation to the program; and

(xiii) evidence of any substance abuse problem.

(3) register an applicant only upon appropriate recommendation from the applicant's physician and after completion of a personal interview by qualified personnel with the applicant, next of kin or sponsor;

(4) register an applicant only after determining that the applicant is not receiving the same services from another other facility or agency.

(b) An individual may be registered in an adult day health care program only if his/her admission assessment indicates that the program can adequately and appropriately care for the physical and emotional health needs of the individual.

(c) No individual suffering from a communicable disease that constitutes a danger to other registrants or staff may be registered or retained for services on the premises of the program.

(d) The operator may admit, on any given day, up to 10% over the approved capacity for that program. The average annual capacity, however, may not exceed approved capacity of the operator's program.

425.7 Registrant care plan. The operator must ensure that:

(a) an individualized care plan based on the comprehensive interdisciplinary assessment required by this Part and, when applicable, a transfer or discharge plan, is developed for each registrant within five visits, not to exceed 30 days, from registration;

(b) each registrant's care plan must include:

(1) designation of a professional person to be responsible for coordinating the care plan;

(2) the registrant's pertinent diagnoses, including mental status, types of equipment and services required, case management, frequency of planned visits, prognosis, rehabilitation potential, functional limitations, planned activities, nutritional requirements, medications and treatments, necessary measures to protect against injury, instructions for discharge or referral if applicable, orders for therapy services, including the specific procedures and modalities to be used and the amount, frequency and duration of such services, and any other appropriate item.

(3) the medical and nursing goals and limitations anticipated for the registrant and, as appropriate, the nutritional, social, rehabilitative and leisure time goals and limitations;

(4) the registrant's potential for remaining in the community; and

(5) a description of all services to be provided to the registrant by the program, informal supports and other community resources pursuant to the care plan, and how such services will be coordinated.

(c) development and modification of the care plan is coordinated with other health care providers outside the program who are involved in the registrant's care; and

(d) the responsible persons, with the appropriate participation of consultants in the medical, social, paramedical and related fields involved in the registrant's care must:

(1) record in the clinical record changes in the registrant's status which require alterations in the registrant care plan;

(2) modify the care plan accordingly;

(3) review the care plan at least once every six months and whenever the registrant's condition warrants and document each such review in the clinical record; and

(4) promptly alert the registrant's authorized practitioner of any significant changes in the registrant's condition which indicate a need to revise the care plan.

425.8 Registrant continued-stay evaluation. The operator must ensure that a written comprehensive assessment and evaluation is completed pursuant to Section 425.6 of this Part at least once every six months for each registrant, addressing the appropriateness of the registrant's continued stay in the program, such assessment and evaluation to address, at a minimum:

(a) a reassessment of the registrant's needs, including an interdisciplinary evaluation of the resident's need for continued services;

(b) the appropriateness of the registrant's continued stay in the program;

(c) the necessity and suitability of services provided; and

(d) the potential for transferring responsibility for or the care of the registrant to other more appropriate agencies or service providers.

425.9 Medical services. The operator must, without limiting its responsibility for the operation and management of the program:

(a) assign the operator's residential health care facility's medical board, medical advisory committee, medical director or consulting physician the following responsibilities regarding registrants of the program:

(1) developing and amending clinical policies;

(2) supervising medical services;

(3) advising the operator regarding medical and medically related problems;

(4) establishing procedures for emergency physician coverage, records and consultants; and

(5) establishing professional relationships with other institutions and agencies, such as general hospitals, rehabilitation centers, residential health care facilities, home health agencies, hospital outpatient departments, clinics and laboratories;

(b) ensure that medical services are provided to registrants of the program in accordance with the applicable sections of this Subchapter, exclusive of the requirements for physician visits every 30 days;

(c) provide or arrange consultation services in accordance with applicable sections of this Subchapter;

(d) provide or arrange for the personal, staff or other designated physician to obtain a medical history and a physical examination of each registrant, including diagnostic laboratory and x-ray services, as medically indicated, within six weeks before or seven days after admission to the program;

(e) ensure that the physician record, date and authenticate significant findings of the medical history, physical examination, diagnostic services, diagnoses and orders for treatment in the registrant's clinical records; and

(f) ensure that orders for treatment include orders for medication, diet, permitted level of physical activity and, when indicated, special orders or recommendations for rehabilitative therapy services and other adult day health care services.

425.10 Nursing services. The operator must:

(a) provide nursing services to evaluate the need of each registrant for nursing care on a periodic and continuing basis, but not less often than quarterly, and, when appropriate, provide for such care;

(b) ensure that a registered professional nurse is on-site and performs a nursing evaluation of each registrant at the time of admission to the program;

(c) ensure that for each registrant the findings of the nursing evaluation, the nursing care plan, and recommendations for nursing follow-up are documented, dated and signed in the registrant's clinical record;

(d) ensure that nursing services are provided to registrants under the direction of a registered professional nurse who is on-site in the adult day health care program during all hours of the program operation. Based on the care needs of the registrants, for those programs also operating over a weekend, a licensed practical nurse may provide the on-site services when a registered professional nurse is available in the nursing home or on the campus to provide immediate direction or consultation; and

(e) ensure that appropriate health education is provided to registrants and family members to provide support for the registrant and family in understanding and dealing with the registrant's health condition as it relates to his/her continued ability to reside in community.

425.11 Food and nutrition services. The operator must:

(a) provide nutritional services for each registrant;

(b) provide meals and nutritional supplements, including modified diets when medically prescribed, to registrants who are on the premises at scheduled meal times and, where appropriate, to registrants in their homes in accordance with the identified needs included in registrant care plans;

(c) ensure that the quality and quantity of food and nutrition services provided to registrants is in conformance with applicable sections of this Subchapter;

(d) ensure that nutrition services are under the direction of a qualified dietitian, as defined in Section 415.14 of this Subchapter; and

(e) ensure that dietary service records for the adult day health care service are maintained in conformance with applicable sections of this Subchapter.

425.12 Social services. The operator must:

(a) provide social services in conformance with applicable sections of this Subchapter;

(b) ensure that psycho-social needs are assessed, evaluated and recorded, and that services are provided to meet the identified needs as part of the coordinated care plan; and

(c) ensure that staff members arrange for the use of and/or access to other community resources as needed and coordinate the needs of the registrants with services provided by the adult day health care program and other health care providers, community social agencies and other resources.

425.13 Rehabilitation therapy services. The operator must:

(a) provide or arrange for rehabilitation therapy services to registrants determined through the interdisciplinary assessments as needing such services; and

(b) ensure that the rehabilitation therapy services provided are in conformance with applicable sections of this Subchapter.

425.14 Activities. The operator must:

(a) ensure that activities are an integral part of the program, are age appropriate, and reflect the registrants' individual interests and cultural backgrounds;

(b) ensure that activities are designed to enhance registrant participation in the program, home life and the community;

(c) involve appropriate volunteers and volunteer groups in the program, unless prohibited by law;

(d) provide sufficient equipment and supplies for the operation of the activity program;

(e) provide or arrange for transportation to and from community events and outings; and

(f) ensure that activities are included as part of each registrant's care plan.

425.15 Religious services and counseling. If provided, religious services and counseling must be included in the registrant's care plan.

425.16 Dental services. The operator must, as appropriate:

(a) provide or refer registrants for dental services; and

(b) ensure that dental services, when provided to or registrants are referred to, are in conformance with applicable sections of this Subchapter.

425.17 Pharmaceutical services. The operator must:

(a) develop and implement written policies and procedures governing medications brought to the program site by registrants;

(b) ensure that pharmaceutical services, when provided for registrants, are in conformance with the applicable sections of this Title;

(c) ensure that each registrant's drug regimen is reviewed at least once every six months by a registered pharmacist in accordance with the registrant's care plan and otherwise modified as needed following consultation with the registrant's attending physician. Any modification to the drug regimen must be documented in the registrant's clinical record and included as a revision to the registrant's care plan; and

(d) ensure that written policies and procedures require the pharmacist to report any irregularity in a registrant's drug regimen and recommendations to the registrant's attending physician and to the program coordinator, with appropriate documentation in the registrant's clinical record and care plan.

425.18 Services for registrants with Acquired Immune Deficiency Syndrome (AIDS).

(a) Applicability.

(1) This section applies to an Adult Day Health Care Program approved by the commissioner pursuant to Part 710 of this Title as a provider of specialized services for registrants with AIDS.

(2) For purposes of these regulations, AIDS means acquired immune deficiency syndrome and other human immunodeficiency virus (HIV) related illness.

(b) General requirements. The program shall provide comprehensive and coordinated health services in accordance with this Article and requirements set forth in sections 425.9 through 425.17 of this Part. In addition, the operator must provide or make arrangements for:

(1) case management services,

(2) substance abuse services, if appropriate,

(3) mental health services,

(4) HIV prevention and counseling services,

(5) pastoral counseling,

(6) TB screening and on-going follow up, and

(7) specialized medical services including gynecology, as needed.

(c) Staffing requirements. The operator must provide or make arrangements for:

(1) specialty oversight of the AIDS program by a physician who has experience in the care and clinical management of persons with AIDS; and

(2) nursing services for the AIDS program under the supervision of a registered professional nurse with experience in the care and management of persons with AIDS.

425.19 General records. The operator must:

(a) maintain on the premises of the facility where the program is operated the following written records, which must be easily retrievable and must include, but need not be limited to, the following:

(1) a chronological admission register consisting of a daily chronological listing of registrants admitted by name with relevant clinical and social information about each, including as a minimum, name, address, next of kin, attending physician, principal diagnosis, and the place from which each registrant was admitted;

(2) a chronological discharge register consisting of a daily chronological listing of registrants discharged by name, the reason for discharge and the place to which the registrant was discharged;

(3) a daily census record consisting of a summary report of the daily registrant census with cumulative figures for each month and each year; and

(4) general records in conformance with the applicable section of this Subchapter.

(b) Maintain as public information, available for public inspection, records containing copies of all financial and inspection reports pertaining to the adult day health care services that have been filed with or issued by any governmental agency for 10 years from the date such reports are filed or issued.

