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.

Office of Children and Family Services

NOTICE OF ADOPTION

Subsidized Child Care Services

I.D. No. CFS-21-03-00011-A
Filing No. 207
Filing date: Feb. 13, 2004
Effective date: May 15, 2004

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

Action taken: Amendment of Part 415, Subparts 358-2, 358-3 and sections 403.1, 404.1, 404.5, 404.6, 404.8, 405.1, 405.2, 405.3 and 628.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 410(1) and 410-u through 410-z

Subject: Subsidized child care services.

Purpose: To establish standards for the provision of subsidized child care services by social services districts.

Substance of final rule: The regulations revise Part 415 of Title 18 NYCRR to implement Title 5-C of the Social Services Law (SSL), which created the New York State Child Care Block Grant (NYSCCBG). The NYSCCBG is comprised of all the federal funds appropriated for child care under Title IV-A of the federal Social Security Act and under the federal Child Care and Development Fund and any additional funds transferred by the State from the federal Temporary Assistance to Needy Families block grant plus any state funds appropriated for child care assistance. The regulations also implement the federal statutory and regulatory requirements that govern the federal funds included in the NYSCCBG. In addition, the regulations set forth the requirements for the provision of child care services under the Title XX Social Services Block Grant program as well as child care services provided as preventive or as child protective services under certain circumstances. Conforming changes are made to other parts of Title 18 NYCRR.

The following changes are made to Part 415:

Section 415.0 regarding the applicability of the Part is unchanged.

Section 415.1, which sets forth the definitions for the Part, is reordered in a more logical sequence, certain definitions are clarified and obsolete provisions are deleted. A new definition of a Child Care Service Unit (CCSU) replaces the definition of the Services Family Unit (SFU) for child care subsidy purposes. The CCSU will be the basis upon which a district will determine which household and/or family members should be counted in determining family size and countable family income. Creation of the CCSU puts unmarried couples living together and all of their children in the same service unit if they have a child in common. The definition of an "adult" is revised to provide districts with more flexibility in determining when 18, 19 or 20 year olds living at home should be included in the CCSU. New definitions of "engaged in work" and "seeking employment" are added to clarify under what circumstances certain families are eligible for child care services.

A new section 415.2, entitled "Eligibility, guarantees, and priorities for child care", replaces former sections 415.2 regarding programmatic eligibility and 415.3 regarding financial eligibility. Sections 415.7, 415.8, 415.10 and 415.11 of the current regulations, which governed eligibility for the Transitional Child Care, Employment and JOBS-related Child Care, At-Risk Low Income Child Care, and Child Care and Development Block Grant programs are replaced with a new section 415.2(a), regarding the NYSCCBG. This section eliminates the separate programmatic requirements that existed across the five former child care programs. Eligible families are divided into three broad categories: families that must be guaranteed child care; families that are eligible as long as funds are available; and families that are eligible if funds are available and the district has opted to serve such families as indicated in the child care section of its Consolidated Services Plan (CSP) or Integrated County Plan (ICP). Section 415.2 also sets forth the eligibility criteria for child care services provided under the Title XX Social Services Block Grant.

The language in this section provides social services districts with much greater flexibility in determining which families are eligible for subsidies and which families will receive priority for funding. It also allows districts to set aside funds to serve one or more priority populations. Provisions are included regarding establishing waiting lists, denial of services and case closings. Districts are required to ensure that families have equitable access to child care subsidies.

The new section 415.3 consolidates into one section all of the existing responsibilities of the caretaker of a child who is receiving subsidized child care services. These requirements include providing the social services district with information that might impact on the family's eligibility for child care subsidies, notifying the district of any changes in the family's circumstances, locating child care providers, and contributing a family share toward the costs of child care. It also adds a significant new requirement that the caretaker in a low-income family that is not receiving public assistance must pursue child support as a condition of eligibility for a child care subsidy. This requirement currently applies only to those families

receiving subsidized child care services that are also receiving or transitioning off of public assistance.

The new section 415.4 consolidates into one section all of the social services districts' existing administrative, programmatic and monitoring responsibilities regarding the provision of child care services. Included in the section are provisions regarding required district activities relating to determining initial and continuing eligibility, notices to applicants and recipients of their rights and responsibilities, due process for families, enrolling legally-exempt child care providers for payment purposes, recouping overpayments to families and recordkeeping and reporting.

A new requirement is added that precludes social services districts from requiring families who are in receipt of a child care subsidy and who are transitioning from public assistance from having to complete a new application for child care services solely because the families' public assistance cases are closing. Another new requirement adds two additional attestation requirements for legally-exempt child care providers. Those providers now will have to attest to whether they have been denied a license or registration to operate a day care program or had such license or registration suspended or revoked. They also will be required to attest to whether they have had their parental rights terminated or had their own children removed from their care based on an Article 10 proceeding under the Family Court Act. Social services districts and caretakers will have to determine whether to enroll a provider with a history of one of these types of situations on a case-by-case basis. New provisions also are included in this section that strengthen the ability of social services districts to recover overpayments from families by making the rules for all families consistent with the rules that had governed child care overpayments for public assistance recipients and for families transitioning off of public assistance.

Section 415.5 of the regulations clarifies the existing methods social services districts may use to make child care payments. Districts must include at least one method of payment under the NYSCCBG that enables payments to be made for child care arranged directly by the families. Obsolete references to the child care earned income disregard and supplements thereto are eliminated.

Section 415.6 sets forth the existing general requirements for State reimbursement to social services districts for child care payments to providers including provisions requiring that payments be made at the actual cost of care up to the applicable market rate. Districts are precluded from making payments for child care services provided by the child's caretaker, another person legally responsible for the child, or by any other member of the family's services unit except the child's siblings. The section also is revised to eliminate obsolete paragraphs. The regulations expand when districts may pay providers of child care services on days that the child is absent from care. The requirement that districts have a contract with a provider in order to pay for children's absences is eliminated. A new provision is added which permits social services districts to pay for up to five additional days per year for program closures due to holidays, extreme weather, or emergencies.

Section 415.7 adds additional requirements governing reimbursement to social services districts under the NYSCCBG program. NYSCCBG funds are available to reimburse social services districts for 75% of the costs of child care services for public assistance recipients and 100% of the costs for other low income families, up to each district's NYSCCBG allocation. Social services districts may spend no more than five percent of their NYSCCBG allocations on administrative activities. Administrative activities include providing information to the public about child care services, conducting public hearings, monitoring program activities, and goods and services required for administering including rental or purchase of equipment, utilities and office supplies. Districts may spend the remainder of their NYSCCBG allocations on other program activities including making eligibility determinations, participating in judicial hearings, monitoring compliance with any additional local child care requirements, training and establishing computerized child care information systems. In addition, each district is required to maintain the amount of local funds spent for child care services under the NYSCCBG at a level equal to or greater than the amount the district spent for certain child care services programs during Federal fiscal year 1995.

Section 415.8 regarding child care availability is unchanged.

Section 415.9 regarding child care market rates is revised to clarify that a social services district must pay the market rate where the child care is provided when the child is receiving child care in a different district from the district where the child resides.

Section 415.10 adds authority for social services districts to request a waiver of any regulatory provision that is non-statutory.

Section 415.11 sets forth the effective date of the regulations. The regulations are effective immediately except for the provisions related to the CCSU and the new child support requirements. Districts will have the option to implement these changes immediately once the regulations are adopted or districts may decide to implement these changes on a case-by-case basis as each individual's case comes up for recertification or when there is a change in case circumstances that requires a case action.

Revisions are made to Sections 358-2 and 358-3 of the regulations regarding Fair Hearings for recipients of assistance and services. Technical amendments are made to reflect the establishment of the NYSCCBG. The existing regulations also are amended to extend to all families that apply for or receive child care services the existing provisions that require timely and adequate notice of the denial of, or certain changes to, child care services and the ability to have aid continue until a fair hearing is held and the decision is rendered. These rights currently apply only to those families transitioning off of public assistance that apply for or are receiving child care services.

Various provisions in Part 403 are revised to conform the regulations regarding the mandated and optional provision of services by social services districts to the new requirements in section 415.2. In addition, several revisions are made to Part 404 regarding eligibility for services, Part 405 regarding the purchase of services, and section 628.3 regarding State reimbursement to make them consistent with the changes being made to Part 415.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 415.1(h), 415.3(f)(2), 415.4(f)(7)(iii), (iv) and (v), 415.4(l) and (i)(13), 415.5(a)(1)(i) and (ii), 415.7(f), (g) and (h).

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

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

Although non-substantive changes were made to the proposed regulations concerning subsidized child care, those changes do not require changes to the Regulatory Impact Statement or Summary, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement as originally published.

Assessment of Public Comment

The Office of Children and Family Services (Office) received written comments from 29 individuals or organizations regarding the proposed child care subsidy regulations. These 29 can be placed into the following general categories: 11 from local social services districts, 6 from child care providers or provider associations, 4 from child care coordinating councils, 4 from children or family advocacy groups, 2 from the general public, 1 from a domestic violence advocacy program, and 1 from the State Legislature. A summary of the comments and the responses from the Office are as follows:

18 NYCRR CITATIONS

415.1(a)

The Office received 7 comments that it should be a statewide rule not a district option to provide for 24-hour child care. The Office reviewed these comments. The Office believes that local districts are in the best position to determine local needs and how to serve their communities and, therefore, should be allowed flexibility in providing reimbursement for child care services. A statewide rule would amount to an unfunded mandate to pay for care in these areas and prevent needed local district flexibility. As such, there will be no change made to the regulations based on these comments.

415.1(a)

The Office received 1 comment that wanted clarification on the following items: providing 24 hour child care on a limited basis; situations in which there are breaks in activities for 2 weeks every month; recoupment of overpayment for temporary assistance recipients; and the actions that a local district can take without amending its Consolidated Services Plan regarding the enrollment of providers that have their licenses revoked. The Office reviewed this comment and the Office believes that clarification on these issues is best handled in a Local Commissioners Memorandum or other official release to local districts. There will be no change made to the regulations based on this comment.

415.1(h)

The Office received 1 comment suggesting that siblings in a public assistance case should be excluded from providing subsidized child care. The Office reviewed this comment and determined that the regulations prohibit siblings in the public assistance filing unit from providing child care. As such, there will be no change made to the regulations based on this comment.

415.1(l)

The Office received 8 comments that it should be a statewide rule, not district option, that children age 18, 19 and 20 years old be included in the Child Care Services Unit only if it benefits the family. The Office reviewed these comments. The Office believes that local districts are in the best position to determine local needs and how to serve their communities and, therefore, should be allowed flexibility in providing child care services. A statewide rule in this instance would amount to an unfunded mandate to pay for care in these areas and prevent needed local district flexibility. As such, there will be no change made to the regulations based on these comments.

415.1(l)

The Office received 1 comment that districts should not have an option concerning inclusion of children age 18, 19 and 20 years old in the Child Care Services Unit. The Office reviewed this comment. The Office believes that local districts are in the best position to determine local needs and how best to serve their communities and, therefore, should be allowed flexibility in providing child care services. A statewide rule in this instance would amount to an unfunded mandate to pay for care in these areas and prevent needed local district flexibility. As such, there will be no change made to the regulations based on this comment.

415.1(l)

The Office received 5 comments in support of the definition of Child Care Services Unit. The Office reviewed these comments and, because the commentators are in agreement with the regulations, there will be no change made to the regulations.

415.1(l)

The Office received 1 comment in support of the flexibility given to districts in defining the Child Care Services Unit. The Office reviewed this comment and because the commentator is in agreement with the regulations, there will be no change made to the regulations.

415.1(l)

The Office received 1 comment in support of inclusion of children age 18, 19 and 20 years old in the Child Care Services Unit. The Office reviewed this comment and, because the commentator is in agreement with the regulations, there will be no change made to the regulations.

415.1(l)

The Office received 1 comment that the proposed definition of the Child Care Services Unit should not put unmarried adults with children in common into the same unit. The Office reviewed this comment. Local districts have often requested that such families be included in one unit. The Office agrees with districts that both parents should be responsible for their children. There will be no change made to the regulations based on this comment.

415.1(l)

The Office received 5 comments in support of the inclusion of temporarily absent family members in the same Child Care Services Unit and children living with individuals other than their parents as separate units. The Office reviewed these comments and because the commentators are in agreement with the regulations, there will be no change made to the regulations.

415.1(o)

The Office received 1 comment in support of the definition of engaged in work. The Office reviewed this comment and because the commentator is in agreement with the regulations, there will be no change made to the regulations.

415.2(a)(1)(iv)

The Office received 5 comments in support of the provision allowing transitional child care to be requested in any month of the 12-month eligibility period. The Office reviewed these comments and because the commentators are in agreement with the regulations, there will be no change made to the regulations.

415.2(a)(3)

The Office received 1 comment suggesting that the definition of eligible families be expanded to include individuals that are sanctioned in public assistance cases but are engaged in other approved work activities such as the Work Experience Program and training. The Office reviewed this comment. The regulations provide that a parent engaged in an approved activity is eligible for child care if the district has included such families as eligible in its Consolidated Services Plan and if the district has child care funds available. Additionally, the regulations provide that the district must provide child care to a sanctioned parent that is required to participate in an approved activity. Therefore, no change will be made to the regulations based on this comment.

415.2(a)(3)

The Office received 1 comment in support of district flexibility in determining optional families to be served. The Office reviewed these comments and because the commentator is in agreement with the regulations, there will be no change made to the regulations.

415.2(a)(3)(iv)(b)

The Office received 1 comment that students attending a four year college program should not be required to work at least 17.5 hours per week and also should not be required to work during summer recess. The Office reviewed this comment. Programmatic eligibility and the need for child care during the summer months when the student is not in school would have to be assessed according to the approved activities in which the student is engaged. The requirement that four year college students work at least 17.5 hours per week is in Section 410-w(1)(d) of the New York State Social Services Law and may not be changed by regulation. Thus, there will be no change to the regulations based on this comment.

415.2(a)(3)(vii)(a)

The Office received 1 comment that it should be a statewide requirement, not a local district option, to allow 30 days of child care while actively seeking employment. The Office reviewed this comment and the Office believes that local districts are in the best position to determine local needs and how best to serve their communities and, therefore, should be allowed flexibility in providing child care services. A statewide rule in this instance would amount to an unfunded mandate to pay for care in these areas and prevent needed local district flexibility. As such, there will be no change made to the regulations based on this comment.

415.2(a)(3)(vii)(a)

The Office received 2 comments that the requirement that child care subsidies be provided only for the time the family is able to document that they are engaged in seeking employment or employment related activities is too burdensome. The commentator suggested that it would be easier to administer a minimum time requirement in order to qualify for a full day or week of child care. The Office reviewed this comment and determined that the federal Final Rule for the Child Care and Development Fund requires that child care payments be related to the time the parent is working or participating in an approved activity. As such, the ability to change this regulatory requirement is outside of the Office's authority. There will be no change made to the regulations based on these comments.

415.2(a)(3)(vii)(b)

The Office received 1 comment that payment for post secondary education programs should be a statewide requirement, not a district option. The Office reviewed this comment and the Office believes that districts are in the best position to determine local needs and how best to serve their communities. A statewide rule, in this instance, would amount to an unfunded mandate to pay for child care in this circumstance and prevent needed local district flexibility. As such, there will be no change made to the regulations based on this comment.

415.2(a)(3)(vii)(b)(7)

The Office received 1 comment that the regulation limiting training programs only from institutions licensed or approved by the State Education Department is too narrow since other state agencies may approve specific programs or may be part of Workforce Investment Act. The Office has reviewed this comment and the regulation in question relates only to training programs with a specific occupational goal. Other training programs referenced in 18 NYCRR 415.2(a)(3)(vii)(b) do not have to be licensed or approved by the State Education Department. Since these regulations are not new and the programs referenced by the commentator should be covered by these regulations, there will be no change made to the regulations based on this comment.

415.2(c)(2)

The Office received 6 comments that it should be a statewide requirement, not a district option, to provide child care for breaks in employment or in other approved activities. The Office believes that local districts are in the best position to determine local needs and how best to serve their communities and, therefore, should be allowed flexibility in providing child care services. A statewide rule, in this instance, would amount to an unfunded mandate to pay for care in these areas and prevent needed local district flexibility. As such, there will be no change made to the regulations based on these comments.

415.2(d)(2)

The Office received 1 comment that when cases are closed due to lack of funding, the highest income cases should be closed first. The Office reviewed this comment and the Office believes that local districts are in the best position to determine local needs and how best to serve their communities. Therefore, local districts should be allowed flexibility in determining how to prioritize families and funding as they determine which cases to

close due to lack of funding. As such, there will be no change made to the regulations based on this comment.

415.2(d)(2)

The Office received 7 comments that there should be one consistent rule for which cases are closed when funds are not available. The Office reviewed these comments and the Office believes that local districts are in the best position to determine local needs and how best to serve their communities. Therefore, each individual local district needs flexibility in determining how to prioritize families and funding as they determine which cases to close due to lack of funding. As such, there will be no change made to the regulations based on these comments.

415.2(d)(4)

The Office received 1 comment that districts should be required to put applicants denied due to lack of funding on waiting lists. The Office reviewed this comment and the Office determined that local districts have the flexibility to maintain waiting lists. The Office believes that local districts are in the best position to determine local needs and how best to serve their communities. Therefore, local districts should be allowed flexibility in determining how to best prioritize families and whether the maintenance of waiting lists are beneficial. As such, there will be no change made to the regulations based on this comment.

415.3(c)

The Office received 2 comments that child support recovery in welfare cases is punitive and not cost effective and, therefore, should not be adopted in the child care subsidy program. The Office reviewed these comments and the Office believes that establishing paternity and an order for child support is not, in any way, punitive. The cost effectiveness of child support is difficult to measure and the Office does not agree that it should be the determining factor in instituting the child support requirement for child care subsidy cases. The Office believes that the establishment of paternity and an order for child support provides the child with access to benefits and resources of the non-custodial parent and, therefore, it is in the long term best interests of the child. The Office also believes that parents are responsible for their children and should share responsibility for child care costs. Custodial parents should pursue child support unless there is good cause to exempt the family from pursuing child support. Establishing an additional source of income from a child support order is an integral part of the family's movement to self-sufficiency. Furthermore, the funds recovered will help offset the local social services districts' child care costs in these cases and allow the districts to use their limited funds to serve additional families. As such, there will be no change made to the regulations based on these comments.

415.3(c)

The Office received 4 comments that the regulations should specify that child support requirements do not apply to preventive and protective cases. The Office reviewed the comments and the Office does not believe that child preventive and child protective cases should be summarily excluded from the child support requirement. Rather, the Office has determined that each child care case, including preventive and protective cases, needs to be reviewed to determine if good cause exists that would indicate a caretaker should be excluded from the child support requirement. Therefore, preventive and protective cases will be screened on a case-by-case basis to determine if good cause exists that would exempt the parent or caretaker from the child support requirements. As such, there will be no change made to the regulations based on these comments.

415.3(c)

The Office received 5 comments that non-legally responsible caretakers should be expressly excluded from the child support requirements. The Office reviewed these comments and the Office has determined that it is appropriate that non-legally responsible caretakers applying for a child care subsidy provide information to the local district that may lead to the establishment of paternity and a child support order. Foster parents applying for a child care subsidy for a foster child are exempted from child support requirements in guidelines issued to local districts in 99 Administrative Directive (ADM)-5 Cooperation With Child Support. As such, there will be no change made to the regulations based on these comments.

415.3(c)

The Office received 1 comment that the child support requirements are too vague and too onerous. The commentator suggested that parents should just attest how much child support they receive. The Office reviewed this comment. The Office does not believe that the child support requirements are too vague or too onerous. In working with local districts, the Office will issue additional guidelines or training as appropriate to address any questions in the implementation of the child support requirements. Furthermore, the Office does not agree that applying this requirement to all child care recipients is onerous because once a child support order is in place, the order will address the responsibility of the non-custodial parent for child care costs. The custodial parent then need only document the amount that is received and the non-custodial parent's share of the child care costs. The Office has determined that the self-attestation by the custodial parent of the amount of child support does not meet the requirements for the documentation of income in accordance with 18 NYCRR 404.1(e)(1) and (2). As such, there will be no change made to the regulations based on this comment.

415.3(c)

The Office received 6 comments that persons pursuing child support should be allowed to provide a self-attestation to verify cooperation rather than obtaining documentation from other sources. The Office reviewed these comments and the Office believes that the documentation standards for child support in child care cases issued to local districts established in 99 Administrative Directive (ADM)-5 Cooperation With Child Support and 00 Informational Letter (INF)-2 are appropriate. If the child care applicant uses the assistance of the district's child support unit, then that unit will provide information to the child care worker if the parent is not cooperating. If the parent uses private means to pursue child support, it is reasonable to ask the parent to provide documentation of the steps that are being taken. As such, there will be no change made to the regulations based on these comments.

415.3(c)

The Office received 1 comment that the regulations should be more specific concerning what "actively pursuing" child support means. The Office reviewed this comment and the Office would like to point out that the definitions and requirements regarding "actively pursuing" child support are detailed in 99 Administrative Directive (ADM)-5 Cooperation With Child Support. If an applicant or recipient of a child care subsidy has any questions regarding this subject, the individual should contact the appropriate local district office for assistance. There will be no change made to the regulations based on this comment.

415.3(c)

The Office received 1 comment that the regulations should explain the differences between "actively pursuing child support" and "cooperation with child support." The commentator suggested that the Administrative Directive (ADM) for child support should be reissued. The Office has reviewed this comment and the Office would like to point out that the definitions and requirements regarding "actively pursuing child support" and "cooperation with child support" are detailed in 99 Administrative Directive (ADM)-5 Cooperation With Child Support. The Office feels that this directive is on point and does not need to be re-issued. Thus, there will be no change made to the regulations based on this comment.

415.3(c)

The Office received 1 comment that the regulations must be more specific as to how districts must implement the child support requirement and how the child support funds collected are allocated to the parent and district. The Office reviewed this comment and the Office determined that the information established in 99 Administrative Directive (ADM)-5 Cooperation With Child Support and 00 Informational Letter (INF)-2 are appropriate and sufficient to implement the child support requirements. There is no assignment of rights to the local districts for child support for low income families. All child support funds collected on the custodial parent's behalf are turned over to the custodial parent. As such, there will be no change made to the regulations based on this comment.

415.3(c)

The Office received 6 comments that the penalty imposed for failure to cooperate with the child support requirements in a child care subsidy case is more severe than the penalty imposed in a family assistance case. The commentator felt that the parent should lose a percentage of the subsidy, not all of the subsidy. The Office reviewed these comments and determined that the difference in the sanction applied in the family assistance program and in child care subsidy program is appropriate. Family assistance is meant to provide for the crucial daily living needs of each individual and eligibility for family assistance benefits is based on an individual's eligibility. If there is a failure to comply with family assistance child support requirements, a sanction is applied against an individual, not the entire family. In accordance with New York State Social Services Law 410-w, child care assistance is provided to a family and eligibility is determined for a family. Therefore, a failure to comply with child support requirements results in the family's ineligibility for a child care subsidy. As such, there will be no change made to the regulations based on these comments.

415.3(c)

The Office received 5 comments that a parent with a child support order should not be required to seek a child care add-on. The commentators recommend that if a parent is required to seek a child care add-on, the local district should guarantee counsel at no cost; the add-on should defray the parent share; and the parent should assign rights to the add-on to the district so that the district is the guarantor of payment. The Office reviewed these comments and the Office determined that section 413 of the Family Court Act requires a child care add-on whenever child care is needed for a parent who is working or participating in elementary or secondary education or higher education or vocational training which the family court determines will lead to employment and the custodial parent incurs child care expenses as a result thereof. The law further requires that responsibility for child care expenses be separately stated in the child support order. The Office determined that the expenses incurred are the total amount charged by the child care provider to the custodial parent. The Family Court determines the add-on that the non-custodial parent is required and that add-on is applied against the amount charged by the provider not the amount of the parent share. The Office determined that it has no authority to require that parents in a child care subsidy case have their rights to the child care payment assigned to the local district as part of a court order. Additionally, the Office determined that it does not have the authority to mandate that districts provide or pay for legal representation for applicants or recipients of child care subsidies. There will be no change made to the regulations based on these comments.

415.3(c)

The Office received 1 comment that legal representation should be made available at no cost to parents who have filed a child support violation petition. The Office has reviewed this comment. The Office has determined that it does not have the authority to mandate that districts provide or pay for legal representation for applicants or recipients of child care subsidies who have filed child support order petitions. There will be no change made to the regulations based on this comment.

415.3(c)

The Office received 1 comment that legal services for child support should be provided by the county at no cost. The Office reviewed this comment. The Office has determined that it does not have the authority to mandate that districts provide or pay for legal representation for applicants or recipients of child care subsidies who have filed a child support petition. There will be no change made to the regulations based on this comment.

415.3(c)

The Office received 12 comments that the child support unit in the local district, rather than the provider, should collect fees from the non-custodial parent. The commentators also suggested that the local district enforce the child support order in the event of non-payment. The Office reviewed these comments and determined that the Office has no authority to direct a Family Court to order that the non-custodial parent pay the local district directly. Additionally, the local district does not have the authority to enforce the order against the non-custodial parent. As such, there will be no change made to the regulations based on these comments.

415.3(c)

The Office received 6 comments that verification of cooperation with child support requirements should not delay new applications or disrupt existing child care services. The Office reviewed these comments. Since the requirement is that custodial parents demonstrate that they are "actively pursuing" child support rather than the stricter requirement that they have a child support order in place, the Office does not feel that this verification will delay new applications or disrupt existing services. As such, the Office has determined that no changes to the regulations are necessary as a result of these comments.

415.3(c)

The Office received 1 comment that the requirement of a child support court order should not be a barrier to receive subsidies in a timely manner or that the lack of a child support court order should not be a basis for denial of a child care subsidy. The Office reviewed this comment. The requirement is that the caretaker is "actively pursuing" a child support order, not that an order be in place. So long as the caretaker is "actively pursuing" a child support order, the caretaker should not suffer a delay or denial of child care subsidies. Thus, the Office does not feel that this requirement will be a barrier to caretakers receiving child care subsidies. There will be no change made to the regulations based on this comment.

415.3(c)

The Office received 1 comment that a determination of child care eligibility should not be delayed due to a lack of judicial availability to hear a violation petition. The Office feels that as long as the parent meets the requirement of "actively pursuing" child support, the inability to obtain a court date because of court delays is not the parent's delay and will not affect the parent's eligibility. As such, there will be no change made to the regulations based on this comment.

415.3(c)

The Office received 2 comments expressing concern that domestic violence victims have to obtain court orders or statements from domestic violence programs to validate that they were domestic violence victims in order to satisfy the child care subsidy good cause exception. The commentators also stated that training would be needed for local districts to implement the good cause determination process for domestic violence victims. The Office reviewed these comments and the Office would like to inform the commentators that court orders or statements from domestic violence programs are two means of corroborating good cause, there are additional types of evidence that are considered corroborative evidence. A list of the types of evidence that will satisfy the good cause exception may be found in 99 Administrative Directive (ADM)-5 Cooperation With Child Support. The Office will also work with local districts to determine the training needed for staff and what additional guidelines or supports are necessary to help local district staff understand the good cause exemption for domestic violence. There will be no change made to the regulations based on these comments.

415.3(c)

The Office received 1 comment that if a custodial parent has two children with different fathers, failure to establish paternity for one child should not affect the eligibility of the other child for a child care subsidy if the second child's paternity has previously been established. The Office reviewed this comment and the Office has determined that, in accordance with New York State Social Services Law 410-w, eligibility for a child care subsidy is based on a "family" determination rather than a "per child" determination. However, If paternity cannot be established for all the children, that in and of itself, is not a basis for denial for a child care subsidy as long as the family is actively pursuing a paternity determination and child support order for the children that do not possess both. As such, there will be no change made to the regulations based on this comment.