425.20 Clinical records. The operator must:

(a) provide a clinical record for each registrant in accordance with the medical records system section of this Subchapter;

(b) ensure that each clinical record include non-medical information consisting of:

(1) all details of the referral and registration;

(2) identification of next of kin, family and sponsor;

(3) the person or persons to be contacted in the event of emergency;

(4) accident and incident reports;

(5) non-medical correspondence and papers pertinent to the registrant's participation in the program; and

(6) a fiscal record including copies of all agreements or contracts;

(c) ensure that all reports and information pertaining to registrant care and planning are entered promptly;

(d) ensure that all entries are dated and authenticated by the person making the entry or ordering the services;

(e) ensure that the record is kept in a place convenient for use by authorized staff; and

(f) retain intact clinical records and all other records of registrants and keep them readily accessible in a safe and secure place. Such records shall be retained safely and securely for a period of six years following discharge or cessation of operation of services. In the case of a minor, retention shall be for six years after reaching majority.

425.21 Confidentiality of records. The operator shall keep confidential and make available only to authorized persons all medical, social, personal and financial information relating to each registrant.

425.22 Program evaluation.

(a) Quality improvement. The operator must develop and implement a quality improvement process that provides for an annual or more frequent review of the operator's program. Such evaluation must include a profile of the characteristics of the registrants admitted to the program, the services and degree of services most utilized, the length of stay and use rate, registrant need for care and services, and disposition upon discharge. The process must:

(1) include an evaluation of all services in order to enhance the quality of care and to identify actual or potential problems concerning service coordination and clinical performance;

(2) review accident and incident reports, registrant complaints and grievances and the actions taken to address problems identified by the process;

(3) develop and implement revised policies and practices to address problems found and the immediate and systematic causes of those problems; and

(4) assess the impact of the revisions implemented to determine if they were successful in preventing recurrence of past problems.

(b) The results of the quality improvement process must be reported to the chief executive officer, nursing home administrator or governing body.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 15, 2003.

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

Regulatory Impact Statement

Statutory Authority:

Section 2803(2) of the Public Health Law authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to effectuate the provisions of such laws, and to establish minimum standards for health care facilities, including hospitals and nursing homes. This provision of the Public Health Law is the authority by which the Department repeals Parts 425, 426 and 427 and promulgates the new Part 425.

Legislative Objectives:

Section 2803(2) of the Public Health Law is intended to protect the health of residents of the State by establishing minimum standards for the operation of regulated health care providers, including hospitals and nursing homes, and to ensure the delivery of quality health care services.

These regulations further the legislative objectives by repealing existing disparate sections of regulations and replacing them with comprehensive regulations that address all pertinent aspects of the adult day health care program. The new regulations clarify the definition of what constitutes an adult day health care program, delineate the services the operator must provide, and define admission criteria. These regulations will strengthen the integrity and structure of the program, and more clearly provide explicit operating standards and responsibilities for providers.

Needs and Benefits:

A work group consisting of adult day health care providers, provider association representatives and Department staff has been working for several months on revision of the adult day health care regulations. These revisions are in part based on the recommendation of a legislatively mandated demonstration, which identified the need for a comprehensive set of regulations. Alleged Medicaid fraud in the adult day health care industry focused the workgroup's efforts and concerns. It became apparent that revision of the current regulations is needed to ensure that registrants of adult day health care programs receive needed care which is based upon an interdisciplinary assessment and an individualized plan of care. This will ensure not only that the individuals receive the care that they need, but also that providers are accountable for a meaningful assessment of the individual's needs and are accountable and responsible for providing services in accordance with those needs.

Costs:

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

The new regulations recast existing requirements in a comprehensive framework that represents a more systematic approach to care, and in general represent what quality providers have been doing. While any additional costs to providers should be minimal, some programs may need to employ one additional full-time equivalent registered professional nurse at an estimated total annual expense of $60,000. The Department will permit additional costs, including the additional nurse, to be addressed through an appeal for those programs that are not at the statutory ceiling of

65% of the sponsoring nursing home's rate. The Department has convened a work group including representatives of the industry to develop a system for reimbursement of transportation costs.

Costs to State and Local Governments:

The State and local shares of Medicaid expenditures for the adult day health care program are 25% and 25%, respectively. The new program regulations are revising the admission criteria for adult day health care programs. If individuals are currently inappropriately receiving services in these programs, implementation of these regulations will decrease utilization, which will reduce the Medicaid expenditures associated with adult day health care.

Costs to the Department of Health:

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

Local Government Mandates:

This regulation imposes no program, service, duty or other responsibility upon any city, town, village, school, fire district or other special district except those operating adult day health care programs. They will be subject to the same standards as non-government operators. The regulations will provide counties with alternative placements to help maintain functionally impaired individuals in the community.

Paperwork:

The proposed regulations impose minimal reporting requirements, forms or other paperwork. These requirements are needed to insure care rendered is necessary and is based on an interdisciplinary assessment and an individualized care plan.

Duplication:

There is no duplication of federal or State requirements.

Alternative Approaches:

Questions regarding the fiscal integrity of the adult day health care program necessitate the establishment of standards that protect the program against abuse, while still providing for necessary services for a dependent and at-risk population. One alternative that the Department considered was to include amendments to 10 NYCRR Part 86 governing reimbursement for adult day health care programs. As the result of discussions with regulated parties, the Department determined not to include amendments to 10 NYCRR Part 86, but rather to convene a work group including representatives of the industry to develop a system for reimbursement of transportation costs.

The proposed definition of "operating hours" for an adult day health care program includes a requirement that each approved adult day health care session must operate for a minimum of five hours duration, not including transportation. In order to accommodate concerns raised by providers that some registrants are unable to attend a five hour session because of poor health, frailty or other factors, the Department has modified this requirement so that unless otherwise permitted by the Department, each approved session will consist of the majority of registrants in attendance for at least five hours. The proposed regulations further provide at section 425.3(d) that an operator of an approved adult day health care program may apply to the Department for approval to run a session where the majority of the registrants are or will be attending fewer than five hours. The Department had considered as an alternative allowing a program to request a waiver from the five hour minimum if it had a registrant or registrants who would attend the adult day health care program for fewer than five hours, but determined that the additional paperwork involved in establishing a waiver process was unnecessary in all such cases and that Department approval would be required only if the majority of the registrants would be attending for fewer than five hours.

Federal Standards:

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

Compliance Schedule:

These regulations will be effective upon filing with the Secretary of State. Similar regulations were previously filed by the Department of Health on an emergency basis.

Contact Person: William Johnson
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(518) 473-7488
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Comments submitted to Department personnel other than the contact person may not be included in any assessment of public comment issued for this regulation.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For purposes of the Regulatory Flexibility Analysis, small businesses were considered to be nursing facilities with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from the RHCF-4 cost reports, 180 nursing facilities were identified as employing fewer than 100 employees. Adult day health care programs are sponsored by nursing facilities. The regulations will apply to any adult day health care operator that may be considered a small business or that is a local government. There are seven (7) adult day health care programs operated by local governments.

Compliance Requirements:

The regulations clarify the reporting and recordkeeping requirements to the extent of specifying the information that must be contained in registrant and program assessment forms, but remove unnecessary yearly reviews, outside committee reviews of program and unnecessary agreements between operators and registrants.

Professional Services:

For most programs, no additional professional services will be necessary to comply with the proposed rule. Some programs may need to employ one additional full-time equivalent registered professional nurse at an estimated total annual expense of $60,000.

Compliance Costs:

There will be no initial capital costs as a result of compliance with this rule. Adult day health care providers may incur nominal costs for providing additional information relative to registrant assessments and coordination of services.

Minimizing Adverse Impact:

The Department of Health considered the approaches in section 202-b(1) of the State Administrative Procedure Act and found them inapplicable. Exemption of small businesses or local governments from the proposed rule would not serve the purposes of assuring quality and necessary services to all program registrants and protecting the program from inappropriate admission and fiscal abuse. All adult day health care programs must comply with these requirements.

Economic and Technical Feasibility Assessment:

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

Small Business and Local Government Input:

Numerous meetings were held with representatives from the industry and their provider associations since the regulation was first filed as an emergency. These meetings, plus the public comment period during the joint meeting of the Codes and Regulations Committee and the Fiscal Policy Committee of the State Hospital Review and Planning Council, have provided the Department an opportunity to address their major concerns and change the proposed regulations accordingly. Representatives of adult day health care providers and provider associations, including those that may be considered small businesses, were consulted during the development of the proposed rule through direct meetings.

Local governments and small businesses were originally given notice of this proposal by its inclusion on the agenda of the State Hospital Review and Planning Council for its February 3, 2000 meeting and subsequently in a joint meeting of the Codes and Regulations Committee and Fiscal Policy Committee of the State Hospital Review and Planning Council on March 23, 2000, and its inclusion on the agenda of the State Hospital Review and Planning Council for its April 6, 2000 meeting, as well as by its inclusion on the agenda of the May 18, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, and its inclusion on the agenda of the State Hospital Review and Planning Council for its June 1, 2000 meeting, its inclusion on the agenda of the September 21, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its subsequent inclusion on the agenda of the State Hospital Review and Planning Council for its October 5, 2000 meeting, its inclusion on the agenda of the November 16, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 7, 2000 meeting, its inclusion on the agenda for the January 18, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 1, 2001 meeting, its inclusion on the agenda for the May 24, 2001 meeting of the Codes and Regulations

Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its June 7, 2001 meeting, its inclusion on the agenda for the July 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council which was subsequently canceled with the decision being made to place renewal of the emergency filing on the agenda of the State Hospital Review and Planning Council of its August 2, 2001 meeting, and by its inclusion on the agenda for the November 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its December 6, 2001 meeting, its inclusion on the agenda for the January 24, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 7, 2002 meeting, its inclusion on the agenda of the May 23, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 6, 2002 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2002 meeting and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 5, 2002 meeting, its inclusion on the agenda of the January 23, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its February 6, 2003 meeting, its inclusion on the agenda of the May 22, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 5, 2003 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2003 meeting.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

The proposed regulations do not impose any new reporting requirements, forms or other paperwork, although they do specify information that is required for reports and forms to be maintained by providers. The regulations clarify the reporting and recordkeeping requirements to the extent of specifying the information that must be contained in registrant and program assessment forms, but remove unnecessary yearly reviews and outside committee reviews of program and unnecessary agreements between operators and registrants.