415.3(c)

The Office received 1 comment that in implementing the good cause exemption in the child support cooperation requirements, the following issues should be addressed: how will workers be aware of the dangers of domestic violence; how will women be notified of the availability of the good cause exemption; and how will confidentiality of domestic violence information be maintained. The Office has reviewed this comment. The Office will work with local districts to determine the training needed for local district staff to be aware of domestic violence issues and to determine how to make such training available. The Office will issue additional guidelines or supports to local districts to inform applicants of the availability of a good cause exemption and to maintain the confidentiality of domestic violence information. The guidelines will also include a sample notice that informs applicants of the good cause exemption as well as the types of evidence that may be used to corroborate the good cause exemption. As such, there will be no change made to the regulations based on this comment.

415.3(c)

The Office received 1 comment that regulations should specify that a woman, who is a victim of domestic violence, be entitled to a waiver of the child support requirements if she fears at risk by pursuing child support. The commentator stated that a self-attestation is sufficient to establish the fear of domestic violence. Additionally, the commentator suggested that the local district should provide clear written and oral notice of the right to abstain from pursuit of child support if there is a fear of domestic violence and that applicants should be provided with a right to a hearing if denied a domestic violence waiver. The commentator further suggested that the local district use domestic violence liaisons or provide serious training for workers. The Office reviewed this comment. The Office is applying standards to the child care subsidy program for the determination of the good cause exemption from child support requirements for victims of domestic violence that are similar to those applied for applicants and recipients of public assistance and for recipients of transitional child care. The Office believes that those standards already in place for applicants and recipients of other benefit programs are appropriate and can find no justification for changing those standards for the child care subsidy program. The Office will issue separate implementation guidelines that will require local districts to provide a written notice specifically informing applicants and recipients of the exemption from child support requirements when good cause is determined by the district to exist. Additionally, 18 NYCRR Part 358-2 requires a notice to be sent to the parent whenever child care benefits

are denied or reduced and that the notice inform parents of their rights to fair hearing. While the parent does not receive a notice regarding the denial of a good cause exemption, if a parent's application for a child care subsidy is denied or case is closed due to failure to cooperate in obtaining child support, districts must send the parent an appropriate client notice form that provides information about all fair hearing rights. Local districts are provided with the flexibility to designate the individual(s) in their agencies that will make the determination of good cause. The local district may decide to use the domestic violence liaison, the eligibility worker, or some other designee. The Office will work with local districts to determine the training needed for local district staff to be aware of domestic violence issues and to determine how to make such training available. The Office will issue additional guidelines or supports to local districts to inform applicants of the availability of a good cause exemption and to maintain the confidentiality of domestic violence information. As such, there will be no change to the regulations based upon this comment.

415.3(c)

The Office received 9 comments in support of imposing the requirement that low income families pursue child support as a condition of eligibility. The Office reviewed these comments and determined that there is no need to change to the regulations in response to these comments.

415.3(c)

The Office received 5 comments that there is no statutory authority to impose a child support requirement on child care subsidy recipients. The Office reviewed these comments and determined that the Office has both federal and State authority to establish such a requirement. Such authority may be found in Title 42 of the U.S. Code Section 9858b(b), which provides that the Office must develop a state plan that contains provisions for the delivery of child care services. Furthermore, Part 45 of the Code of Federal Regulations Section 98.20 contains the Child Care and Development Fund regulations that authorize the State to establish eligibility conditions and/or priority rules for child care services in addition to those specified in federal regulations. Additionally, Section 20.3(d) of the New York State Social Services Law (SSL) authorizes the Office to establish rules, regulations, and policies to carry out the Office's powers and duties under the SSL. Section 34.3(f) of the SSL authorizes the Office to establish regulations for the administration of public assistance and care within the State. Finally, 410-w(1)(e) of the SSL requires the Office to establish regulations setting forth the eligibility criteria for child care assistance to low income families. As such, there will be no change to the regulations based upon these comments.

415.3(f)

The Office received 5 comments that the regulations should define "timely pay" with regard to the provision that failure to timely pay the family share can result in termination or suspension of child care services. The Office reviewed these comments and determined that there is no reference to "timely pay" in the regulation cited by the commentators. As such, there will be no change to the regulations based upon these comments.

415.3(f)(7)

The Office received 1 comment that the procedures for recalculation of the family share are unclear and difficult for local districts to implement. The commentator was also concerned that it would be difficult for the district to recalculate the family share each time a change in income, family circumstances or provider is reported to the local district. The Office reviewed this comment and determined that the circumstances under which the family share must be recalculated are unambiguous. Families are required to report immediately changes in circumstances, including any changes in income. Local districts are required to assess whether or not those changes affect the family's eligibility or family share of the child care costs. These requirements are appropriate and necessary to see that only eligible families are receiving benefits. The requirements are not new and therefore, the Office believes that the requirements should not be difficult to implement. As such, there will be no change made to the regulations based on this comment.

415.3(f)(7)

The Office received 1 comment to add the words (as underlined) to the provision in 18 NYCRR 415.3(f)(7) that the family share must be recalculated whenever there is notice to the district of a change in income. The Office reviewed this comment and determined that the requirements in this regulation that the family share be recalculated when there is a change in income are appropriate. Parents are required to immediately report any change in income or other circumstances to the local district. Local districts are required to immediately act upon such information and determine whether eligibility for child care subsidies and/or the amount of the family share should be adjusted. As such, there will be no change made to the regulations based on this comment.

415.3(f)(8)

The Office received 5 comments that the regulations should address what happens when the family defaults in payment of family share. The commentators also asked whether the provider would receive advance notice when the family share is adjusted. The Office reviewed these comments and determined that the proposed regulations and 18 NYCRR Part 404 provide adequate and appropriate guidelines. The existing regulation 18 NYCRR 404.6(b)(2) details that the local district must immediately give a written notice, which includes a warning of pending termination, if the family share is past due and non-payment continues. In accordance with 18 NYCRR 404.6(b)(1) the local district must notify the provider when a recipient is required to pay a family share, the amount of the family share, and the date the family share is due. The proposed regulation 18 NYCRR 415.3(f)(8) states the failure to pay the family share or to develop a satisfactory arrangement to pay the family share is a basis for suspending or terminating services. Thus, there will be no change made to the regulations based on these comments.

415.4(b)(1)

The Office received 1 comment that agrees with the intent of the regulation prohibiting a new application in cases transferred from one district to another. The commentator requests that the regulations be clarified that if income and family size are not available, the new district cannot continue child care without collecting necessary information. The Office reviewed this comment and determined that the requirements in this regulation do not pertain to circumstances when a case is transferred from one district to another district. The requirements apply only when the local district transfers the case from one unit within the district to another unit in the district. As such, there will be no change made to the regulations based on this comment.

415.4(b)(1)

The Office received 1 comment in support of the provision that a new application is not required for transitional child care. The Office reviewed these comments and, because the commentators are in agreement with the regulations, there will be no change made to the regulations.

415.4(c)(3)

The Office received 7 comments that it should be a statewide regulation, not a district option, to provide sleep time for employed caretakers working the second or third shifts. The Office reviewed these comments. The Office believes that local districts are in the best position to determine local needs and how to serve their communities and, therefore, should be allowed flexibility in providing child care services. A statewide regulation, in this instance, would amount to an unfunded mandate to pay for care in this area and prevent needed local district flexibility. As such, there will be no change made to the regulations based on these comments.

415.4(c)(3)

The Office received 1 comment in support of the payment for child care while the parent travels to and from the place of his or her employment or activity. The Office reviewed this comment and determined that there is no need to change the regulations based on this comment.

415.4(d)

The Office received 5 comments that the provision, 18 NYCRR 415.4(d), defining local district responsibility when recipients of guaranteed transitional and public assistance child care subsidies move to another district should also be extended to recipients of low income child care subsidies. The Office reviewed this comment and the Office feels that extending this requirement to all low income families would be an unfunded mandate to all local districts and would be particularly problematic when a family moves to a local district that is out of funds. The Office does not believe that extending the proposed regulation's scope in this matter is in the best interests of all the concerned parties. Thus, there will be no change made to the regulations based on these comments.

415.4(f)

The Office received 2 comments that legally-exempt providers should be held to the same standards as regulated providers. The Office reviewed these comments and the Office does not agree that legally exempt providers should be held to the same standards as regulated providers. The Office believes that imposing such standards would lead to an unwillingness of such providers to continue to provide needed child care. Additionally, the New York State Social Services Law (SSL) does not allow the Office to regulate legally-exempt child care providers. Such providers are exempted from the definition of child day care in Section 390 of the SSL. Under Section 410-x(3) of the SSL, the Office is only allowed to establish minimum health and standards for child care providers not required to be

licensed or registered. As such, there will be no change made to the regulations based on these comments.

415.4(f)

The Office received 1 comment that a provision should be added to include face-to-face interviews for those applying for vendor numbers to be paid as informal child care providers. The Office reviewed this comment and concluded that local districts have a number of methods to document and verify that information provided by legally-exempt providers is accurate and that appropriate services have been provided. Thus, the Office does not agree that a face-to-face interview is necessary or warranted for legally-exempt providers to receive a vendor number for payment purposes. There will be no change made to the regulations based on this comment.

415.4(f)

The Office received 5 comments that regulations should state that a provider that is denied enrollment should have a right to a fair hearing. The Office reviewed these comments and does not agree with the position of the commentators. Parents, not child care providers, are the recipients of child care subsidy benefits and, as such, they are the only group that has a right to a fair hearing. If recipients feel that the providers they have selected were denied enrollment in error, the recipients may ask the local district to review the determination of ineligibility or request a fair hearing. Thus, there will be no change made to the regulations based on these comments.

415.4(f)(7)(iii)

The Office received 5 comments that guidelines for enrolling legally-exempt child care providers who have had their child care license/registration denied, suspended, or revoked or had a child removed from their care should be in regulation. The Office reviewed these comments and the Office believes that detailed implementation guidelines should not be in regulation but issued as a separate release to local districts. In working with local districts, the Office will issue additional guidelines and provide supports or training, as appropriate. As such, the Office believes there is no need to change the regulations based on these comments.

415.4(f)(7)(iii)(a)

The Office received 1 comment that agreed that a previous denial or removal of a license or registration should be considered before enrolling a provider but questioned whether an attestation is an effective way of gathering information about this situation. The Office reviewed this comment and the Office would like to make the commentator aware that local districts may utilize the OCFS Child Care Facility System (CCFS) to document the accuracy of the information provided in an attestation. Districts also have the option to propose additional standards for legally-exempt providers of subsidized child care services should they feel that an attestation is not an effective way of gathering information. This could include an additional standard requiring a higher level of documentation beyond an attestation. Therefore, no change will be made to the regulations based on this comment.

415.4(f)(7)(iii)(a)

The Office received 3 comments in support of the requirement that legally-exempt providers enrolling with the local district attest to whether they have had a previous denial or removal of a license or registration for child care. The Office reviewed this comment and because the commentators are in agreement with the regulations there will be no change made to the regulations based on these comments.

415.4(f)(7)(iii)(b)

The Office received 1 comment suggesting that the enrollment standards should automatically disqualify legally-exempt providers that have had a child removed from their care; who do not have custody of one or more of their own children at present due to a court order; or who have been the subject of prior court finding of abuse or neglect and whose parental rights have been terminated. The commentator also suggested that the self-reporting requirement is insufficient. The Office reviewed this comment and the Office disagrees with the commentator's suggestions. The Office does not believe that it should summarily disqualify this group of individuals from enrolling as providers. Rather the Office will issue guidelines that local districts will use to make a determination regarding the enrollment of such providers. If the local districts do not feel that the guidelines are stringent enough, they may propose to add more stringent requirements, including the submission of additional documentation from the provider. There will be no change made to the regulations based on this comment.

415.4(f)(7)(iii)(b)

The Office received 1 comment that the meaning of "lost custody " is unclear and that self-reporting by the provider is insufficient to protect the child. The Office reviewed this comment. The Office believes that guidelines are the best way to address the meaning of "lost custody" and will issue guidelines to local districts that will include the meaning of "lost custody." The Office believes that self attestation is a reasonable means to document that legally-exempt providers have complied with the regulation in question. If local districts do not believe that self attestation is a sufficient means to protect the children in care, then local districts have the flexibility to propose additional standards for legally exempt providers that would satisfy their concerns. There will be no change made to the regulations based on this comment.

415.4(f)(7)(iv)

The Office received 1 comment citing an incorrect reference to a new subparagraph (iv) of 18 NYCRR 415.4(f)(7), but the paragraph is not included in the regulations. The Office reviewed this comment and agrees that the reference was incorrect. The Office did not intend to create a new paragraph (iv). The reference to paragraph (iv) was deleted from the regulations.

415.4(i)

The Office received 1 comment that there should be no obligation to recover overpayments from a client until the next recertification period and that the decision to recoup overpayments should be at the discretion of the district. The Office reviewed this comment and determined that delaying the collection of overpayments until the next recertification could result in parents continuing to receive benefits for which they are no longer eligible or paying an inappropriate amount towards their share of the child care costs. In many districts, eligible families are not receiving benefits due to a lack of funds. Delaying recalculation of eligibility and recovery of overpayments would exacerbate this problem. The Office believes that the requirements for recoupment of overpayments are appropriate and sees no reason for providing local district discretion in this area. As such, there will be no change made to the regulations based on this comment.

415.4(i)

The Office received 1 comment that there is an inconsistency between 18 NYCRR 415.4(i)(5) and (9) concerning when overpayments have to be recovered: the word "must" in terms of recovery should be "may." The Office reviewed this comment and determined that the regulations are not inconsistent. The language in 18 NYCRR 415.4(i)(5) refers to which entity (parent or provider) must repay any overpayment. 18 NYCRR 415.4(i)(9) refers to the case status under which the district must attempt a recovery (i.e. all current child care cases and all cases of fraud). As the regulations are consistent, there will be no change made to the regulations based on this comment.

415.4(i)

The Office received 1 comment in support of the provisions for the recovery of overpayments and the penalties applied to the child care subsidy recipients convicted of fraud. The Office reviewed this comment and, since the commentator is in agreement with the regulations, there will be no change made to the regulations based on this comment.

415.4(i)(6)

The Office received 1 comment recommending that the proposed regulation allow local districts to seek other legal remedies to recover overpayments from current recipients who refuse to repay overpayments. The commentator recommends that the word "former" be deleted in the regulation so that the regulation would then apply to all recipients. The Office reviewed these comments and believes that the deletion of the word "former' is unnecessary. Current clients who refuse to repay overpayments will be subject to termination of their cases. The Office believes that this is a sufficient incentive for current clients to continue to abide by the terms of their repayment agreement. It would be at the point of case closure that a district may consider pursuing repayment options via other legal remedies. This regulation also does not prohibit local districts from prosecuting recipients for fraud. As such, there will be no change made to the regulations based on this comment.

415.4(i)(7)

The Office received 1 comment that the term "promptly" in the provision regarding overpayments occurring as a result of the district failure to act promptly should be more specific. The Office reviewed this comment and the Office believes that detailed clarification on this issue is best handled in an ADM or other official release to local districts. The Office will issue guidelines as appropriate to implement the overpayment provisions. As such, there will be no change made to the regulations based on this comment.

415.4(i)(7)

The Office received 1 comment recommending that overpayments be collected even when the overpayment was caused by the local district's

failure to act promptly. The Office reviewed this comment and the Office believes that parents and providers reporting changes promptly should not be penalized when a district fails to act promptly to adjust the family share. As such, there will be no change made to the regulations based on this comment.

415.4(i)(7)

The Office received 5 comments in support of the prohibition for collection of overpayments resulting from the local district's failure to act promptly on information provided by a parent. The Office reviewed these comments and, since the commentators are in agreement with the regulations, there will be no change made to the regulations based on these comments.

415.4(i)(9)

The Office received 1 comment that requests that districts be given discretion in making judgments about the cost/benefits of recovery actions and about the appropriate extent of recovery efforts. The Office reviewed this comment. The regulatory language states that recovery must be attempted whenever the overpayment amount is in excess or equal to the cost of recovery. The Office believes this is an appropriate standard. There will be no change made to the regulations based on this comment.

415.4(i)(12)

The Office received 1 comment that the process for suspending or terminating benefits when recipients fail to agree to a reasonable repayment plan is unclear. The commentator believes that this requirement appears to be in conflict with 18 NYCRR 415.4(i)(4) which says overpayments may only be recovered from child care benefits. Additionally, the commentator states that it is unclear how the process affects public assistance recipients mandated to participate in a work activity. The Office reviewed this comment. In working with local districts, the Office will issue additional guidelines and provide supports or training as appropriate to assist local districts in determining when to suspend or terminate benefits. Additionally, the Office reviewed 18 NYCRR 415.4(i)(4) and concluded that the two regulations are not in conflict. The recoupment of overpayments should be made only from child care benefits unless the recipient requests that recovery is made from his or her available income. If the recipient refuses to repay the overpayment and the child care subsidy case is terminated, 18 NYCRR 415.4(i)(6) provides that the local district may recover the overpayments in accordance with the legal remedies available under State Law. The Office also concluded that the requirements concerning pubic assistance recipients are unambiguous. Public assistance recipients cannot be sanctioned for non-participation in a work activity if they do not have appropriate and affordable, accessible, or suitable child care. Therefore, no change will be made to the regulations based on this comment.

415.6(b)(1)

The Office received 1 comment that the requirement that districts can pay for absences only for contracted providers be reinstated. The Office reviewed this comment and since the payment for absences is a district option, local districts can choose to continue to pay only contracted providers, if they wish to do so. The Office believes that the decision should be left to the districts and that districts should be provided with enough options to allow them to make decisions based on their specific local circumstances. As such, there will be no change made to the regulations based on this comment.

415.6(b)(1)

The Office received 5 comments in support of the regulation that districts may extend payment for absences to non-contract providers. The Office reviewed these comments and because the commentators are in agreement with the regulations there will be no change made to the regulations based on these comments.

415.6(b)(9)

The Office received 2 comments that would like the regulation to mandate, rather than provide a district option, that child care programs charging a daily or part-time rate be paid for absences whenever it is required for the provider's private pay parents. The Office reviewed these comments and the Office feels that a regulatory mandate is unnecessary. The Office believes that the local districts are in the best position to determine local needs and how best to serve their communities. Therefore, the local districts should have the option whether to reimburse child care programs for these absences. A statewide rule, in this instance, would amount to an unfunded mandate to pay for care and prevent needed local district flexibility. As such, there will be no change made to the regulations based on these comments.

415.6(c)

The Office received 1 comment that it should be a statewide rule not a district option to provide reimbursement for absences and program closures. The Office reviewed this comment and the Office believes that local districts are in the best position to determine local needs and how to best serve their communities. Therefore, the local district should have the option whether or not to reimburse child care programs for these closures. A statewide rule, in this instance, would amount to an unfunded mandate to pay for care in these areas and prevent needed local district flexibility. As such, there will be no change made to the regulations based on this comment.

415.6(c)

The Office received 7 comments that payment for absences and holidays should be required statewide whenever it is required for private pay parents. The Office reviewed these comments. The Office believes that local districts are in the best position to determine local needs and how to serve their communities and, therefore, should be allowed flexibility in reimbursing child care programs. A statewide rule would amount to an unfunded mandate to pay for care in these areas and prevent needed local district flexibility. As such, there will be no change made to the regulations based on these comments.

415.6(c)

The Office received 3 comments in support of the regulations for payment for holidays and provider closings. The Office reviewed these comments and because the commentators are in agreement with the regulations there will be no change made to the regulations based on these comments.

415.9(k)

The Office received 5 comments in support of the definition of applicable market rate for providers located in another district. The Office reviewed these comments and because the commentators are in agreement with the regulations there will be no change made to the regulations based on these comments.

415.10

The Office received 1 comment in support of the waiver provisions. The Office reviewed this comment and, because the commentator is in agreement with the regulations, there will be no change made to the regulations based on this comment.

415.11

The Office received 1 comment that the effective date of the regulations is unrealistic and inappropriate and should be made effective 90 days from the time they are issued as final. The proposed regulations did not include an effective date. The social services districts already have implemented many of the new regulatory provisions because they reflect statutory provisions that already became effective. The Office recognizes that it will take the social services districts a period of time to implement other portions of the regulations. Therefore, the adoption of the regulations by the Office will provide for a delayed effective date.

none

The Office received 1 comment that the child care subsidy program should be administered by the State directly and not through the local social services districts. The Office reviewed this comment. The New York State Social Services Law Section 410-v(1) requires that the Office apportion the child care assistance funds from the New York State Child Care Block Grant to local districts. Additionally, the Office believes that the local districts are in the best position to determine local needs and how best to serve their communities. Therefore, there will be no change made to the regulations based on this comment.

none

The Office received 1 comment that the child care provider community should have participated in the development of regulations. The Office reviewed this comment. Child care providers had an opportunity to reflect and comment on several provisions of the proposed regulations that were included in the proposed State Plan for the Child Care and Development Fund. Providers could have provided written comments to the proposed Plan or presented oral testimony at one of the regional public hearings that were held in May 2003. In addition, providers, as well as the public, had the opportunity to comment once the regulations were filed as a proposed rule. Any comments that are submitted are reviewed and changes are made, if necessary. Providers and the public, through comments, do participate and affect the regulations promulgated by State agencies. As this comment does not address a regulation provision, there will be no changes to the regulations due to this comment.

none

The Office received 2 comments that a grandparent receiving public assistance in a three generational household should be allowed to meet the

public assistance work requirements by providing child care to his or her grandchild. The Office reviewed this comment and determined that the New York State Department of Labor (DOL), rather than the Office, is responsible for changes to the public assistance work requirements. The Office cannot make this or any other change to the public assistance requirements but will send these comments to DOL. Since these comments do not pertain to the proposed regulations, there will be no change made to the regulations based on these comments.

none

The Office received 6 comments that districts should be required to notify clients, in writing, if they have been denied child care subsidies due to lack of funding and to report the number of such denials to the Office. Additionally, the commentators suggested that districts should be required to provide the Office with data on the numbers of children on waiting lists. The Office reviewed these comments and the Office determined that existing regulations require a notice to any applicant denied child care for any reason. The Office feels a requirement for local districts to report additional data to the Office regarding denials or waiting lists would not be beneficial and would impose an unnecessary administrative burden on all local districts. Given the requirement that local districts must determine eligibility within 30 days from the date of application, the Office feels this additional administrative burden may adversely impact the ability of the local districts to complete the determination of eligibility in an accurate and timely manner. Thus, there will be no change made to the regulations based on these comments.

none

The Office received 6 comments that the Consolidated Services Plans for each social services district should be made quickly available through the local district or the Office and that they should be posted on both websites. The Office has reviewed these comments and will examine the capability of making child care plans more readily accessible. As this comment does not directly relate to the proposed regulations, there will be no change made to the regulations based on these comments.

none

The Office received 5 comments that the regulations should require that the Consolidated Services Plans (CSP) for each social services district be made available based within five business days on a request to the district or the Office. The Office reviewed these comments. The CSP is a public document and as such is covered under the Freedom of Information Act. The Freedom of Information Act mandates timeframes within which a government agency must respond to a request for information. The Office does not feel that it is necessary to institute its own timeframes regarding this matter. As these comments do not directly relate to the proposed regulations, there will be no change made to the regulations based on these comments.

none

The Office received 1 comment that a child care subsidy approved for part-time child care only may not be in the best interests of the child. The commentator felt that vacant slots in part-time situations cause financial problems for child care providers. The commentator suggested that part-time care should be used only in those situations where the well being of the child is not compromised. The Office reviewed this comment and the Office determined that the federal Final Rule for the Child Care and Development Fund requires that the payment for child care be related to the time the parent is involved in an approved activity. When the approved activity is only for a few hours a day, payment can only be made for the time the parent is participating in the activity, plus any time it takes the parent to travel to drop off and pick up the child. The purpose of a child care subsidy is to care for the child, thus enabling the parent to participate in the approved activity. The child care subsidy is not designed or intended to better the financial circumstances of the child care provider's business. As such, there will be no change made to the regulations based on this comment.

none

The Office received 1 comment asking if there is anything in the regulations regarding when a provider has to submit billing forms. The Office reviewed this comment and determined that regulations do not specify when a provider has to submit billing forms to a local district. The Office believes that districts are in the best position to establish billing procedures to accommodate local circumstances. As this comment does not directly specify a change to the proposed regulations, there will be no change made to the regulations based on this comment.

none

The Office received 1 comment in support of changes employed to deter fraud and make recoveries. The Office reviewed this comment and because the commentator is in agreement with the regulations, there will be no change made to the regulations based on this comment.

none

The Office received 1 comment in support of district flexibility in selecting options that will benefit the residents of specific counties. The Office reviewed this comment and because the commentator is in agreement with the regulations, there will be no change made to the regulations based on this comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Statewide Automated Child Welfare Information System (SACWIS)

I.D. No. CFS-09-04-00015-P

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

Proposed action: Amendment of Parts 428 and 441 and addition of Part 466 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 446

Subject: Establishing standards relating to the implementation of CONNECTIONS, New York's Statewide Automated Child Welfare Information System (SACWIS.)

Purpose: To implement the State's SACWIS system in a manner that allows child welfare workers time to effectively communicate with one another, enter information directly, eliminate duplicate entry of information, allow for direct determination of claims and sanctions, improve the convenience to consumers of service, reduce the administrative burden of child welfare workers in social services districts and the agencies with which they contract to provide direct services, protect the confidentiality of individuals about whom information is recorded, meet the requirements of section 479 of the Federal Social Security Act (SSA) and 45 CFR parts 1355 and 1356 which mandate the collection of specified adoption and foster care information, and protect Federal financial participation.

Text of proposed rule: Paragraph (4) of subdivision (a) of section 428.15 is repealed and a new paragraph (4) is added to read as follows:

(4) Such records, whether maintained by a social services district or provider agency must be retained in accordance with the following standards:

(i) records of a foster child must be retained for 30 years following the discharge of the child from foster care;

(ii) records of a child and family receiving preventive services must be retained for six years after the 18th birthday of the youngest child in the family. The provisions of this subparagraph apply where the sole service provided is preventive services. Where preventive services is provided in conjunction with or in addition to foster care, adoption or child protective services, the applicable standards for record retention in relation to foster care, adoption or child protective services as set forth in this section apply;

(iii) records of a child and family receiving child protective services must be maintained in accordance with the standards set forth in sections 422(5) and 422(8) of the Social Services Law and section 432.9(f) of this Title; and

(iv) records of an adopted child must be permanently retained.

Paragraph (1) of subdivision (a) of section 441.7 is amended to read as follows:

(a) All authorized agencies shall:

(1) maintain current case records for each child in its care, in accordance with the requirements of section 372 of the Social Services Law, which records [shall] *must* be conveniently indexed and retained [until such child becomes 21 years of age] *in accordance with the requirements set forth in paragraph (4) of subdivision (a) of section 428.15 of this Title;* such [record shall] *records must* also include the intake study*;* [,] the plan of service*;* [,] plan for discharge and aftercare, where applicable*;* [,] the care and services provided, including social, psychiatric and psychological services, social history of the child and [his] *the child's* family*;* [,] certification of birth*;* [,] medical and surgical consent from parent or guardian*;* [,] record of school placement*;* [,] reports from other agencies*;* [,] all pertinent correspondence*;* [,] and periodic progress reports which [shall] *must* consist of social information, psychological or psychiatric reports, if applicable, medical and dental reports, reports from staff, and after care reports. The requirements of this paragraph [shall] *must* not be construed to

require agencies to maintain duplicate records for those maintained by them pursuant to *Parts* [Part] 428 *and/or 466* of this Subchapter.

A new Part 466 is added to read as follows:

PART 466

Implementation and Administration of the CONNECTIONS System

Section 466.1 Scope.

The provisions of this Part apply to the implementation and administration of the CONNECTIONS system. This Part establishes standards for the internal and external recording of information in the CONNECTIONS system, the protection of confidential individual identifiable information, the sealing and expungement of information and the security of the system.

Section 466.2 Definitions.

For the purposes of this Part the following definitions apply:

(a) The CONNECTIONS system means the statewide automated child welfare information system implemented and administered by OCFS pursuant to section 446 of the Social Services Law. The CONNECTIONS system contains, but is not limited to, those data elements required by applicable State and federal statutes and regulations, relating to the provision of child welfare services including foster care, adoption assistance, adoption services, preventive services, child protective services, and other family preservation and family support services.