Professional Services:

For most programs, no additional professional services will be necessary to comply with the proposed rule. Some programs may need to employ one additional full-time equivalent registered professional nurse at an estimated total annual expense of $60,000.

Compliance Costs:

There will be no initial capital costs as a result of compliance with this rule. Adult day health care providers may incur nominal costs for providing additional information relative to registrant assessments and coordination of services.

Minimizing Adverse Impact:

In general, the regulations attempt to minimize the adverse economic impact on all providers, including those operating in rural areas. The Department of Health considered the approaches in section 202-bb(2) of the State Administrative Procedure Act and found them inapplicable. Exemption of rural providers from the proposed rule would not serve the purposes of provision of assuring quality and necessary services to all program registrants and protecting the program from inappropriate admission and fiscal abuse. All adult day health care programs must comply with these requirements.

Opportunity for Rural Area Participation:

Representatives of adult day health care providers and associations, including those that operate in rural areas, were consulted during the development of the proposed rule through direct meetings. In addition, the Department held numerous meetings with the regulated entities to hear their concerns. Those concerns and those heard at the public joint meeting of the Code and Regulations Committee and the Fiscal Policy Committee of the State Hospital Review and Planning Council were addressed by changes in these regulations. Rural areas were originally given notice of this proposal by its inclusion in the agenda of the State Hospital Review and Planning Council for its February 3, 2000 meeting, and subsequently in a joint meeting of the Code and Regulations Committee Fiscal Policy Committee of the State Hospital Review and Planning Council on March 23, 2000, and its inclusion in the agenda of the State Hospital Review and Planning Council for its April 6, 2000 meeting, a meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council on May 18, 2000, and its inclusion in the agenda of the State Hospital Review and Planning Council for its June 1, 2000 meeting, its inclusion on the agenda of the September 21, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and by its subsequent inclusion on the agenda for the October 5, 2000 meeting of the State Hospital Review and Planning Council, its inclusion on the agenda for the November 16, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and on the agenda of the State Hospital Review and Planning Council for its December 7, 2000 meeting, its inclusion on the agenda for the January 18, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 1, 2001 meeting, its inclusion on the agenda for the May 24, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its June 7, 2001 meeting, its inclusion on the agenda for the July 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council which was subsequently canceled with the decision being made to place renewal of the emergency filing on the agenda of the State Hospital Review and Planning Council of its August 2, 2001 meeting, and by its inclusion on the agenda for the November 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its December 6, 2001 meeting, its inclusion on the agenda for the January 24, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 7, 2002 meeting, its inclusion on the agenda of the May 23, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 6, 2002 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2002 meeting and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 5, 2002 meeting, its inclusion on the agenda of the January 23, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its February 6, 2003 meeting, its inclusion on the agenda of the May 22, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State

Hospital Review and Planning Council for its June 5, 2003 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2003 meeting.

Exemption of adult day health care providers in rural areas from the proposed rule would not serve the purposes of assuring quality and necessary services to all program registrants and protecting the program from fiscal abuse. An adult day health care program must comply with these requirements.

Job Impact Statement

A Job Impact Statement is not necessary because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. These regulations establish additional standards for operation of adult day health care programs and are not expected to result in reductions of staff providing necessary care.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-40-03-00002-E
Filing No. 1067
Filing date: Sept. 19, 2003
Effective date: Sept. 19, 2003

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

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

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

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

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program's commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After two complete years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and re-certification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce premium rates by adjusting the stop loss reimbursement corridors to enable more uninsured businesses and individuals to afford health insurance; lessen complexity in eligibility determination; eliminate the well-child copayment; create a second benefit package; establish clear rules with respect to determining employment eligibility; clarify employer contribution requirements for part-time workers, qualify Healthy NY as coverage eligible for a Federal tax credit - generally improving the Healthy New York Program based upon feedback of affected parties.

Substance of emergency rule: The second amendment to regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

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

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

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

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

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

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

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

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

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions as those that do not exceed an average of $50 per employee per month, and shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 17, 2003.

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

Regulatory Impact Statement

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

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

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce an second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the re-certification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. De-minimus contributions are those that do not exceed an average of $50 per employee per month. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York.

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

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

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans.

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

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criterion. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household

income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

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

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

Regulatory Flexibility Analysis

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

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

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

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

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Clinton County Motor Vehicle Use Tax

I.D. No. MTV-40-03-00007-P

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

Proposed action: This a consensus rule making to add section 29.12(w) to Title 15 NYCRR.

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

Subject: Clinton County motor vehicle use tax.

Purpose: To impose the tax.

Text of proposed rule: Part 29.12 is amended by adding a new subdivision (w) to read as follows:

(w) Clinton County. The Clinton County Legislature adopted Resolution No. 579 on September 10, 2003, to establish a Clinton County Motor Vehicle Use Tax. The Chairperson of the Clinton County Legislature entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after January 1, 2004 and upon the renewal of registrations expiring on and after March 1, 2004. The County Treasurer of Clinton County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Clinton County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be $5.00 per annum on such motor vehicles weighing 3500 lbs. or less and $10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Clinton County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be $10.00 per annum.

Text of proposed rule and any required statements and analyses may be obtained from: Michele Welch, Legal Bureau, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Consensus Rule Making Determination

This proposed regulation would create a new 15 NYCRR Part 29.12(w) to provide for the collection of a Clinton County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On September 10, 2003 the Clinton County Legislature enacted a local law requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Clinton County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate — it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the collection of the Clinton County Use Tax by DMV shall have no impact on job opportunities in New York State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Yates County Motor Vehicle Use Tax

I.D. No. MTV-40-03-00008-P

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

Proposed action: This is a consensus rule making to add section 29.12(v) to Title 15 NYCRR.

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

Subject: Yates County motor vehicle use tax.

Purpose: To impose the tax.

Text of proposed rule: Part 29.12 is amended by adding a new subdivision (v) to read as follows:

(v) Yates County. The Yates County Board of Supervisors adopted Resolution No. 327-03 on September 8, 2003, to establish a Yates County Motor Vehicle Use Tax. The Yates County Treasurer entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after January 1, 2004 and upon the renewal of registrations expiring on and after March 1, 2004. The County Treasurer of Yates County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Yates County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be $5.00 per annum on such motor vehicles weighing 3500 lbs. or less and $10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Yates County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be $10.00 per annum.

Text of proposed rule and any required statements and analyses may be obtained from: Michele Welch, Legal Bureau, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Consensus Rule Making Determination

This proposed regulation would create a new 15 NYCRR Part 29.12(v) to provide for the collection of a Yates County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On September 8, 2003 the Yates County Legislature enacted a local law requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Yates County local law. The merits of the tax may have been debated

before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the collection of the Yates County Use Tax by DMV shall have no impact on job opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Establishment of a Surcharge by Hudson Valley Water Companies, Inc.

I.D. No. PSC-35-02-00022-A
Filing date: Sept. 23, 2003
Effective date: Sept. 23, 2003

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

Action taken: The commission, on Aug. 20, 2003, adopted an order in Case 02-W-1012, denying revisions to Hudson Valley Water Companies, Inc. (Hudson Valley) tariff schedule, P.S.C. No. 2—Water.

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

Subject: Tariff filing.

Purpose: To deny Hudson Valley from establishing a surcharge.

Substance of final rule: The Commission denied Hudson Valley Water Companies, Inc.'s request to implement a surcharge for the cost of repainting its Mt. Marion storage tank, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-W-1012SA1)

NOTICE OF ADOPTION

Minor Rate Increase by Fishers Island Electric Company

I.D. No. PSC-15-03-00009-A
Filing date: Sept. 19, 2003
Effective date: Sept. 19, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 03-E-0513, approving revisions to The Fishers Island Electric Company's (Fishers Island) tariff schedule, P.S.C. No. 1—Electricity.

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

Subject: Request for rate increase.

Purpose: To increase annual electric revenues.

Substance of final rule: The Commission authorized The Fishers Island Electric Company to file tariff amendments designed to increase electric revenues by $189,171 or 14.5%, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0513SA1)

NOTICE OF ADOPTION

Intracorporate Reorganization by Athens Generating Company, L.P., *et al.*

I.D. No. PSC-15-03-00010-A
Filing date: Sept. 18, 2003
Effective date: Sept. 18, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 03-E-0516 approving a joint proposal for the transfer of jurisdictional assets from Athens Generating Company, L.P. (AGC) to MACH Gen, LLC (MACH) or a subsidiary.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership.

Purpose: To allow AGC to transfer its electric generating facility to MACH.

Substance of final rule: The Commission authorized the transfer of a 1,080 megawatt electric generating facility owned by Athens Generating Company, L.P. to MACH Gen, LLC or a subsidiary that directly holds such assets, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0516SA1)

NOTICE OF ADOPTION

Regulation of National Fuel Gas Distribution Corporation

I.D. No. PSC-25-03-00010-A
Filing date: Sept. 18, 2003
Effective date: Sept. 18, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 00-G-1858 approving National Fuel Gas Distribution Corporation's (National Fuel) extension proposal establishing rate and restructuring plans.

Statutory authority: Public Service Law, sections 66(12) and 72

Subject: Joint proposal.

Purpose: To establish rate and restructuring plans for National Fuel.

Substance of final rule: The Commission adopted the terms, conditions and provisions of a Joint Proposal authorizing National Fuel Gas Distribution Corporation (National Fuel) to extend rate plans and directed National Fuel to serve all participants the tariff amendments necessary to implement the requirements of this order, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(00-G-1858SA4)

NOTICE OF ADOPTION

Gas Meters and Accessories by KeySpan Energy Delivery

I.D. No. PSC-26-03-00020-A
Filing date: Sept. 18, 2003
Effective date: Sept. 18, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 01-G-0771, allowing KeySpan Energy Delivery to use the American Meter Continuous Mechanical Temperature Compensator (CMTC) for commercial and industrial natural gas applications in New York State.

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

Subject: Types of gas meters and accessories.

Purpose: To approve the CMTC for utilization by residential natural gas customers in New York State.