(b) OCFS means the New York State Office of Children and Family Services, successor agency to the Department of Social Services and the Division for Youth, pursuant to chapter 436 of the Laws of 1997.

(c) A public or private agency means an authorized agency, as defined in paragraphs (a) or (b) of subdivision 10 of section 371 of the Social Services Law; a not-for-profit corporation, as defined in paragraph 5 of subdivision (a) of section 102 of the Not-for-Profit Corporation Law; or a public agency that receives prior approval from OCFS to provide foster care and/or child welfare services.

Section 466.3 Mandatory Use.

Upon issuance of an administrative directive by OCFS indicating that information regarding a child welfare service or services must be entered into the CONNECTIONS system, each social services district or public or private agency providing such service that has access to the CONNECTIONS system must use the CONNECTIONS system for recording the information in the form and manner prescribed by OCFS to satisfy the data requirements for the particular service. Any such administrative directive may require use of the CONNECTIONS system for all or part of the services or information to be documented, and may apply initially to a limited number of social services districts and/or public and private agencies.

Section 466.4 Confidentiality.

(a) Individual identifiable information contained in the CONNECTIONS system is confidential and may be disclosed only in a manner consistent with applicable statutory and regulatory standards.

(1) Individual identifiable information regarding children in foster care and their families is confidential and access to such information is allowable only pursuant to the standards set forth in sections 372, 373-a, 409-e and 409-f of the Social Services Law and applicable OCFS regulations including sections 357.3, 430.12 and 431.12 of this Title.

(2) Individual identifiable information regarding children and families receiving preventive services is confidential and access to such information is allowable only pursuant to the standards set forth in sections 409-e and 409-f of the Social Services Law and applicable OCFS regulations including section 423.7 of this Title.

(3) Individual identifiable information regarding adoption assistance and adoption services is confidential and access to such information is allowable only pursuant to the standards set forth in section 114 of the Domestic Relations Law, sections 373-a and 409-f of the Social Services Law and applicable OCFS regulations including section 357.3 of this Title.

(4) Individual identifiable information regarding child protective services is confidential and access to such information is allowable only pursuant to the standards set forth in sections 422(4), 422(5), 422(6), 422(7), 422-a, 424(4) and 424(5) of the Social Services Law and applicable OCFS regulations including section 432.7 of this Title.

(5) In addition to the standards set forth in paragraphs (1)-(4) of this subdivision, information contained in the CONNECTIONS system is subject to all other applicable federal and State confidentiality standards, including but not limited to, those set forth in Article 27-F of the Public Health Law regarding confidential HIV-related information and section 459-g of the Social Services Law regarding the street address of residential programs for victims of domestic violence.

(b) Consistent with applicable statute and regulation, an employee of OCFS, a social services district or a public or private agency providing child welfare services may have access to client identifiable information contained in the CONNECTIONS system only when access to such information is necessary for the employee to perform his or her specific job responsibilities.

(c) Each social services district and each public or private agency providing child welfare services that has access to the CONNECTIONS system must develop and implement policies and practices to maintain the confidentiality of individual identifiable information contained in the CONNECTIONS system consistent with applicable statutes and regulations including the taking of disciplinary action against any employee who fails to comply with the confidentiality standards set forth in this Part.

Section 466.5 Sealing and Expungement of Information.

(a) All individual identifiable information regarding a child and/or family receiving preventive services that are not provided in conjunction with or in addition to child protective, foster care or adoption services must be expunged from the CONNECTIONS system six years after the 18th birthday of the youngest child in the family.

(b) All individual identifiable information regarding a child and/or family receiving child protective services is subject to the sealing and expungement standards set forth in sections 422(5) and 422(8) of the Social Services Law and section 432.9 of this Title.

(c) The expungement of individual identifiable information from the CONNECTIONS system includes the elimination of the electronic data and information from the electronic system or the elimination of the electronic data required to access such information.

Section 466.6 Security.

(a) OCFS, local social service districts, and public or private agencies providing child welfare services that have access to the CONNECTIONS system must establish and maintain a CONNECTIONS security plan addressing the following areas:

(1) Physical security of CONNECTIONS resources;

(2) Equipment security to protect equipment from theft and unauthorized use;

(3) Software and data security;

(4) Telecommunications security;

(5) Personnel Access Control;

(6) Contingency plans for meeting critical processing needs in the event of short or long-term interruption of services;

(7) Emergency and/or disaster preparedness;

(8) Designation of a security manager for OCFS and a security coordinator for the local district or public or private agency; and

(9) A program for conducting periodic security reviews at least once every two years to evaluate physical and data security operating procedures and personnel practices and to determine whether appropriate, cost effective safeguards exist to comply with the areas set forth in this subdivision. A report of each security review and all relevant supporting documentation must be maintained and made available to OCFS upon request.

(b) Each social service district and each public or private agency providing child welfare services that has access to the CONNECTIONS system must immediately report in writing to the State Information Technology staff person designated by OCFS the loss or theft of any CONNECTIONS equipment and any event that may jeopardize the security of the CONNECTIONS system.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Data, views or arguments may be submitted to: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

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

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to promulgate regulations to carry out its powers and duties.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 446 of the SSL requires OCFS to promulgate regulations in accordance with federal requirements for the establishment and administration of a statewide child welfare information system (SACWIS), known

as CONNECTIONS. The regulations must set forth standards for timely submission of data elements relating to child welfare services, including foster care, adoption assistance, preventive services, child protective services and other family preservation and support services.

2. Legislative Objectives:

Section 446 of the SSL was enacted to implement the State's SACWIS system in a manner that allows child welfare workers time to effectively communicate with one another, enter information directly, eliminate duplicate entry of information and allow for direct determination of claims and sanctions. The legislative objectives underlying section 446 of the SSL include designing a SACWIS system that improves the convenience to consumers of service, reduces the administrative burden of child welfare workers in social services districts and the agencies with which they contract to provide direct services, protects the confidentiality of individuals about whom information is recorded, meets federal requirements and protects federal financial participation. The proposed regulations also would implement specific rules and procedures for the establishment and administrations of CONNECTIONS and, in so doing, meet federal statutory and regulatory SACWIS requirements. Section 479 of the federal Social Security Act (SSA) and 45 CFR Parts 1355 and 1356 mandate the collection of specified adoption and foster care information. The regulations implement the statutory provisions in section 446 of the SSL that require regulations mandating the timely submission in CONNECTIONS of data elements relating to child welfare services.

3. Needs and Benefits:

The federal Omnibus Budget Reconciliation Act of 1993 provided enhanced federal funding (FFP) at the 75 percent reimbursement rate to states to develop SACWIS systems to carry out the states' child welfare, foster care and adoption programs under Titles IV-B and IV-E of the SSA. This initiative also was intended to assist states to fulfill the federal reporting requirements of the Adoption and Foster Care Analysis and Reporting System (AFCARS) as specified by 45 CFR Part 1355. Failure to meet the AFCARS requirements may result in federal financial penalties. Section 446 of the SSL requires the State to implement the federal SACWIS requirements.

CONNECTIONS is being designed to develop a comprehensive response to children and families in need of child welfare services. Technological advances have prepared the path for the implementation of more efficient systems support to increase staff productivity and improve the quality of service delivery. Modern system solutions will assist in addressing child welfare information needs and at the same time protect the privacy concerns and interests of persons about whom information is entered into CONNECTIONS.

Under the CONNECTIONS approach, OCFS staff, child welfare workers at social services districts and public and private child welfare agencies will be linked through a computer network. This linkage will provide opportunities for communication and secure electronic exchange of information. Through the on-line access to case records and other case data, information can be shared in ways that will provide for increased timeliness of information, thereby allowing for approvals, monitoring and evaluation of services in a more rigorous manner and providing access to a wide variety of resources. The system will allow for better overall tracking of cases and an opportunity to integrate information previously available in several separate and discreet paper records and individual computer systems.

Over 18,000 child welfare workers will be affected by this change. They will be given the automated tools to reduce the paperwork associated with the delivery of child welfare services and these tasks and processes will be significantly streamlined. Child welfare workers at all levels have been involved in the development and testing of the CONNECTIONS system from its inception. Their involvement continues to provide valuable input necessary to develop the system in a manner that will meet their needs.

4. Costs:

Section 446 of the SSL requires both the implementation of CONNECTIONS and the promulgation of regulations for the timely recording of child welfare services information in the system. The fiscal impact of the development and operation of CONNECTIONS is the result of these statutory requirements. The costs of the development and operations of CONNECTIONS will be through a combination of federal and state dollars.

As caseworkers are currently required to provide, in paper format, the information required by these regulations to be inputted in CONNECTIONS, there is no fiscal impact anticipated for OCFS, social services districts or other public and private agencies providing child welfare services as a result of the reporting requirements included in the proposed regulations. All other requirements are administrative in nature and, as a result, are not anticipated to have a fiscal impact.

5. Local Government Mandates:

Social services districts and other public and private agencies providing child welfare services are already required to report specific child welfare case information in completely and timely in the manner and format required by OCFS. The regulations will require social services districts and applicable public and private child welfare services agencies to record such information in the CONNECTIONS system, rather than in another manner, upon the issuance of an administrative directive from OCFS. OCFS is phasing the development and implementation of the various case record provisions into CONNECTIONS to incorporate revisions to some of the case record documents that will improve case practice. Case workers will be trained in using these practices before full implementation is required. Once fully implemented, CONNECTIONS will result in more timely and appropriate placements, provide compliance with the Adoption and Safe Families Act (ASFA) and address Title IV-E eligibility review parameters. As a result, children will be better served and there will be a reduction in the risk of a loss in federal financial participation in their placement costs.

6. Paperwork:

Much of the paper work associated with the delivery of child welfare services will be eliminated as a result of the implementation of CONNECTIONS. Automated tools will allow for the entry of information once and then allow that information to be displayed and transmitted to other required case documents conveniently and efficiently, as needed. Currently, there is significant duplication of data recording due to the existing child welfare computer information systems, including the Welfare Management System (WMS), Child Care Review System (CCRS) and the CONNECTIONS system components already in production. Caseworkers also are required to record duplicate information into the Uniform Case Record or other paper records. These various recording systems have led to workers being increasingly burdened by time consuming, duplicative paper work tasks. The duplicate tasks do not add to the provision of services and actually takes away from the direct service time that workers need to spend with clients. When CONNECTIONS is fully implemented, the need to record data in duplicative systems and forms will be eliminated, and CCRS will be discontinued from service.

7. Duplication:

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

8. Alternatives:

There are no alternatives to these proposed regulations. Failure to implement them will expose OCFS and social services districts to potential federal financial - penalties, as well as jeopardize the State's ability to enhance the capabilities of child welfare workers to improve conditions for the clients they serve.

9. Federal Standards:

The proposed regulations comply with the child welfare reporting and information standards set by the federal government in accordance with section 479(b)(2) of the SSA and 45 CFR Parts 1355 and 1356. States are mandated to report electronically specified data regarding foster and adoptive children in compliance with the federal AFCARS requirements. In addition, having a fully compliant SACWIS system is one of the federal outcomes that states are measured against as part of the federal Child and Family Services Review required by 45 CFR Part 1355. The proposed regulatory requirements are consistent with the federal requirements.

10. Compliance Schedule:

Social services districts and the applicable public and private child welfare services agencies already have been provided the computers and associated technologies that are needed to record the required information in CONNECTIONS. OCFS will only issue administrative directives requiring social services districts and the applicable public and private agencies to record information in CONNECTIONS to the extent that those districts and agencies have the administrative and systems capability to implement the particular reporting requirements. Therefore, the social services districts and applicable public and private agencies will be able to comply with the regulatory requirements as they are implemented.

Regulatory Flexibility Analysis

1. Effect on Small Business and Local Governments:

These proposed regulations will apply to public and private child welfare agencies that contract with social services districts to provide foster care, adoption and preventive services. Currently, 236 agencies have been provided with personal and laptop computers, printers, servers and

other hardware and software necessary to access and use CONNECTIONS. Of those agencies, 112 agencies provide foster care and preventive services, 79 agencies provide preventive services only, 37 agencies provide foster care only, and 3 agencies provide adoption services only. The regulation also will affect the 58 social services districts in the State.

2. Compliance Requirements:

Applicable public and private child welfare agencies and social services districts will be required to comply with the standards and requirements set forth in the regulations for implementing the statewide automated child welfare information system (SACWIS), known as CONNECTIONS in New York State, in accordance with State and federal law. The standards include mandated reporting, internal and external data confidentiality standards, and record retention requirements.

3. Professional Services:

Social services districts and the applicable public and private child welfare agencies will not have to hire additional staff to implement the regulations. Existing case workers and other staff who will be required to enter data into CONNECTIONS will be comprehensively trained to use the automated tools and capabilities the system provides. In addition, current training programs will be enhanced to emphasize the casework support that CONNECTIONS will bring. The social services districts and applicable public and private child welfare agencies already have staff acting as security coordinators for CONNECTIONS.

4. Compliance Costs:

Section 446 of the SSL requires both the implementation of CONNECTIONS and the promulgation of regulations for the timely recording of child welfare services data in CONNECTIONS. The fiscal impact of the development and operation of CONNECTIONS is the result of these statutory requirements. The costs of developing and operating CONNECTIONS have already been budgeted, and are a combination of State and federal funds. To date, State funds have been used to cover the costs that are not federally reimbursable.

Caseworkers are currently required to document in other computer systems and/or paper format the information that these regulations require be inputted into CONNECTIONS. Therefore, there is no fiscal impact anticipated for social services districts or other public and private child welfare services agencies as a result of the reporting requirements included in the proposed regulations. All other requirements are administrative in nature and, as a result, are not anticipated to have a fiscal impact.

5. Economic and Technological Feasibility:

The small businesses and local governments affected by the proposed amendments will have the economic and technological ability to comply with the proposed regulations. Social services districts and the applicable public and private child welfare agencies already have been provided the personal and laptop computers, printers, servers and other hardware and software necessary to access and use CONNECTIONS.