Substance of final rule: The Commission authorized KeySpan Energy Delivery to utilize the American Meter Continuous Mechanical Temperature Compensator (CMTC) for metering of natural gas customers in New York State.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-G-0771SA1)

NOTICE OF ADOPTION

Overhead Electric Lines, Underground Distribution and Extension by Niagara Mohawk Power Corporation

I.D. No. PSC-27-03-00006-A
Filing date: Sept. 18, 2003
Effective date: Sept. 18, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 03-E-0906, authorizing modifications to Niagara Mohawk Power Corporation (Niagara Mohawk) tariff schedule, P.S.C. No. 207—Electricity.

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

Subject: Tariff filing.

Purpose: To modify line extensions in rule Nos. 15, 16, 17 and 21.

Substance of final rule: The Commission approved tariff amendments to reflect revisions to Niagara Mohawk Power Corporation's Rule No. 15 - Extension of Overhead Electric Lines, Rule No. 16 - Underground Distribution, Rule No. 17 - Underground Extensions to Office Buildings and Other Non-Residential Developments and Rule No. 21 - Service Laterals.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-0906SA1)

NOTICE OF ADOPTION

Real-Time Pricing by Orange and Rockland Utilities

I.D. No. PSC-28-03-00011-A
Filing date: Sept. 18, 2003
Effective date: Sept. 18, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 00-E-2054, authorizing revisions to Orange and Rockland Utilities, Inc.'s (Orange and Rockland) electric tariff schedule, P.S.C. No. 2.

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

Subject: Tariff amendments.

Purpose: To eliminate the termination dates for enrollment in and participation under rider M—real-time pricing.

Substance of final rule: The Commission approved Orange and Rockland Utilities, Inc.'s request to eliminate the termination dates for enrollment in and participation under its Rider M, Voluntary Real -Time Pricing Program (RTP).

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(00-E-2054SA28)

NOTICE OF ADOPTION

Voluntary Real-Time Pricing by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-28-03-00012-A
Filing date: Sept. 18, 2003
Effective date: Sept. 18, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 00-E-2054, authorizing revisions to Consolidated Edison Company of New York, Inc.'s (Con Edison) electric tariff schedule, P.S.C. No. 9.

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

Subject: Tariff amendments.

Purpose: To eliminate the termination dates for enrollment in and participation under its rider M—real-time pricing.

Substance of final rule: The Commission approved Consolidated Edison Company of New York, Inc.'s request to eliminate the termination dates for enrollment in and participation under its Rider M, Voluntary Real-Time Pricing Program (RTP).

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(00-E-2054SA29)

NOTICE OF ADOPTION

Support Services by Jefferson Wells International for KeySpan Corporation

I.D. No. PSC-28-03-00017-A
Filing date: Sept. 22, 2003
Effective date: Sept. 22, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted in Case 02-M-0953 approving Jefferson Wells International's (Jefferson Wells) request for a waiver of article I, paragraph B.4 of the contract relating to a physical security assessment for KeySpan Corporation (KeySpan).

Statutory authority: Public Service Law, sections 4(1) and 66(19)

Subject: Physical security assessment of KeySpan.

Purpose: To allow Jefferson Wells to provide support services for KeySpan.

Substance of final rule: The Commission granted Jefferson Wells International (Jefferson Wells) a limited waiver of Article I, paragraph B.4 of the January 15, 2003 contract to provide support services necessary to document KeySpan Corporation's internal control policies and procedures.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-M-0953SA1)

NOTICE OF ADOPTION

Day Ahead Demand Reduction Program

I.D. No. PSC-30-03-00005-A
Filing date: Sept. 18, 2003
Effective date: Sept. 18, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 00-E-2054, authorizing revisions to Consolidated Edison Company of New York, Inc.'s (Con Edison) electric tariff schedule, P.S.C. No. 9.

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

Subject: Tariff amendments.

Purpose: To modify the Day-Ahead Demand Reduction Program.

Substance of final rule: The Commission approved Consolidated Edison Company of New York, Inc.'s request to eliminate the penalty multiplier applicable when the customer's load reduction is less than the customer's bid, to conform to a Federal Energy Regulatory Commission approved change in the NYISO's Day-Ahead Demand Reduction Program.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(00-E-2054SA30)

NOTICE OF ADOPTION

Relationship with Gas Marketers by New York State Electric & Gas Corporation

I.D. No. PSC-30-03-00009-A
Filing date: Sept. 23, 2003
Effective date: Sept. 23, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 01-G-1668, approving the provisions of a joint proposal concerning transactions between New York State Electric & Gas Corporation (NYSEG) and independent gas marketers.

Statutory authority: Public Service Law, sections 5(b), (c), 65(1) and 66

Subject: Settlement proposal.

Purpose: To expand opportunities for independent marketers to compete as natural gas suppliers to customers in the NYSEG's service territory.

Substance of final rule: The Commission adopted the terms of a Joint Proposal by New York State Electric & Gas Corporation (NYSEG), Department of Public Service Staff, and independent gas marketers, regarding charges and procedures for balancing services; and regarding the delineation of operational and cost responsibility for system reliability, among NYSEG, independent marketers (and other "pool operators"), and their gas customers, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(01-G-1668SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Economic Development Plan by New York State Electric & Gas Corporation

I.D. No. PSC-40-03-00009-P

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

Proposed action: The Public Service Commission is considering New York State Electric & Gas Corporation's Sept. 22, 2003 petition for modifications of economic development plan spending limitations adopted in the commission's May 9, 2003 order modifying economic development plan and tariffs and denying rehearing in Case 01-E-0359, and for the adoption of expedited procedures for consideration of future requests for modification of the spending limitations.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1)-(3), (5), 66(1), (4), (5), (10), (12), 71 and 72

Subject: Economic development plan spending limitations and procedures.

Purpose: To consider modifications.

Substance of proposed rule: The Public Service Commission is considering New York State Electric & Gas Corporation's September 22, 2003 petition for modifications of economic development plan spending limitations adopted in the Commission's May 9, 2003 Order Modifying Economic Development Plan and Tariffs and Denying Rehearing in Case 01-E-0359, and for the adoption of expedited procedures for consideration of future requests for modification of the spending limitations.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(01-E-0359SA13)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Hudson Park Investors, LLC

I.D. No. PSC-40-03-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by Hudson Park Investors, LLC (Hudson Park Apartments) to submeter electricity at One Van Der Donck St. and One Pierpointe St., Yonkers, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1)-(5), (12) and (14)

Subject: Case 26988—submetering of electricity for new master metered residential rental units owned or operated by private or government entities.

Purpose: To permit electric submetering at the Hudson Park Apartments.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new master metered residential rental properties owned or operated by private or government entities. The Hudson Park Investors, LLC has submitted a proposal to master meter and submeter this new residential rental complex. The total building electric usage for this complex will be master metered and each unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, dispute resolution, economic benefits, grievance procedures and metering systems. The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at the Hudson Park Apartments located at Van Der Donck Street and 1 Pierpointe Street, Yonkers, New York.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-E-1225SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Refunded Over-Charges for Imported Power by the Village of Freeport

I.D. No. PSC-40-03-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Village of Freeport to allocate an approximate $4 million settlement proceeds from the New York Power Authority to recover litigation costs, to mitigate a proposed rate increase, to pay down interest expense, and to complete certain capital projects.

Statutory authority: Public Service Law, sections 66(12) and 113(2)

Subject: Use of refunded over-charges for imported power.

Purpose: To allow the Village of Freeport to use $4 million settlement proceeds for utility purposes.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Village of Freeport to allocate an approximate $4 million refund received from the New York Power Authority. The Village has petitioned to use the refund proceeds to: 1) recover litigation costs; 2) mitigate a proposed rate increase; 3) pay down interest expense; and 4) complete certain capital projects.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-E-1289SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Securities by NRG Energy, Inc. and NRG Northeast Generating LLC

I.D. No. PSC-40-03-00012-P

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

Proposed action: The commission is considering a petition by NRG Energy, Inc. and NRG Northeast Generating LLC (collectively NRG) for authority to issue up to $3.3 billion of securities under section 69 of the Pubic Service Law.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To consider NRG's request for authority to issue securities.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a request by NRG Energy, Inc. and NRG Northeast Generating LLC (NRG) to issue securities in connection with a recapitalization financing. Petitioners maintain that expedited approval of the securities issuance would strengthen NRG's ability to conduct its business and operate its generation assets.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-E-1298SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Calculation of Billing by Nucor Steel Auburn, Inc.

I.D. No. PSC-40-03-00013-P

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

Proposed action: The Public Service Commission is considering a petition from Nucor Steel Auburn, Inc. requesting that New York State Electric & Gas Corporation be directed to revise and modify its policies and practices for calculating and billing marginal cost adjustments under flexible rate contracts with individual customers.

Statutory authority: Public Service Law, sections 5(b), 65(1), 66(1)-(5), (12), (12-b), (12-c) and (14)

Subject: Policies and practices of New York State Electric & Gas Corporation for calculating and billing marginal cost adjustments under flexible rate contracts with individual customers.

Purpose: To consider revisions and modifications.

Substance of proposed rule: The Public Service Commission is considering a petition from Nucor Steel Auburn, Inc. requesting that New York State Electric & Gas Corporation be directed to revise and modify its policies and practices for calculating and billing marginal cost adjustments under flexible rate contracts with individual customers. The Commission may grant, reject or modify, in whole or in part, the relief requested.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-E-1306SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Calculation of Billing by Corning Incorporated

I.D. No. PSC-40-03-00014-P

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

Proposed action: The Public Service Commission is considering a petition from Corning Incorporated requesting that New York State Electric & Gas Corporation be directed to revise and modify its policies and practices for calculating and billing marginal cost adjustments under flexible rate contracts with individual customers.

Statutory authority: Public Service Law, sections 5(b), 65(1), 66(1)-(5), (12), (12-b), (12-c) and (14)

Subject: Policies and practices of New York State Electric & Gas Corporation for calculating and billing marginal cost adjustments under flexible rate contracts with individual customers.

Purpose: To consider revisions and modifications.

Substance of proposed rule: The Public Service Commission is considering a petition from Corning Incorporated requesting that New York State Electric & Gas Corporation be directed to revise and modify its policies and practices for calculating and billing marginal cost adjustments under flexible rate contracts with individual customers. The Commission may grant, reject or modify, in whole or in part, the relief requested.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-E-1307SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Receipt of Payment of Bills by St. Lawrence Gas Company

I.D. No. PSC-40-03-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by St. Lawrence Gas Company to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 2.

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

Subject: Receipt of payment of bills.

Purpose: To revise the way the company processes receipt of payment of bills.

Substance of proposed rule: St. Lawrence Gas Company, Inc. proposes to revise its gas tariff to allow the customer to pay its bill within 20 calendar days after receipt of the bill. The company would apply late payment charges based on the date the payment was received, not the postmark date.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-G-1309SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deferral Request by United Water New Rochelle Inc.

I.D. No. PSC-40-03-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of United Water New Rochelle Inc. for permission to defer an estimate in excess of $500,000 due to increased purchased water costs, filed in Case No. 9221.

Statutory authority: Public Service Law, section 89

Subject: Deferral of an estimate in excess of $500,000 due to an increase in water costs.

Purpose: To resolve the amount to be deferred for future recovery from customers.

Substance of proposed rule: By letter dated September 4, 2003, United Water New Rochelle Inc. notified the Commission that effective July 1, 2003 the New York City Water Board increased its water cost to customers outside the city to $542.36 per million gallons from $485.71 per million gallons. The company indicates that the amount of its deferral request is estimated to be in excess of $500,000 based on projected sales from July 1, 2003 through December 31, 2003, a lost and unaccounted for water factor of 18%. The actual cost of the deferral will be recorded by the company when actual sales for the period ending December 31, 2003 become known. The Commission may approve, modify, or reject, in whole or in part the request of United Water New Rochelle Inc.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-W-1260SA1)

State University of New York

NOTICE OF ADOPTION

Tuition and Fees Schedule

I.D. No. SUN-30-03-00002-A
Filing No. 1068
Filing date: Sept. 23, 2003
Effective date: Oct. 8, 2003

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

Action taken: Amendment of section 302.1(b)-(i) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: State University of New York tuition and fees schedule.

Purpose: To increase tuition for students enrolled in associate's, bachelor's and graduate degree programs and in the professional programs of pharmacy, law, medicine, dentistry, physical therapy and optometry and create a new graduate tuition category for the master of business administration degree.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. SUN-30-03-00002-EP, Issue of July 30, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Brian Stenson, Vice Chancellor for Finance and Business, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5175, e-mail: stensonb@sysadm.suny.edu

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

EMERGENCY RULE MAKING

Temporary Shelter Supplements

I.D. No. TDA-24-03-00001-E
Filing No. 1066
Filing date: Sept. 17, 2003
Effective date: Sept. 17, 2003

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

Action taken: Addition of section 370.10 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 158, 350(2) and art. 5, title 10; and L. 2001, 2002 and 2003, ch. 53

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

Specific reasons underlying the finding of necessity: To ensure that persons who are no longer eligible for family assistance because of the 60-month time limit on receipt of such assistance but who are receiving safety net assistance and meet other eligibility requirements can pay their rent and avoid eviction.

Subject: Temporary shelter supplements.

Purpose: To provide temporary shelter supplements to certain persons who are no longer eligible for family assistance because of the time limit on receipt of such assistance.

Text of emergency rule: Section 370.10 is added to read as follows:

370.10(a) Scope.

This section governs the provision of supplements known as Temporary Shelter Supplements (TSS). Such supplements may be provided to recipients of Safety Net Assistance (SNA) who would otherwise be eligible for Family Assistance (FA) but for the time limits on receipt of such assistance and who meet the conditions set forth below. Such supplements are provided pursuant to an authorization and appropriation in the State budget. This section shall be effective only for so long as a specific appropriation in the State budget is made therefore.

370.10(b) Application of other regulations.

TSS is provided only to recipients of non-federally participating SNA program. TSS recipients are subject to all the regulations of this Title governing SNA unless otherwise specified in this section.

370.10(c) District responsibilities.

All social services districts authorized to provide a TSS benefit must:

(1) Upon this office's eligibility determination for a TSS benefit or the local districts determination of eligibility for such a benefit, if directed by this office to make such determination, provide such benefits to eligible individuals.

(2) Ensure that all SNA recipients in receipt of a TSS benefit comply with all training requirements and case management services.

(3) Periodically report to this office on the recipients of TSS at such times and in such manner as this office may direct.

370.10(d) Eligibility requirements for applicants who are not receiving a supplemental shelter allowance when they apply for TSS.

(1) Applicants for TSS who were not receiving a supplemental shelter allowance must apply for TSS on a form prescribed by this office.

(2) To be eligible for TSS, there must be a court proceeding concerning the nonpayment of rent, maintenance or mortgage where the applicant resides. The application shall include documentation demonstrating that the case is on file with a court including the caption, index number and an official court stamp or signature.

(3) The applicant must reside in a social services district in which a lawsuit challenging the adequacy of the shelter allowance maxima in the FA program was commenced prior to December 1, 2001 and preliminary relief has been ordered.

(4) Receipt of TSS must enable the applicant to remain in his or her housing. The district may pay up to $3,000 or six times the monthly rental obligation in full satisfaction of tenant liability for rent arrears, whichever is higher, in accordance with paragraph (4) of subdivision (f) of this section. This office may require the applicant to move to a similar priced apartment in lieu of paying arrears.

370.10(e) Eligibility requirements for all applicants for TSS, including persons receiving a supplemental shelter allowance when they apply for TSS.

(1) All individuals requesting a TSS benefit must be eligible for SNA, have exhausted their FA eligibility as a result of the 60 month time limitation and be eligible for FA except for the application of the time limits.

(2) The TSS benefit must not exceed the amounts established in subdivision (f) of this section.

(3) The public assistance recipient must be the tenant of record and have a lease for the housing or obtain an agreement in writing to stay for at least one year if the tenancy is not covered by rent regulation.

(4) In addition, the following case circumstances must be met in order to receive a TSS benefit:

(i) No one in the public assistance case can be sanctioned.

(ii) The public assistance household must contain a child under the age of 18 or under the age of 19 and a full-time student.

(iii) The household cannot have willfully lost section 8 assistance provided by the federal Department of Housing and Urban Development, without good cause, within the past two years.

(iv) The household must apply for section 8 assistance, if permitted to do so, and take the benefit, if offered.

(v) The household must verify household composition and rent must be paid by non public assistance (NPA) household members as described below.

(vi) Any changes that affect eligibility must be reported to this office, if acting on behalf of the local district, and the district within 10 days of the change. Failure to report any change may result in permanent discontinuance of TSS benefits.

(5) NPA household members, including persons not eligible for public assistance due to their immigration status and recipients of supplemental security income (SSI) or foster care, must agree to contribute either their pro rata share of the rent or 30 percent of their gross income to the rent, whichever is less. In addition:

(i) The NPA's income must be verified.

(ii) If the NPA claims to have no income, the person must apply for public assistance before the additional allowance can be authorized.

(iii) Persons reported as not eligible for public assistance due to their immigration status, who are without income will not be expected to contribute toward their rent or be included in the shelter number.

370.10(f) Needs and allowances.

(1) TSS allowance. The amount of the TSS benefit will be established by this office. The maximum benefit an SNA household may receive is equal to the amount which was or would have been previously authorized for that household size by a court ordered supplement under FA. SNA households that were not in receipt of a court ordered supplement prior to their receiving SNA assistance, may receive an allowance equal to the difference between the shelter allowance determined in accordance with section 352.3 of this Title and the actual rental obligation; provided however, that the TSS allowance must not exceed an amount equal to the shelter allowance maximum or an amount, when combined with the allowable shelter allowance, is equal to the following rent table, whichever is greater:

By family size

1	2	3	4	5	6	7	8+
$450	$550	$650	$700	$725	$750	$775	$800

(2) TSS benefit increase limitations. Once TSS benefits have been authorized for a household, the TSS benefit amount may increase for that household up to the maximum established in paragraph (1) of this subdivision, provided that the increase is documented in the recipient's lease or rental agreement.

(3) TSS rental amounts. The temporary assistance household's rental obligation may exceed the amount authorized under paragraphs (1) and (2) of this subdivision by up to one hundred dollars. The household is responsible for this excess amount and must agree to have this amount restricted from their regular public assistance benefit authorized under section 352.2 of this Title.

(4) Arrears payments. Rent arrears may be authorized as part of the TSS request. Arrears payments for rent cannot exceed the higher of $3,000 or six times the monthly rental obligation. Under extenuating circumstances (e.g. need to keep current housing for medical reasons), and subject to approval by this office, an arrears amount can be authorized for a higher amount not to exceed 10 times the monthly rental obligation. Once arrears payments are made for the household under this section, no future rental arrears payments will be made for any month in which a TSS benefit was authorized for household or for any month in which the case was sanctioned.

370.10(g) Budgeting.

The following general provisions apply:

(1) A recipient is no longer eligible for a TSS benefit once he or she has lost eligibility for public assistance.

(2) The undue hardship reduction procedures found in section 352.31(d)(2) of this Title do not apply in relationship to TSS benefits.

(3) As a condition for receiving a TSS benefit, recipients must agree to have their entire rent paid directly to the landlord.

(4) TSS is not part of the standard of need for determining eligibility for public assistance. Eligibility shall be determined without regard to TSS.

370.10(h) Notice and procedural rights.

To the extent not inconsistent with this section, desk reviews of case discrepancies will forgo the procedures in Part 358 of this Title.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. TDA-24-03-00001-EP, Issue of June 18, 2003. The emergency rule will expire November 15, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). Chapter 436 transferred the functions of the former Department of Social Services concerning financial support services to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 158 of the SL contains the eligibility requirements for the Safety Net Assistance (SNA) program.

Title 10 of Article 5 of the SSL authorizes the Family Assistance program (FA) which provides allowances for the benefit of children who are financially needy for their support, maintenance and needs.

Section 350(2) of the SSL provides that FA shall not be granted to any family which includes an adult who has received FA or any other form of assistance funded under the Federal Temporary Assistance to Needy Families Block Grant program for a cumulative period of longer than 60 months.

Chapter 53 of the Laws of 2001, Chapter 53 of the Laws of 2002 and Chapter 53 of the Laws of 2003 (the State Operations and Aid to Localities Budget) appropriated funds to be used to reimburse one-half of the non-federal share of the cost of the rent supplement authorized by this regulatory amendment.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that people who are unable to provide for themselves can, whenever possible, be restored to a condition of self-support.