6. Minimizing Adverse Impact:

As previously mentioned, social services districts and the affected agencies already have the equipment needed to implement these regulations. CONNECTIONS will enable the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements to be accommodated in a way so that the prescribed data is interwoven within the case flow process, while the actual reporting is compiled and accomplished by the State. Automated cues and reports will assist and remind workers, supervisors and administrators of coming due and overdue activities, assisting not only with AFCARS reporting, but in verifying compliance with other federal and State legal requirements.

7. Small Business Participation:

Since the inception of CONNECTIONS, information on the system's development and operation has been shared with social services districts and the applicable public and private child welfare agencies through written materials, face-to-face focus groups and meetings, teleconferences, surveys and questionnaires. In addition, OCFS established Executive Steering and Management Committees and numerous work groups to assist in developing the conceptual and detailed design of the CONNECTIONS software applications. The Council of Family and Child Caring Agencies (COFCCA), an organization that represents most of the private child welfare agencies as well individual representatives from some of those agencies participated on the Committee and work groups. Representatives of social services districts also participated in the design process. The ideas, opinions, suggestions and assistance of these stakeholders were instrumental in the decisions made at every phase of this project. The reporting and record keeping requirements set forth in the regulations with be implemented according to the design decisions that have been made through that process.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The proposed regulations would affect those public and private agencies located in rural areas that contract with social services districts to provide foster care, adoption and preventive services. Currently, there are approximately 100 such agencies located in counties with a population of less than 200,000. The regulations also will affect those social services districts that are located in rural areas.

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

Applicable public and private child welfare agencies and social services districts will be required to comply with the standards and requirements set forth in the regulations for implementing the statewide automated child welfare information system (SACWIS), known as CONNECTIONS in New York State, in accordance with State and federal law. The standards include mandated reporting, internal and external data confidentiality standards, and record retention requirements.

Social services districts and the applicable public and private child welfare agencies will not have to hire additional staff to implement the regulations. Existing case workers and other district staff who will be required to enter data into CONNECTIONS will be comprehensively trained to use the automated tools and capabilities the system provides. In addition, current training programs will be enhanced to emphasize the casework support that CONNECTIONS will bring. The social services districts and applicable public and private child welfare agencies also already have staff acting as security coordinators for CONNECTIONS.

3. Costs:

Section 446 of the SSL requires both the implementation of CONNECTIONS and the promulgation of regulations for the timely recording of child welfare services data in CONNECTIONS. The fiscal impact of the development and operation of CONNECTIONS is the result of these statutory requirements. The costs for developing CONNECTIONS will be a combination of federal and state dollars. To date, State funds have been used to cover the costs that are not federally reimbursable.

Caseworkers are currently required to document in other computer systems and/or paper format the information that these regulations require be inputted into CONNECTIONS. Therefore, there is no fiscal impact anticipated for social services districts or other public and private child welfare services agencies as a result of the reporting requirements included in the proposed regulations. All other requirements are administrative in nature and, as a result, are not anticipated to have a fiscal impact.

4. Minimizing Adverse Impact:

All applicable public and private child welfare agencies and the social services districts have been provided the personal and laptop computers, printers, servers and other hardware and software necessary to access and use CONNECTIONS. CONNECTIONS will enable the federal AFCARS reporting requirements to be accommodated in a way so that the prescribed data is interwoven within the case flow process, while the actual reporting is compiled and accomplished by the State. Automated cues and reports will assist and remind workers, supervisors and administrators of coming due and overdue activities, assisting not only with AFCARS reporting, but in verifying compliance with other federal and State legal requirements.

5. Rural Area Participation:

Since the inception of CONNECTIONS, information on the system's development and operation has been shared with social services districts and the applicable public and private child welfare agencies through written materials, face-to-face focus groups and meetings, teleconferences, surveys and questionnaires. In addition, OCFS established Steering and Management Committees and numerous work groups to assist in developing the conceptual and detailed design of the CONNECTIONS software applications. The Council of Family and Child Caring Agencies (COFCCA), an organization that represents most of the private child welfare agencies along with individual representatives from some of those agencies, including agencies located in rural areas, participated on the Committee and work groups. Representatives of social services districts also participated in the design process. The ideas, opinions, suggestions and assistance of these stakeholders were instrumental in the decisions made at every phase of this project. The reporting and recordkeeping requirements set forth in the regulations with be implemented according to the design decisions that have been made through that process.

Job Impact Statement

A full job impact statement has not been prepared for the regulations, which contain requirements imposed by federal mandates and which comply with the mandate of Section 446 of the Social Services Law that OCFS enact such regulations. The regulations will not have an impact on jobs and

employment opportunities because they will not impact upon the number of staff authorized agencies must maintain to provide preventive, foster care or adoptive services. Rather, the regulations are designed to implement CONNECTIONS statewide, providing case workers with an automated set of tools in CONNECTIONS in order to enhance the delivery of child welfare services.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements for Conferral of a College Degree and Home Instruction

I.D. No. EDU-09-04-00007-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 3.47(a) and (b) and 100.10(d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 218(1); 224(4); 3204(2); 3205(1), (2) and (3); 3210(2)(d); 3212(2)(d); and 3234(1)

Subject: Requirements for the conferral of a college degree and the home instruction of students of compulsory attendance age and college study.

Purpose: To establish alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeal the requirement that a student must have completed at least a four-year high school course or its equivalent before beginning degree study, require students subject to compulsory education to obtain the approval of an appropriate school administrator prior to enrolling in college credit course work offered when the public school is in session, and establish requirements relating to the home instruction of students of compulsory attendance age and college study.

Text of proposed rule: 1. Subdivisions (a) and (b) of section 3.47 of the Rules of the Board of Regents are repealed and new subdivisions (a) and (b) are added, effective July 1, 2004, as follows:

(a) General requirements.

(1) No earned degree shall be conferred in this State on any person who has not completed the program of study requisite to such degree, which institution shall be authorized to confer the same. No earned undergraduate or graduate degree shall be conferred unless the applicant has completed a program registered by the department.

(2) No earned degree shall be conferred unless the candidate has met the requirements of subparagraphs (i) or (ii) of this paragraph.

(i) Candidates who are of compulsory school age, pursuant to section 3205 of the Education Law or other requirement of law, shall provide the degree-granting institution with satisfactory evidence of meeting the following requirements:

(a) holding a high school diploma; or

(b) having completed the equivalent of a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator of the candidate's school district of residence at the time such course was completed.

(ii) Candidates who are beyond compulsory school age, pursuant to section 3205 of the Education Law or other requirement of law, shall provide the degree-granting institution with satisfactory evidence of meeting the following requirements:

(a) holding a high school diploma; or

(b) having completed the equivalent of a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator of the candidate's school district of residence at the time such course was completed; or

(c) holding a New York State high school equivalency diploma in accordance with the requirements of section 100.7 of this Title, or a local high school equivalency diploma in accordance with the requirements of section 100.8 of this Title, or a high school equivalency diploma issued by another state of the United States or an authorized local government of such state, or a high school equivalency diploma based on passing the General Educational Development (GED) test or its successor examination, or a high school equivalency diploma based upon completing requirements that are substantially equivalent to the requirements for a New York State high school equivalency diploma as prescribed in section 100.7 of this Title; or

(d) having completed 24 semester hours or the equivalent of college course work, distributed in subjects in accordance with the requirements of section 100.7(a)(2)(iii) of this Title, as verified by the institution conferring the degree; or

(e) having previously earned and been granted a degree from a degree-granting institution accredited by an accrediting agency approved by the United States Department of Education, pursuant to 20 USC 1099b; or from a postsecondary institution authorized by the Board of Regents to confer degrees; or from a degree-granting institution located in a jurisdiction outside the United States that is approved, authorized, or recognized by the jurisdiction's ministry of education or other governmental agency responsible for higher education.

(b) Preliminary requirement. Prior to a student subject to the compulsory education requirements, pursuant to section 3205 of the Education Law or other requirement of law, enrolling in a college credit course, the student shall submit to the degree-granting institution satisfactory evidence in writing that the student's attendance at such institution is approved by the superintendent of schools or comparable school administrator of the school district of residence or the chief school administrator of a nonpublic school or charter school that the student attends. This requirement shall not apply in cases in which such college credit course is offered in its entirety outside the normal instructional year or hours of session of the public schools of the district of residence. For purposes of this subdivision, satisfactory evidence of such approval may include, but is not limited to, a valid and in effect individualized home instruction plan (IHIP) for the student that authorizes college-level course work and is approved by the school district in accordance with section 100.10 of this Title.

2. Subdivision (d) of section 100.10 of the Regulations of the Commissioner of Education is amended, effective July 1, 2004, as follows:

(d) Content of individualized home instruction plan (IHIP). Each child's IHIP shall contain:

(1) . . .

(2) . . .

(3) the dates for submission to the school district of the parents' quarterly reports as required in subdivision (g) of this section. These reports shall be spaced in even and logical periods; [and]

(4) the names of the individuals providing instruction*; and*

(5) a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such course work.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: hedepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 210 of the Education Law authorizes the Board of Regents to register institutions in terms of New York standards.

Subdivision (1) of section 218 of the Education Law provides that no institution shall be given power to confer any degree not authorized by its charter.

Subdivision (4) of section 224 of the Education Law provides that no diploma or degree shall be conferred in the State except by a regularly organized institution meeting all requirements of the law and The University of the State of New York, and prohibits an individual from appending to his or her name any letters in the same form registered by the Regents as signifying a degree unless that person has received such degree.

Subdivision (2) of section 3204 of the Education Law requires that instruction given to a child not attending a public school shall be at least equivalent to the instruction given to a child at a public school.

Subdivision (1) of section 3205 of the Education Law requires each minor from six to sixteen years of age to attend upon full-time instruction.

Subdivision (2) of section 3205 of the Education Law provides that a minor who has completed a four-year high school course of study shall not be subject to the compulsory attendance requirements of the Education Law.

Subdivision (3) of section 3205 of the Education Law authorizes prescribed school districts to extend the age of compulsory school attendance from 16 to 17 years of age.

Paragraph (d) of subdivision (2) of section 3210 of the Education Law provides that a child of compulsory attendance age may be permitted to attend for a shorter school day or shorter school year than in the public schools provided that, in accordance with the regulations of the State Education Department, the instruction the child receives is substantially equivalent to that provided in the public schools.

Paragraph (d) of subdivision (2) of section 3212 of the Education Law requires persons in parental relation to a child of compulsory school age who is not attending upon instruction in a public or parochial school in the school district of residence to furnish proof that such child is attending upon required instruction elsewhere.

Subdivision (1) of section 3234 of the Education Law requires the Commissioner of Education to supervise the enforcement of Part I of Article 65 of the Education Law pertaining to compulsory attendance.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Rules of the Board of Regents and Regulations of the Commissioner of Education carries out the intent of the aforementioned statutes by establishing standards that students must meet to complete registered college programs leading to degrees, preliminary requirements for enrollment in credit course work at a college to safeguard that students subject to compulsory education requirements meet the requirements for compulsory school attendance, and requirements for the content of individualized home instruction plans (IHIPs) for home-schooled students to ensure that the plans properly reflect authorization to engage in college-level course work.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeal the requirement that a student must have completed at least a four-year high school course or its equivalent prior to beginning degree study, require students subject to compulsory education to obtain the approval of an appropriate school administrator prior to enrolling in college credit course work offered when the public school is in session, and establish requirements relating to the home instruction of students of compulsory attendance age and college study.

Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four- year high school course or its equivalent, prior to obtaining the degree. The amendment provides a number of alternative requirements that may be met instead of the holding of a high school diploma. Specifically, under the proposed amendment, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or have completed 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree. The increasing variety of high school preparation, including by distance learning or through home instruction, has suggested that providing additional alternatives to the requirement that a candidate for a college degree hold a high school diploma would be helpful to students and colleges and universities in New York State. The Department believes that the proposed requirements provide needed flexibility in the regulation, permitting the candidate for a degree to demonstrate preliminary education through a variety of means.

The amendment does not extend these alternatives to a candidate for a degree who is of compulsory school age. Such a candidate must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator. This requirement is necessary because students of compulsory school age must be in high school or home schooled, unless they have already completed high school study, as signified by holding the high school diploma or the certification by the superintendent of schools of completion of the high school course.

The amendment removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. The Department does not believe this requirement is necessary because section 52.2(d) of the Commissioner's regulations already requires colleges to take into account the capacity of the student to undertake the program of study in their admission requirements for each degree program. In addition, the change is needed to resolve a conflict in the Rules of the Board of Regents and the Regulations of the Commissioner of Education. Section 100.7 of Commissioner's Regulations permits a student to earn a high school equivalent diploma through college study as a recognized candidate for a degree, but the provision proposed for repeal appears to prohibit that study.

The amendment also requires students who are subject to compulsory education requirements to present the college with written approval from an appropriate school administrator that enrollment in college credit courses is approved, prior to college enrollment. This requirement does not apply when the college credit course is offered in its entirety outside the normal instructional year or hours of session of the public schools of the district of residence. This change provides a necessary link between the college and the school district for students subject to compulsory education. It helps to safeguard that these students are meeting the requirements for compulsory school attendance.

Finally, the amendment establishes an additional content requirement for individual home instruction plans (IHIPs) for home-schooled students. It requires the IHIP to include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such course work. This is needed to enable a home-schooled student subject to compulsory education requirements to easily demonstrate to the college that college- level study is authorized by the school district.

4. COSTS:

(a) Costs to the State Government: The proposed amendment is not expected to impose additional costs on State government.

(b) Costs to local government: The proposed amendment will not impose any additional costs on school districts. The proposed amendment to section 100.10(d) of the Commissioner's regulations requires that the individualized home instruction plan (IHIP) of a home-schooled child must include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such coursework. The Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory attendance age to ensure that it includes prescribed content, and it is anticipated that this requirement will not impose any additional costs on school district to review the IHIP to ensure compliance with this additional requirement.

(c) Costs to private regulated parties: The amendment is not expected to impose costs on private regulated parties, including candidates for college degrees, degree-granting institutions, or students who are home schooled. The amendment requires candidates for a college degree to demonstrate that the candidate holds a high school diploma or has met an alternative requirement. Degree-granting institutions will be required to ensure that candidates have provided satisfactory evidence of compliance. Currently, degree-granting institutions must ensure that candidates for a college degree have completed a preliminary education of at least a four-year high school course, or its equivalent. The Department does not believe that the change in the requirement will impose additional costs on degree-granting institutions beyond costs already borne to ensure that the candidate has completed an appropriate preliminary education, or that affording candidates the opportunity to demonstrate preliminary education through alternatives will impose any additional costs on candidates for a college degree. In addition, the amendment will not increase costs for home-schooled students. It simply requires their instructional plan to indicate whether or not they will be enrolling in college-level course work and the subjects that will be covered.