3. Needs and Benefits:

The proposed amendments authorize the payment of a rent supplement to cases that include a child in receipt of SNA when such supplement is necessary to prevent eviction and when such cases were in receipt of such supplement as FA recipients pursuant to a decision of the Commissioner of OTDA as determined necessary to address litigation or pursuant to a court order pending final adjudication of litigation and transferred to SNA or when such case would have met the eligibility criteria for such supplement except for FA ineligibility.

In *Jiggetts* v. *Grinker*, a case commenced in 1987, plaintiffs were recipients of Aid to Dependent Children (ADC) residing in New York City whose actual rent exceeded the agency shelter allowance maxima and who were facing eviction for non-payment of their rent. The plaintiffs alleged that the shelter allowance provided to ADC recipients was inadequate to maintain their housing and therefore violated section 350 of the Social Services Law. Similar cases were brought and are still pending in three other counties. In each of the cases, either by court order or by an informal intervention process , families receiving ADC who have alleged similar claims to the plaintiff have received rent supplements to prevent eviction while the court cases pended.

In 1997, the ADC program was abolished in New York and a successor program, the FA program, was established. The FA program contains a 60 month limitation on receipt of assistance (See section 350 of the Social Services Law). Beginning on December 1, 2001, the first cohort of families reached the 60 month limit. Such families can transition to the SNA program if they apply. However, section 350 of the Social Services Law, which is the linchpin of the *Jiggetts* case, does not apply to families receiving SNA. See *Deleo* v. *Kaladjian* 215 A.D.2d 520 (1995) and *Gautam* v. *Perales* 179 A. D. 2d 509 (1992). Therefore, such families would no longer be eligible for the preliminary relief being provided in the various cases.

To ease the transition from FA to SNA, the Legislature, in Chapter 53 of the Laws of 2001, appropriated funds to reimburse one-half of the cost of a rent supplement to be provided to families formerly receiving preliminary relief in the various shelter allowance cases or who might be eligible for such relief but for the time limits. In order to receive the shelter supplement, a person must be in receipt of SNA, have exhausted their FA eligibility as a result of the 60-month time limit or receipt of such assistance and be eligible for FA except for the application of the time limit. Because the allowance is a creature of the appropriation language and is not a special needs allowance in the SNA program, it does not increase the standard of need or standard of payment for that program. Funds also were appropriated in the recently passed 2003-04 State Operations and Aid to Localities Budget to continue the rent supplement program.

4. Costs:

Assuming that 6,855 cases reach the 60-month limit in December 2001, with additional cases reaching the limit in each month thereafter, and factoring in a 10 percent caseload decrease due to restrictions on the payments and attrition, it is estimated that the cumulative costs to be as follows, based on a benefit level of $280 per month in New York City and $377 per month in the rest of the State:

Cumulative Cost (millions)	Gross	Federal	State	Local
State Fiscal Year 2001-02	$8.337	$0	$4.168	$4.168
State Fiscal Year 2002-03	$32.270	$0	$16.135	$16.135

It is important to note that any additional State and local expenditures would count toward meeting the State's federal maintenance of effort requirement.

5. Local Government Mandates:

When requested by this Office, social services districts would be required to determine whether persons are eligible for a temporary shelter supplement.

6. Paperwork:

A new form would be developed by this Office that would be used when a person applies for a temporary shelter supplement.

7. Duplication:

The proposed regulatory amendments do not duplicate any existing State or federal requirements.

8. Alternatives:

This Office is required to establish a rent supplement program as described in Chapter 53 of the Laws of 2001, Chapter 53 of the Laws of 2002 and Chapter 53 of the Laws of 2003. These regulations comply with the requirements of those chapter laws and reflect this Office s experience and the experience of social services districts in operating informal intervention programs.

9. Federal Standards:

There are no Federal standards concerning temporary shelter supplements.

10. Compliance Schedule:

Social services districts would be required to begin complying with the requirements of these regulatory amendments when they become effective.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulations will not affect small business but will have an impact on the 58 social services districts in the State.

2. Compliance requirements:

Social services districts would be required to determine eligibility for temporary shelter supplement benefits when directed to do so by the Office of Temporary and Disability Assistance.

3. Professional services:

No new professional services will be required for social services districts to comply with the proposed regulations.

4. Compliance costs:

The proposed regulations will not require the social services districts to incur any initial capital costs. It is estimated that local costs of the regulations for State Fiscal Year 2001-02 will be $4,168,000; for State Fiscal year 2002-03, the local costs will be $16,135,000.

5. Economic and technological feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed regulations.

6. Minimizing adverse impact:

The proposed regulations will not have an adverse economic impact on social services districts.

7. Small business and local government participation:

Staff of the Office of Temporary and Disability Assistance have informed social services districts in New York City, Nassau County, Suffolk County and Westchester County about the proposed amendments since those are the only districts that will be affected by the amendments. Those districts were invited to submit comments on the amendments.

Rural Area Flexibility Analysis

A rural area flexibility analysis statement has not been prepared for the regulations establishing a temporary shelter supplement since only those social services districts in New York City, Nassau County, Suffolk County and Westchester County will be affected by the regulations.

Job Impact Statement

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

Assessment of Public Comment

During the public comment period for the proposed regulations concerning temporary shelter supplements (TSS), the Office of Temporary and Disability Assistance received comments from one social services district and a State agency. No changes have been made to the proposed amendments as a result of the comments.

Comment:

The social services district asked that 18 NYCRR 370.10(f)(4) be revised to allow for multiple shelter arrears payments when there are extenuating circumstances. The current regulation only allows arrears payments to be made once while the applicant/recipient is in receipt of a TSS.

Response:

This Office disagrees with this comment and no change is being made to the regulation. Under the TSS program, there is a requirement to have shelter payments vendor restricted, that is, have the rental payment paid directly to the landlord. Therefore, any arrears accumulated while on TSS would be the sole responsibility of the person receiving the TSS payment and would not warrant an additional arrears payment.

Comment:

The State agency asked that 18 NYCRR 370.10(g) be revised to include a statement that would make clients ineligible for TSS benefits if they are sanctioned for failing to comply with any public assistance program requirement.

Response:

This Office agrees with this comment. However, this is already a requirement for TSS benefits as set forth in 18 NYCRR 370.10(e)(4). Therefore, no change to the regulation is necessary.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residency Requirements for Public Assistance Recipients

I.D. No. TDA-40-03-00005-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 sections 311.1(a) and 352.29(i) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f)

Subject: Residency requirements for public assistance recipients.

Purpose: To repeal regulations that are inconsistent with a Supreme Court decision holding that residency requirements for public assistance recipients are unconstitutional.

Text of proposed rule: Sections 311.1(a) and 352.29(i) are repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

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.

Consensus Rule Making Determination

The Office of Temporary and Disability Assistance is proposing to repeal 18 NYCRR 311.1(a) and 352.29(i).

Section 153 of Chapter 81 of the Laws of 1995 added paragraph (d) to section 131-a (3) of the Social Services Law to limit the amount of public assistance that could be granted to any person during the first six months that the person resides in this State to the amount the person would have received in his or her prior place of residence. As a result of this provision, the Office of Temporary and Disability Assistance promulgated amendments to 18 NYCRR 311.1(a) and added section 352.29(i) to 18 NYCRR. Those sections contain provisions concerning eligibility for public assistance of persons who move to this State from another state.

In 1996, the Supreme Court in Monroe County held in Brown v. Wing, 649 N.Y.S.2d 988, that section 131-a (3)(d) of the Social Services Law violated Article 17 of New York's Constitution because the statute classified welfare recipients by standards other than need and it impermissibly infringed upon the right to migrate as protected by the United States Constitution. This decision is similar to one issued by the same court in 1994 (*Aumick, et al.* v. *Bane,* 766 N.Y.S. 2d 766) that found that section 158(f) of the Social Services Law, which imposed durational residency requirements, resulting in reduced home relief benefits for those individuals who have been residents for six months or less and have come from states without comparable public assistance benefits, was unconstitutional.

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA [P.L. 104-193]) was enacted. Section 404(c) of that Act provides that a state operating a program funded under this part may apply to a family the rules (including benefit amounts) of another state's program funded under the Act if the family has moved to the state

from the other state and has resided in the state for less than 12 months. As a result of the Federal authority, this State, as part of the Welfare Reform Act of 1997 (Chapter 436 of the Laws of 1997), repealed section 131-a (3)(d) of the Social Services Law and added subdivision 3 to section 117 of the Social Services Law. That subdivision contains residency requirements for receipt of public assistance. Because of the decision in Brown v. Wing, this Office did not amend 18 NYCRR 311.1(a) and 352.29(i) to reflect the new provisions of the Federal and State welfare reform acts.

After the enactment of the PRWORA, California indicated that it would begin to enforce a state statute that limited new residents, for the first year they live in the state, to the benefits they would have received in the state of their prior residence. Prior to implementation of the statute, a class action suit was filed challenging the constitutionality of the durational residency requirement and PRWORA's approval of that requirement. The Supreme Court, in *Saenz* v. *Roe*, 119 S. Ct. 1518 (1999), held that California's statute violated the right of newly arrived citizens to the same privileges and immunities enjoyed by other citizens of the same state and that the provisions of PRWORA could not make the state statute constitutional.

As a result of the decisions in *Brown* v. *Wing* and *Saenz* v. *Roe*, the Office's regulations concerning residency requirements for public assistance recipients are unenforceable. Therefore, the provisions should be repealed. It is expected that no person will object to the repeal of the two sections since the regulatory provisions are no longer applicable to any person and the repeal will be non-controversial.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulations. It is evident from the subject matter of the regulations that the job of the worker making the decisions required by the proposed regulations will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Transportation Safety Board

I.D. No. TRN-40-03-00004-P

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

Proposed action: Amendment of sections 990.1-990.14; addition of sections 990.16-990.20; and repeal of Appendixes B-19 and B-22 of Title 17 NYCRR.

Statutory authority: Transportation Law, section 17-b and art. 9-B

Subject: Public Transportation Safety Board.

Purpose: To provide consistency with the standards and requirements of the Code of Federal Regulations that have been incorporated by reference and clarify the procedures of the Public Transportation Safety Board to better preserve public safety.

Substance of proposed rule: Because of the length of these changes, the State Public Transportation Safety Board ("Safety Board") is submitting this summary of the changes for publication in the *State Register* rather than the full text.

Current regulations for public transportation systems and services under Safety Board jurisdiction are quite detailed in developing and documenting acceptable safety policies, procedures, practices and future strategies. In addition, current Safety Board procedures are somewhat unclear and unwieldy, but some systems do not yet possess or have direct access to the necessary safety expertise to ensure public safety . Furthermore, the existing Safety Board requirements do not specifically include long standing practices followed by rail carriers under Safety Board jurisdiction, although such practices have been considered to be acceptable by the Safety Board and now are required by the incorporation of 49 CFR Part 659.

In order to more effectively promote the safety of the public, the proposed revisions are intended to modernize, streamline and clarify the Safety Board's requirements and make them consistent with new federal regulations.

The proposed revisions provide for the following:

1. Clarify and update definitions to better describe the properties under the jurisdiction of the Safety Board and the required procedures of the Safety Board.

2. Streamline and make more consistent the accident and safety incident notification and investigation procedures among the various public transportation modes.

3. Clarify and update the Safety Board's System Safety Program Plan requirements and add proactive safety provisions for bus preventative maintenance cycles, preventability (consistent with national industry standards), designated staff at properties certified in safety accident investigation, federal safety-related waivers and exemptions, and safety-sensitive positions.

4. Incorporate by reference the Safety Board's System Safety Program Plan Guidelines.

5. Incorporate by reference 49 CFR Part 659 for State Safety Oversight of Rail Fixed Guideway Systems, as issued by the Federal Transit Administration.

6. Detail Safety Board procedures regarding the development of recommendations to the public transportation systems and services.

7. Revise the rail and bus operator accident report forms.

Text of proposed rule and any required statements and analyses may be obtained from: Dennison P. Cottrell, Department of Transportation, Bldg. 7A, Rm. 400, 1220 Washington Ave., Albany, NY 12232-0881, (518) 457-6512, e-mail: dcottrell@dot.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

The statutory authority for the State Public Transportation Safety Board ("Safety Board") to promulgate these rules is found in the Transportation Law. ("TL").

TL Article 9-B established the Safety Board as an independent investigative and advisory body to examine the causes of accidents on public transportation and make recommendations in order to prevent the occurrence of further accidents and thereby promote the safety to the public.

Article 9-B, Section 217 generally sets forth the Safety Board's powers and duties. Subdivision (4) of Section 217 specifically authorizes the Safety Board to promulgate rules and regulations necessary to carry out the provisions and purposes of Article 9-B and to enforce any standards established thereunder.

TL 17-b, specifically, § 17-b(2) and (3) gives the Safety Board the authority, along with the Commissioner of Transportation, to determine whether public transportation plans or amendments to said safety plan filed by transportation authorities and public transportation operators or carriers receiving mass transportation operating assistance, are satisfactory and feasible and, therefore, provides the basis for the proposed rules detailing the requirements necessary for a plan to be deemed satisfactory and feasible.

2. Legislative Objectives:

The proposed amendments to the regulations follow the legislative intent by revising the existing Safety Board regulations to reflect recently enacted Federal regulations regarding rail fixed guideway systems, as well as to better fulfill the Safety Board's responsibility for the investigation of all accidents involving public transit, by computer rail, subway and bus lines under Safety Board jurisdiction and to better fulfill the Safety Board's responsibility for making recommendations to such public transit operators to prevent accidents.

3. Needs and Benefits:

a. The proposed amendments further the intent and purposes of Section 17-b and Article 9-B of the Transportation Law. These changes reflect a need to better promote the safety of the public by improved investigative and preventative requirements regarding accidents.

Specifically, these proposed changes are based on the following objectives:

(i) Simplify the Board's operating procedures to streamline the accident notification and investigation process; make it consistent across modes; facilitate communication and sharing of information between PTSB staff and transit properties; and, accelerate the offering of recommendations when appropriate.

The existing duties and powers of the board need to be revised to more accurately reflect the administrative processes of the board such as meet-

ing times, staff delegations of functions, and making findings and recommendations. Such duties and powers also need to reflect the oversight functions of the board for the new rail fixed guideway requirements.

Prompt notification by companies to the PTSB will result in faster responses to accidents by PTSB investigators who often have to travel far distances to remote accident locations. Those investigators can then conduct a substantial portion of their accident investigation at the accident scene (or an immediate followup), collect data and review evidence at the scene prior to the roads being opened up to traffic when data or possibly evidence could be lost or altered forever (vehicle being towed away), and work with police and transit officials at the scene. Communications can then be improved because the companies would be working with the various investigative entities in a more coordinated way.

Furthermore, the companies would spend less time, after the accident site is finally cleared, trying to find data and evidence and having their employees interviewed by PTSB staff. In addition, the clarified investigation provisions would avoid confusion or inconsistent compliance with requirements such as the notification provisions for rail accidents which provide for very limited and specified exceptions.

We have brought consistency to as many pieces of what are two distinct operations - bus versus rail - as best we can. Our proposed regulations will provide for bus and rail accident consistency regarding the time frame to report all such accidents (now 90 minutes) and the phone numbers used to report all such accidents. However, the accident criteria in the PTSB regulations involving numbers of injuries or type of event is tailored to the differences between bus and rail operations and their respective accident statistics. Both bus and rail criteria obviously require an investigation of fatal accidents. However, regarding bus accident injuries, the number of five or more is used 1) to stratify the more severe bus accidents on the bell curve and 2) respond directly to those bus accidents that occur with an estimated frequency that could be properly investigated given the available resources of the PTSB staff. Currently PTSB bus investigators work an estimated 70-80% of their time on PTSB criteria bus accidents reported from over 135 different bus companies, with their remaining work hours spent on SSPP and on-site reviews. A substantial change in the bus criteria would have a direct effect on the ability of the staff to respond directly to an undisturbed crash site and overall to be able to process cases in a timely manner.

Alternatively, derailments and debris strikes are rail specific. Furthermore, regarding rail accident injuries, the number two is used as a result of an analysis of hundreds of accident records and determined to be the optimum number of injuries generally associated with rail type accidents that needed to be captured.

PTSB properties recognize the obvious differences between bus and rail types of accidents whereby injuries and fatalities generally occur in smaller numbers during rail accidents than in bus accidents, except for the catastrophic rail accidents which sometimes occur.

(ii) Adjust Board procedures in order to comply with Federal Transit Administration requirements (49 CFR Part 659) for State Safety Oversight of Rail Fixed Guideway Systems.

In accordance with Section 659.21 of Title 49 of the Code of Federal Regulations, the PTSB is the oversight agency authorized to implement the requirements of Part 659 of those federal regulations. Compliance with the provisions of Part 659 is necessary to avoid the loss of millions of dollars of federal funding. The Federal Transit Administration has no role under the provisions of 49 CFR Section 659.21.

(iii) Modernize and clarify the Board's system safety plan requirements to focus attention on and reflect the need for transit properties to establish preventive maintenance procedures that are consistent with industry practices and manufacturer's recommendations; and , to encourage transit properties to establish their own in-house accident investigation and analysis procedures, including the rating of accidents according to their preventability consistent with national Safety Counsel and PTSB guidelines.

The PTSB is responsible for carrying out various efforts that will help to prevent the occurrence of future accidents. Therefore, each system safety program plan has had to include a process for the determination of preventability. The PTSB has supported this with the development of free training classes explaining the process of "determining preventability". Proper accident investigation determines how an accident occurred and thus is a necessary tool in the determination of an accident's preventability. Free Bus Accident Investigation Training for Identifying Safety Hazards (BAITFISH) training classes include not only the "how to" but also examples of best practices of other established accident investigation programs. As far as related costs are concerned, if smaller systems known as Rural Transportation Assistance Programs (RTAP) attend the free classes, they are reimbursed with State and Federal funds for all travel and lodging associated with this effort. Roughly 72 of the 135 PTSB properties have had their staff take one or more of the BAITFISH classes. The development of in-house investigation procedures is based on the belief that once a property utilizes training such as BAITFISH , the property will upgrade its institutional/staff knowledge and existing policies as a matter of course.

Under the proposed Section 990.12(e), bus preventative maintenance cycles need to be explicitly stated in a company's system safety program plan to be approved by the PTSB and maintenance of the buses shall be scheduled accordingly. "Preventative maintenance" is accomplished through these provisions because companies are then required to perform vehicle maintenance at regular intervals. Mechanical problems would then be found at those regular vehicle maintenance examinations in the controlled setting of a company's maintenance facility instead of on the road in an accident situation. Furthermore, PTSB staff would review the company's preventative maintenance records and see if the company's employees were complying with the company's own preventative maintenance procedures in its system safety program plan.

b. Furthermore, in order to produce more thorough investigations and thereby more effectively prevent future accidents, existing regulations need to be revised in order to overcome certain problems.

i. Companies frequently provided late notice of accidents which delayed PTSB investigators' responses and at times caused the removal of crucial evidence and or disturbance of the accident site. Thus the notification provisions had to be strengthened and clarified for efficient and effective accident investigations.

ii. Companies frequently did not adhere to their own industry accepted accident prevention techniques and standards and thus such industry accepted techniques and standards are being incorporated into the PTSB regulations to require consistent compliance.

4. Costs:

Safety Board investigations are provided at no cost to the public transit carriers under the Safety Board's jurisdiction and therefore the changes to the Safety Board's investigative procedures also should not result in any costs to such carriers. Moreover, the other proposed changes will result in either no costs or negligible costs to these public transit carriers.

Over the past several years the PTSB bus staff has been providing BAITFISH training classes in bus accident investigation. There is no charge to attend the classes which are held at locations throughout the State, given in one day sessions and fulfill the system safety program plan requirement regarding having at least one staff person certified in a comprehensive accident investigation training program approved by the Safety Board. We are currently working to train 12 in-state bus industry representatives to provide the BAITFISH training program on an ongoing basis throughout New York State starting in the early part of 2003.

We also recognize that many other courses exist that are acceptable options for bus companies to send their staff to be trained. For example, the Transportation Safety Institute (TSI) sponsored by the FTA provides very low cost tuition classes specifically on transportation safety issues. These classes would be approved as a comprehensive accident training program. Our list would include this program, however it would be the bus company's responsibility to provide the cost of traveling to the TSI classes. Other programs also exist such as the accident investigation series from the Institute of Police Technology and Management. Although Institute of Police Technology and Management Program costs are about $800 per student, per class, its program would also be approved (in fact its program instruction is well above the technical level of the baseline that we would list as an approved training program) and travel would still be the responsibility of the bus company.