(d) Costs to the regulatory agency: The proposed amendment will not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory attendance age to ensure that it includes prescribed content. The proposed amendment includes a new element that must be included in the IHIP, a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such coursework. School districts will have to review the IHIP for this new requirement.

6. PAPERWORK:

The proposed amendment requires students of compulsory school age to obtain approval in writing from the school district (or nonpublic or charter school of attendance) to enroll in college credit courses during the

normal instructional year or hours of session of the public schools of the district of residence. Home-schooled students may show this approval through the inclusion of college-level course work in his or her approved individualized home instruction plan (IHIP). The amendment does not impose any other paper work requirements that are new or additional.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards in this area.

10. COMPLIANCE SCHEDULE

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. No additional period of time is needed to permit regulated persons to achieve compliance with this rule.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

(a) Small Businesses:

The proposed amendment will apply to all 265 degree-granting institutions. Of that that number, 26 are classified as small businesses.

(b) Local Governments:

The proposed amendment will apply to all 708 school districts in the State.

2. COMPLIANCE REQUIREMENTS:

(a) Small Businesses:

The proposed amendment establishes requirements that must be met by candidates for a college degree. Consequently, it will affect all degree-granting institutions in the State, include those classified as small businesses. Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent. The amendment provides a number of alternative requirements that may be met instead of the holding a high school diploma. Specifically, under the proposed amendment, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or have completed 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree.

The amendment provides that a candidate for a college degree who is still of compulsory school age must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school course as certified by the superintendent of schools or comparable chief school administrator.

The amendment removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. However, the amendment requires students who are subject to compulsory education requirements to present the college with written approval from an appropriate school administrator that enrollment in college credit courses is approved, prior to college enrollment. This requirement does not apply when the college credit course is offered in its entirety outside the normal instructional year or hours of session of the public schools of the district of residence.

(b) Local Governments:

Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory attendance age to ensure that it includes prescribed content. The proposed amendment includes a new element that must be included in the IHIP, a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such coursework. School districts will have to review the IHIP for this new requirement.

3. PROFESSIONAL SERVICES:

(a) Small Businesses: The proposed amendment will not require degree-granting institutions, including those classified as small businesses, to hire additional professional services to comply.

(b) Local Governments: The proposed amendment will not require school districts to hire additional professional services to comply.

4. COMPLIANCE COSTS:

(a) Small Businesses:

The proposed amendment does not impose any additional compliance costs on degree-granting institutions classified as small businesses. The amendment imposes requirements on candidates for college degrees to demonstrate that the candidate holds a high school diploma or meets an alternative requirement. Degree-granting institutions, including those that are classified as small businesses, will be required to ensure that candidate has provided satisfactory evidence of compliance. Currently, degree-granting institutions must ensure that candidates for a college degree have completed a preliminary education of at least a four-year high school course, or its equivalent. The Department does not believe that the change in the requirement will impose additional costs on degree-granting institutions beyond costs already borne to ensure that the candidate has completed an appropriate preliminary education.

(b) Local Governments:

The proposed amendment will not impose any additional costs on school districts. The proposed amendment to section 100.10(d) of the Commissioner's regulations requires that the individualized home instruction plan (IHIP) of a home-schooled child must include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such coursework. The Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory school age to ensure that it includes prescribed content, and it is anticipated that this requirement will not impose any additional costs on school districts to review the IHIP to ensure compliance with this additional requirement.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

(a) Small Businesses:

The proposed amendment does not impose any new technological requirements on degree-granting institutions that are classified as small businesses and is economically feasible. The amendment will not impose any additional costs on these institutions.

(b) Local Governments:

The proposed amendment does not impose any new technological requirements on school districts and is economically feasible. The amendment will not impose any additional costs on school districts.

6. MINIMIZING ADVERSE IMPACT:

(a) Small Businesses:

The proposed amendment concerns requirements for a college degree, and preliminary requirements that a student subject to compulsory education requirements must meet to enroll in college credit courses. The Department believes that a uniform standard should apply regardless of the size of the degree-granting institution or its status as a small business, to ensure that adequate educational standards are met for college degree study. In any event, for the reasons stated in "Compliance Costs," the proposed amendment will not impose additional costs on degree-granting institutions classified as small businesses, and therefore, will not have any adverse economic impact on them.

(b) Local Governments:

The proposed amendment concerns requirements for the home instruction of students of compulsory attendance age. The Department believes that a uniform standard should apply to all school districts in the State to safeguard that students are meeting the State's compulsory education requirements. In any event, for the reasons stated in "Compliance Costs," the proposed amendment will not impose additional costs on school districts, and therefore, will not have any adverse economic impact on them.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

(a) Small Businesses:

Comments on the proposed amendment were solicited from all degree-granting institutions in New York State, including the 26 that are classified as small businesses.

(b) Local Government:

Comments on the proposed amendment were solicited from all school districts in New York State through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to degree-granting institutions, candidates for degrees and applicants for admission to college, students who are home schooled, and school districts in New York State, including individuals residing in, and those institutions and school districts located in, the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS, AND PROFESSIONAL SERVICES:

The proposed amendment establishes requirements that must be met by candidates for a college degree. Consequently, it will affect students and colleges in all parts of the State, including rural areas. Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent. The amendment provides a number of alternative requirements that may be met instead of the holding a high school diploma. Specifically, under the proposed amendment, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or complete 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree.

The amendment provides that a candidate for a college degree who is still of compulsory school age must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school course as certified by the superintendent of schools or comparable chief school administrator.

The amendment removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. However, the amendment requires minors who are subject to compulsory education requirements to present the college with written approval from an appropriate school administrator that enrollment in college credit courses is approved, prior to enrollment. This requirement does not apply when the college credit course is offered in its entirety outside the normal instructional year or hours of session of the public schools of the district of residence.

The amendment also establishes an additional content requirement for individual home instruction plans (IHIPs) for home-schooled students of compulsory attendance age. It requires the IHIP to include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such coursework. This will affect home-schooled students and school districts in all parts of New York State, including rural areas of the State. Individuals submitting the IHIP for the home-schooled student must include this additional element in the IHIP, and the school districts must review the IHIP to ensure its inclusion.

The proposed amendment would not require regulated parties to hire additional professional services in order to comply.

3. COSTS:

The proposed amendment does not impose any additional compliance costs on regulated parties, including those that are located in rural areas of the State. The amendment requires candidates for college degrees to demonstrate that the candidate holds a high school diploma or has met an alternative requirement. Degree-granting institutions will be required to ensure that candidates have provided satisfactory evidence of compliance. Currently, degree-granting institutions must ensure that candidates for a college degree have completed a preliminary education of at least a four-year high school course, or its equivalent. The Department does not believe that the change in the requirement will impose additional costs on degree-granting institutions beyond costs already borne to ensure that the candidate has completed an appropriate preliminary education, or that affording candidates the opportunity to demonstrate preliminary education through alternative means will impose any additional costs on candidates for a college degree.

The proposed amendment to section 100.10(d) of the Commissioner's regulations requires that the individualized home instruction plan (IHIP) of a home schooled child must also include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such coursework. The Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory school age to ensure that it includes prescribed content, and it is anticipated that this requirement will not impose any additional costs on school districts to review the IHIP to ensure compliance with this additional requirement.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment concerns requirements for a college degree, preliminary requirements for the enrollment of minors subject to compulsory education requirements in college credit courses, and requirements for the home instruction of students of compulsory attendance age. The Department believes that a uniform standard should apply regardless of the geographic location of the student or institution, to ensure that adequate educational standards are met for college degree study, and safeguard that minors are meeting the State's compulsory education requirements.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from all degree-granting institutions in New York State, including those located in rural areas of the State, and from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas of the State. Comments were solicited from the Commissioner's Advisory Council on Nonpublic Schools, that includes representatives of nonpublic schools located in rural areas of the State, and from all charter schools in the State. In addition, comments were solicited from groups representing home-schooled students in New York State, including students living in rural areas of the State.

Job Impact Statement

The proposed amendment will establish alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeal the requirement that a student must have completed at least a four-year high school course or its equivalent prior to beginning degree study, require students subject to compulsory education to obtain the approval of an appropriate school administrator prior to enrolling in college credit course work offered when the public school is in session, and establish requirements relating to the home instruction of students of compulsory attendance age and college study. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Inspection and Copying of Department Records

I.D. No. EDU-09-04-00008-P

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

Proposed action: Amendment of sections 187.1, 187.2 and 187.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 305(6); and Public Officers Law, sections 87(1)(b) and 89(3)

Subject: Inspection and copying of department records.

Purpose: To conform the commissioner's regulations regarding Freedom of Information Law (FOIL) procedures to court decision interpreting Public Officers Law, section 89(3); and to update address of department's records access officer and addresses of several regional offices designated to receive requests for inspection and copies of department records.

Text of proposed rule: 1. Section 187.1 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

§ 187.1 Designation of department officers.

The records access officer, whose office is located in Room [115] *121*, State Education Building, Albany, New York 12234, is designated to receive requests for records under the Freedom of Information Law, except archival records that are in custody of the State Archives. The records access officer shall be the department official responsible for ensuring compliance with the provisions of Public Officers Law, articles 6 and 6-A. The Assistant Commissioner of Education for Archives and Records Administration, whose office is located in Room 10D45, Cultural Education Center, Albany, New York 12230, shall serve as records access officer for archival records in custody of the State Archives. Requests for access to archival records that are in the State Archives shall be subject to the provisions of this Part and of section 188.26 of this Title. In the event of a conflict with this Part, the provisions of section 188.26 shall govern.

2. Section 187.2 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

§ 187.2 Submission of requests for inspection or copies of records.

The following offices of the department are designated to receive requests for inspection and copies of records of the department, and requests for the identification or amendment or correction of records of the department relating to a data subject. All such requests shall be in writing.

ALBANY
New York State Education Department
Records Access Officer
Room [115] *121*
State Education Building
Albany, NY 12234

New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
Local Office
Six Tower Place, 1st Floor
Executive Park
Albany, NY 12203
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
Eastern Special Education Regional Office
One Commerce Plaza, Room 1623
Albany, NY 12234
New York State Education Department
Office of Professional Discipline
1450 Western Avenue
Albany, NY 12203
BATAVIA
New York State Education Department
New York State School for the Blind
Two-A Richmond Avenue
Batavia, NY 14020
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
Western Special Education Regional Office
New York State School for the Blind
Two-A Richmond Avenue
Batavia, NY 14020
BINGHAMTON
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
44 Hawley Street
Binghamton, NY 13901
BUFFALO
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
Donovan State Office Building
[125 Main Street] *508 Main Street*
Buffalo, NY [14203] *14202*
CHEEKTOWAGA
New York State Education Department
Office of Professional Discipline
3530 Union Road
Cheektowaga, NY 14225
ELMIRA
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
244 West Water Street
Elmira, NY 14901
HAUPPAUGE
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
New York State Office Building
Veterans Highway
Hauppauge, NY 11788
HEMPSTEAD
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
Hempstead Plaza
50 Clinton Street, Room 708
Hempstead, NY 11550
LINDENHURST
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
Long Island Special Education Regional Office
The Kellum Educational Center
887 Kellum Street
Lindenhurst, NY 11757
LIVERPOOL
New York State Education Department
Office of Elementary, Middle, Secondary & Continuing Education
800 4th Street
Liverpool, NY 13088
New York State Education Department
Office of Professional Discipline
A.V. Zogg School
800 4th Street - Rooms 317 & 318
Liverpool, NY 13088
MALONE
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
[231 West Main Street, Suite 2] *209 West Main Street, Suite 3*
Malone, NY 12953
[MELLVILLE] *MELVILLE*
New York State Education Department
Office of Professional Discipline
1121 Old Walt Whitman Road
Suite 301
Melville, NY 11747
NEW YORK CITY
New York State Education Department
Bureau of Proprietary School Supervision
116 West 32nd Street - 14th Floor
New York, NY 10001
New York State Education Department
Office of Professional Discipline
[One Park Avenue - 6th Floor] *475 Park Avenue South, 2nd Floor*
New York, NY 10016
New York State Education Department
Office of the Professions
Harlem State Office Building
163 West 125th Street
New York, NY 10027
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
116 West 32nd Street, 6th Floor
New York, NY 10001
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
1215 Zerega Avenue
Bronx, NY 10462
New York State Education Department
Office of Elementary, Middle, Secondary & Continuing Education
55 Hanson Place, 2nd Floor
Brooklyn, NY 11217
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
55 Hanson Place, 2nd Floor
Brooklyn, NY 11217
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
New York City Special Education Regional Office
55 Hanson Place, Room 545
Brooklyn, NY 11217-1580
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
One Lefrak City Plaza
59-17 Junction Boulevard, 20th Floor
Corona, NY 11368
New York State Education Department
Office of Professional Discipline
55 Hanson Place
Brooklyn, NY 11217
PORT CHESTER
New York State Education Department
Office of Professional Discipline
One Gateway Plaza

Port Chester, NY 10573
POUGHKEEPSIE
New York State Education Department
Office of Vocational and Educational Services for
Individuals with Disabilities
Manchester Mill Centre
229 Manchester Road, 2nd Floor
Poughkeepsie, NY 12603
ROCHESTER
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
109 South Union Street, 2nd Floor
Rochester, NY 14607
New York State Education Department
Office of Professional Discipline
220 Idlewood Road, Room 106
Rochester, NY 14618
ROME
New York State Education Department
New York State School for the Deaf
401 Turin Street
Rome, NY 13440
SYRACUSE
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
Hughes State Office Building, Room 230
333 East Washington Street
Syracuse, NY 13202
UTICA
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities
State Office Building
207 Genesee Street
Utica, NY 13501
WASHINGTON, DC
New York State Education Department
Office of Federal Legislation
1730 Rhode Island Avenue, NW
Washington, DC 20036
WEST SENECA
New York State Education Department
Office of Elementary, Middle, Secondary and Continuing
Education
355 Harlem Road
West Seneca, NY 14224
WHITE PLAINS
New York State Education Department
Office of Vocational and Educational Services for
Individuals with Disabilities
[55 Church Street-3rd Floor] *75 South Broadway*
White Plains, NY 10601
YORKTOWN HEIGHTS
New York State Education Department
Office of Vocational and Educational Service for Individuals
with Disabilities
Hudson Valley Special Education Regional Office
Putnam-Northern Westchester BOCES
1950 Edgewater Street
Yorktown Heights, NY 10598

3. Section 187.4 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

§ 187.4 Freedom of Information Law procedures.