The proposed provisions regarding rail fixed guideway systems which incorporate 49 CFR Part 659 merely formalize long standing practices that have been utilized by rail carriers under Safety Board Jurisdiction and deemed acceptable by the Safety Board.

49 CFR 659.45 requires rail fixed guideway systems to submit annual reports. The cost is virtually non-existent since much of the same information is and has been for some time, been submitted to the PTSB on a yearly basis with regards to updating their System Safety Program Plans. As noted above, this is a requirement for the FTA which piggybacks information PTSB has collected for years. There is nothing new here, just another reporting mechanism. Basically, the same is true for corrective action plans for unacceptable hazardous conditions (UHC's). UHC's are reported as they develop and are detected. The number of actual reports of UHC's has been very, very small and being so, not costly at all. Both FTA regulated properties, New York City Transit and Niagara Falls Transit

Authority, have been doing similar functions as part of their safety programs since 1984 and nothing new has surfaced.

The proposed changes can produce potential cost savings regarding bus accidents. According to data collected and analyzed by the Office of Data Analysis of the Federal Motor Carrier Safety Administration, transit/intercity bus crashes cost a total of approximately $978 million in 1997 incurred by bus drivers, other drivers involved either directly or indirectly in the crashes and the public in general. Since the New York State Public Transportation Safety Board has jurisdiction over approximately 19% of these bus services, the efforts of the PTSB, to a degree made more effective by the revisions to the PTSB regulations, to potentially reduce or prevent the number and severity of bus accidents can produce a maximum cost savings to drivers and the public of approximately $186 million. Further details on such cost data are available at http:www.fmcsa.dot.gov.

There should be a cost savings to the PTSB staff of approximately 10 percent based on saving 10 hours on a 40 hour investigation times $30.00/hr. times actual case experience (approximately 20 times a year) equals about 20 × 300 = $6,000.

If the company implements safety training and preventative maintenance inspections (PMI) and thereby avoids the occurrence of two accidents that meet PTSB criteria, then there are additional savings of about 40 × 30 ×2 = $2,400 + additional administrative costs (*i.e.* going to the PTSB staff supervisor and higher review up to and including the Public Transportation Safety Board and the Transit company's cost to be involved through the whole process).

5. Local Government Mandates:

None.

However, these regulations do apply to municipal operations as well as those of private companies. The enabling legislation directed that all transit operators receiving Operating Assistance from the state take the basic steps necessary to operate safely. That has been the case since the PTSB was created in 1984. These amendments of themselves should not impose any additional cost or burden on the operator, whether they be municipal or private. The end result should be fewer accidents and a reduced severity of those accidents that do occur, thus lower cost.

6. Paperwork:

The proposed regulations generally clarify and simplify various provisions including accident notification and investigation procedures and system safety program plans.

Furthermore, additional notice requirements for rail accidents can be fulfilled through the use of the carrier's existing forms that are merely forwarded to the Safety Board staff thereby avoiding additional paperwork and costs.

7. Duplication:

None.

8. Alternatives:

Alternatives to simplifying, clarifying and making the Safety Board Regulations more effective and consistent with federal regulations are: (1) risking public safety, or (2) risking the loss of millions of dollars of federal funding because the Federal Transit Administration requires compliance with 49 CFR Part 659 for the State to be eligible for rail transit funding that the State then distributes to carriers. These alternatives were not considered to be preferable over the recommended approach in the proposed regulations.

Moreover, the no action alternative to the current regulations was rejected because it would leave open the possibility of future incidents of lost data or evidence due to late notification by companies of accidents whereby vehicles or other evidence has been removed and the roadway opened up to traffic. Consequently, with such future incidents of late notice and lost information possibly occurring under the current regulations, the PTSB's investigative reports and recommendations will not be as thorough (as they would be under the proposed regulations) and will not be as instructive to the companies and the public in showing how such accidents were caused and could be prevented in the future.

Based on the PTSB staff's outreach efforts, major industry input was obtained which the PTSB staff evaluated in determining whether certain alternate provisions might be more reasonable and more effective for implementation of the PTSB's overall goal of safe transportation.

Time periods for telephone and written notice of bus and rail accidents were lengthened to 90 minutes for telephone notice and 48 hours for written notice. The outreach revealed that the previous shorter alternate language provisions would be difficult for carriers to comply with given the many complexities involved in accident situations.

The types of determinations for returning a formerly removed employee back to a safety-sensitive position required to be reported to the PTSB has been significantly reduced. This change would avoid an otherwise over-burdensome obligation given the very large numbers of determinations that would have been required to be generated under the previous alternate language.

9. Federal Standards:

At present, the only federal standards that deal with transit system safety are those of the Federal Transit Administration in 49 CFR 659 and these apply to Rail Fixed Guideway Systems (New York City Transit's Subway system and the Niagara Frontier Transportation Authority's Metro Rail) which we have incorporated by reference in the proposed regulations.

10. Compliance Schedule:

All proposed regulations, except those changes involving system safety program plans are effective upon publication in the *State Register.* Those proposed regulations involving system safety program plans in 17 NYCRR § 990.12 are effective 1 year after publication of the final rule in the *State Register* in order to permit public transit carriers under Safety Board jurisdiction and Safety Board staff sufficient time to adjust to those clarified and simplified requirements.

Regulatory Flexibility Analysis

1. Effect of Rule:

The Safety Board has jurisdiction over commuter rail, light rail, subway, rapid transit and bus carriers that receive Statewide mass transportation operating assistance. There are approximately 115 carriers providing public transportation under Safety Board jurisdiction in this State of which approximately 7 are public authorities, approximately 41 are county and municipal public bus operations, and approximately 67 are private bus carriers providing service under contract to municipalities. The clarification and simplification of the Safety Board regulations in 17 NYCRR Part 990 will especially benefit the smaller public transit bus carriers. Of the approximately 115 total public transit carriers under Safety Board jurisdiction, approximately two-thirds would be considered to be smaller public transit bus carriers and have fewer than 25 vehicles.

Each year the PTSB publishes an annual report summarizing accident statistics from over the past ten years. The most recent published report is for Calendar Year 2000 and indicates that there were a total of 79 bus accidents and 39 rail accidents that were reported and met the Board's criteria for investigation. Copies of the annual reports are available upon request.

The clarification and simplification of the Safety Board regulations into a more user friendly product will help to facilitate a better understanding of what the Safety Board requires of such carriers. In many cases, the proposed regulations merely formalize practices that various carriers have followed and have been approved by the Safety Board. As a result, carriers under Safety Board jurisdiction will be less dependent on Safety Board staff for consulting on acceptable practices and will be better able to develop future safety strategies and relate such strategies to the overall operations of the company.

2. Compliance Requirements:

The only significant changes involve the incorporation of the Rail Fixed Guideway Systems requirements consistent with federal regulations and only affect large rail carriers under Safety Board jurisdiction that are operated by state created public authorities. The remaining changes generally involve clarification and simplification of accident notifications, investigations, the recommendation process, system safety program plan requirements, and other Safety Board procedures and provisions.

3. Professional Services:

No additional or unique services are required.

4. Compliance Costs:

Since the proposed regulations implement statutory obligations and provide clarification and guidance, they should result in either no costs or negligible costs.

5. Economic and Technological Feasibility:

This proposed update does not add any increased requirements that would have a significant economic or technological impact.

6. Minimizing Adverse Impact:

These proposed amendments do not add any significant additional burden on small businesses and local governments. The only significant additional requirement that is being added is that each property have at least one person trained. Over the past several years the Department has developed a special safety training course specifically designed to meet the needs of smaller carriers. It has already been given to over 98 individuals from 78 transit properties. The cost is free. The proposed regulations will require all properties to have at least one person trained within two years and steps are underway to establish a network of trainers around the state to deliver the course.

The Safety Board intends to continue its practice of proactive training and encouragement of carriers under its jurisdiction in the field of transportation safety and therefore, will allow one year after publication of the final rule in the *State Register* for compliance with all changes involving system safety program plans. This will also ease any negligible effects on small businesses and the local governments that they service.

7. Small Business and Local Government Participation:

Safety Board staff generally meet with the staff of every carrier under its jurisdiction at least once every few years in addition to frequent telephone calls back and forth for guidance and clarification and appearances by certain of such carriers at regular Safety Board meetings. The Safety Board staff have utilized valuable information derived from their interactions with such carriers and incorporated such information, where appropriate, in the clarified and simplified changes to the Safety Board regulations. Therefore, there is not expected to be any adverse impact on small businesses. Furthermore, the revisions do not increase requirements or effects on local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because this proposed rule will not impose any adverse economic impact or reporting, record keeping, or other compliance requirements on public or private entities in rural areas. The New York State Public Transportation Safety Board, in consultation with the Federal Transit Administration, has considered the effects of the proposed revisions and has determined that the proposed regulatory revisions will not have any adverse impact on rural areas. The proposed revisions are consistent with the standards and requirements of the federal regulations that have been incorporated by reference in this proposed rule and preserve public safety to facilitate compliance and understanding.

Furthermore, these revisions provide for a uniform commitment to safety for bus and rail carriers overseen by the Safety Board and therefore, the proposed revisions will not adversely impact rural areas.

Moreover, measures have been taken to ensure that the proposed rule would have none or minimal adverse impacts on rural areas.

As noted previously the only significant additional requirement established in this regulation is that properties have at least one employee appropriately trained. Before entertaining the inclusion of such a requirement the Board and the Department designed and established a special training course specifically targeted to meet the needs of smaller rural operators. It has already been given to 98 individuals from 78 properties and a team of 10 experienced transit safety professionals from around the state is being assembled to continue delivering this course upon request at no cost to the properties.

Job Impact Statement

A job impact statement is not submitted because this proposed rule, by its nature, will not have a substantial adverse impact on jobs and employment opportunities. The proposed revisions are consistent with the standards and requirements of the federal regulations that have been incorporated by reference in this proposed rule and clarify the procedures of the New York State Public Transportation Safety Board to better preserve public safety. Consequently, the proposed revisions will have either a positive impact or no impact on jobs and employment opportunities.