The following procedures shall be followed in connection with requests to inspect or secure copies of department records made by members of the general public under the provisions of Public Officers Law, article 6:

(a) Albany office.

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) If the agency does not provide or deny access to the record sought within five business days of receipt of a request, the agency shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. [If access to records is neither granted nor denied within 10 business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed.]

(b) All other offices.

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) If the agency does not provide or deny access to the record sought within five business days of receipt of a request, the agency shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. [If access to records is neither granted nor denied within 10 business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed.]

(c) . . .
(d) . . .

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Kathy A. Ahearn, Chief of Staff and Counsel and Deputy Commissioner for Legal Affairs, Office of Counsel, Education Bldg., Rm. 148EB, Albany, NY 12234, (518) 474-6400

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred by law on the State Education Department.

Education Law section 305(6) provides that the Commissioner shall be responsible for the safe keeping and proper use of the books, records and other property in charge of the Regents, and for the proper administration and discipline of the various officers and divisions of the State Education Department.

Public Officers Law section 87(1)(b) provides that each State agency shall promulgate rules and regulations, in conformity with Article 6 of the Public Officers Law (Freedom of Information Law) and applicable rules promulgated pursuant to the provisions of Public Officers Law section 87(1)(a), and pursuant to such general rules and regulations as may be promulgated by the Committee on Open Government, pertaining to the availability of records and procedures to be followed, including, but not limited to:the times and places such records are available; the persons from whom such records may be obtained; and the fees for copies of records.

Public Officers Law section 89(3) provides that each entity subject to the Freedom of Information Law, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date when such request will be granted or denied.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above described statutory authority conferred on the Commissioner of Education to promulgate regulations relating to the inspection and copying of State Education Department records, in conformity with Article 6 of the Public Officers Law (Freedom of Information Law [FOIL]).

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Public Officers Law section 89(3) and the regulations promulgated by the Committee on Open Government, consistent with the holding in *Lecker* v. *New York City Board of Education*, 157 AD2d 486 (1st Dept). In that decision, the Court upheld a determination by the Supreme Court, New York County, that denied petitioner's application for an order directing the New York City Board of Education to amend its regulations relating to FOIL to require the Board of Education to either grant or deny access to its records within 10 days after acknowledgment of receipt of the request for records. While noting that this requirement was contained in the regulations promulgated by the Committee on Open Government (21 NYCRR 1401.5[d]), the Court determined that such regu-

lation was invalid as inconsistent with Public Officers Law section 89(3), which contains no such time limitation but merely requires that the person requesting a record be furnished with a statement of the "approximate date when such request will be granted or denied." The Committee on Open Government subsequently amended section 1401.5 to remove the 10-day requirement. The proposed amendment to section 187.4 of the Commissioner's Regulations would remove identical language imposing such 10-day requirement.

In addition, the proposed amendments to sections 187.1 and 187.2 are necessary to update references to the address of the Department's records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records.

COSTS:

(a) Costs to State: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementing and continued administration of the rule: None.

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Article 6 of the Public Officers Law, and to update references to the address of the Department's records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements.

LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal procedures of the State Education Department, relating to the inspection and copying of Department records, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

DUPLICATION:

The proposed amendment relates solely to the internal administration of the State Education Department and is necessary to conform the Commissioner's Regulations to Article 6 of the New York State Public Officers Law. There are no relevant statutes, rules or other legal requirements of the State and Federal governments which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Article 6 of the Public Officers Law. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed amendment, which relates solely to the New York State Freedom of Information Law and the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed amendment relates to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

The proposed amendment is necessary to conform the Commissioner's Regulations to Article 6 of the Public Officers Law (the Freedom of Information Law), and relates solely to the internal administration of the State Education Department concerning the inspection and copying of Department records. The proposed amendment does not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment is necessary to conform the Commissioner's Regulations to Article 6 of the Public Officers Law (the Freedom of Information Law), and relates solely to the internal administration of the State Education Department concerning the inspection and copying of Department records. The proposed amendment does not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Article 6 of the Public Officers Law (the Freedom of Information Law), and relates solely to the internal administration of the State Education Department concerning the inspection and copying of Department records. The proposed amendment will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Judicial Review of the Determination of the State Review Officer

I.D. No. EDU-09-04-00009-P

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

Proposed action: Amendment of sections 200.5(j)(3), 200.6(i)(5)(iii) and 200.7(d)(4) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 4403(3) and 4404(3) and L. 2003, ch. 492

Subject: Judicial review of the determination of the State review officer.

Purpose: To ensure that a judicial appeal of a decision of the State review officer is by means of a proceeding in State Supreme Court pursuant to art. 4 of the Civil Practice Law and Rules.

Text of proposed rule: 1. Paragraph 3 of subdivision (j) of section 200.5 is amended, effective June 10, 2004, as follows:

(3) The written decision of the State review officer shall be final, provided that either party may seek judicial review by means of a proceeding pursuant to article [78] *4* of the Civil Practice Law and Rules or 20 U.S.C. section 1415.

2. Clause (iii) of paragraph (5) of subdivision (i) of section 200.6 is amended, effective June 10, 2004, as follows:

(iii) Where the department requires, as corrective action, that a board of education obtain prior approval for private day and residential school placements, the department's determination to approve or deny any such application shall be made within 10 business days of a request by the board of education for such approval. Where the department disapproves such a placement recommendation for an individual student, the parent may file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. The procedures relating to notice and review of the disapproval of the recommended private or residential school placement shall be comparable to those set forth in section 200.5 of this Part, and shall be provided by the department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article [78] *4* of the Civil Practice Law and Rules or 20 USC 1415, and may be instituted by any party to the hearing.

3. Paragraph (4) of subdivision (d) of section 200.7 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(4) If the commissioner declines to make a State appointment of a student who has been recommended for appointment by a State-operated or State-supported school, or if the Commissioner seeks to change a student's classification or placement against the recommendation of the State-operated or State-supported school which such student attends, the parent may request mediation or file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such a hearing officer shall not be an employee of the department. The procedures relating to notice and review of a refusal of State appointment or of a change of classification or placement by the commissioner shall be comparable to those set forth in section 200.5(a) through (f) of this Part, and shall be provided by the Education Department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article [78] *4* of the Civil Practice Law and Rules or 20 USC 1415, and may be instituted by any party to the hearing.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel,

Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Rebecca H. Cort, Ed.D., Interim Deputy Commissioner, Office of Vocational and Educational Services for Individuals with Disabilities, One Commerce Plaza, Rm. 1606, Albany, NY 12234, (518) 474-2714, e-mail: rcort@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred by law on the State Education Department.

Education Law section 4403 outlines the responsibilities of the Department relating to special education programs and services for students with disabilities. Section 4403(3) authorizes the Department to formulate such rules and regulations pertaining to the physical and educational needs of such children as the Commissioner shall deem to be in their best interests.

Education Law section 4404 sets forth the appeal procedures for students with disabilities from recommendations of committees on special education. Section 4404(3), as amended by Chapter 492 of the Laws of 2003, provides that a review of the determination of a state review officer regarding students with disabilities may only be reviewed in a proceeding brought in the supreme court pursuant to article four of the Civil Practice Law and Rules or in United States District Court.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to ensure consistency between federal and State law and regulations regarding the procedures for the judicial review of a written decision of a State Review Officer.

NEEDS AND BENEFITS:

The proposed amendment will replace references to CPLR Article 78 with CPLR Article 4, relating to judicial proceedings to review the written decision of the State review officer with respect to the classification and educational placement of students with disabilities.

The proposed amendment is necessary to align the Commissioner's Regulations with Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003. Chapter 492 amended section 4404(3) to provide that judicial review of the final determination or order of a State Review Officer be conducted in a proceeding pursuant to Article 4 of the Civil Practice Law and Rules (CPLR) rather than pursuant to Article 78 of the CPLR. Judicial review under CPLR Article 4 ensures the State's compliance with the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, which require that a review of the final determination or order be made on the entire record, with any additional evidence heard at the request of the party, and be based upon a preponderance of the evidence.

COSTS:

(a) Costs to State government: None.

(b) Costs to local governments: None.

(c) Costs to private regulated parties: None.

(d) Costs to the State Education Department for implementation and continued administration of this rule: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003, and thereby ensure compliance with requirements in the federal IDEA and its implementing regulations. The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department beyond those imposed by State statutes or federal statutes and regulations.

PAPERWORK:

The proposed amendment will not impose any additional paperwork requirements beyond those imposed by State statutes or federal statutes and regulations.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by State statute or federal statutes and regulations.

DUPLICATION:

The proposed amendment does not duplicate any existing State or federal statute or regulation and is necessary to conform the Commissioner's Regulations to Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003, and thereby ensure compliance with federal requirements in the IDEA and its implementing regulations.

ALTERNATIVES:

There are no alternatives to the proposed amendment. The proposed amendment is necessary to align State regulations to State statute and to comply with the federal IDEA and its implementing regulations.

FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the federal IDEA and its implementing regulations, which require that a review of the final determination or order of the State Review Officer, regarding children with disabilities, be made on the entire record, with any additional evidence heard at the request of the party, and be based upon a preponderance of the evidence.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003, and to federal requirements in the IDEA and its implementing regulations.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to align State regulations to State statute and the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, relating to judicial review of the final determination or order of a State Review Officer in proceedings relating to the classification and educational placement of children with disabilities. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further actions were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment relates to judicial review of the final determination or order of State Review Officer with respect to impartial hearings relating to the provision of special education to students with disabilities by school districts, and thus is applicable to each school district in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any compliance requirements on school districts. The proposed amendment will replace references to CPLR Article 78 with CPLR Article 4, relating to judicial proceedings to review the written decision of the State Review Officer with respect to the classification and educational placement of students with disabilities.

The proposed amendment is necessary to align State regulations with Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003. Chapter 492 amended section 4404(3) to provide that judicial review of the final determination or order of a State Review Officer be conducted in a proceeding pursuant to Article 4 of the Civil Practice Law and Rules (CPLR) rather than pursuant to Article 78 of the CPLR. CPLR Article 4 proceedings comply with the requirement of the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, which require that a review of the final determination or order be made on the entire record, with any additional evidence heard at the request of the party, and be based upon a preponderance of the evidence.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts.

COMPLIANCE COSTS:

The proposed amendment will replace references to CPLR Article 78 with CPLR Article 4, relating to judicial proceedings to review the written decision of the State Review Officer with respect to the classification and educational placement of students with disabilities.

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003, and thereby ensure compliance with requirements in the federal IDEA and its implementing regulations. The proposed

amendment does not impose any costs on the school districts beyond those imposed by State statutes or federal statutes and regulations.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any new technological requirements on school districts. Economic feasibility is addressed above under Compliance Costs.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003, and thereby ensure compliance with federal requirements in the IDEA and its implementing regulations. The proposed amendment does not impose any compliance requirements on school districts beyond those imposed by State statutes or federal statutes and regulations.

LOCAL GOVERNMENT PARTICIPATION:

Comments from the proposed amendment have been solicited from school districts, through the office of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to judicial reviews of State Review Officer determinations from hearings to rule on disputes between parents and school districts over special education programs and services, including those affecting school districts located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any reporting, recordkeeping or other compliance requirements on school districts in rural areas. The proposed amendment will replace references to CPLR Article 78 with CPLR Article 4, relating to judicial proceedings to review the written decision of the State Review Officer with respect to the classification and educational placement of students with disabilities.

The proposed amendment is necessary to align State regulations with Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003. Chapter 492 amended section 4404(3) to provide that judicial review of the final determination or order of a State Review Officer be conducted in a proceeding pursuant to Article 4 of the Civil Practice Law and Rules (CPLR) rather than pursuant to Article 78 of the CPLR. CPLR Article 4 proceedings comply with the requirement of the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, which require that a review of the final determination or order be made on the entire record, with any additional evidence heard at the request of the party, and be based upon a preponderance of the evidence.

COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003, and thereby ensure compliance with requirements in the federal IDEA and its implementing regulations. The proposed amendment does not impose any costs on the school districts in rural areas beyond those imposed by State statutes or federal statutes and regulations.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003, and thereby ensure compliance with federal requirements in the IDEA and its implementing regulations. The proposed amendment does not impose any compliance requirements on school districts beyond those imposed by State statutes or federal statutes and regulations.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment have been solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment is necessary to align State regulations to State statute and the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, relating to judicial review of the final determination or order of a State Review Officer in proceedings relating to the classification and educational placement of children with disabilities. The proposed amendment will not have an adverse impact on jobs and employment opportunities in New York State. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Leaves of Absence

I.D. No. EDU-09-04-00010-P

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

Proposed action: Repeal of Part 221 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 305(1) and (6)

Subject: Leaves of absence for State Education Department employees.

Purpose: To repeal obsolete provisions.

Text of proposed rule: Part 221 of the Regulations of the Commissioner of Education is repealed, effective June 10, 2004.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Kathy A. Ahearn, Chief of Staff and Counsel and Deputy Commissioner for Legal Affairs, Office of Counsel, Education Bldg., Rm. 148EB, Albany, NY 12234, (518) 474-6400, e-mail: legal@mail.nysed.gov

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief Administrative Officer.

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred by law on the State Education Department. Education Law section 305(1) designates the Commissioner of Education as the Chief Executive Officer of the State system of education and of the Board of Regents. Section 305(6) charges the Commissioner with responsibility for the proper administration and discipline of the various officers and divisions of the State Education Department.

LEGISLATIVE OBJECTIVES:

The proposed repeal carries out the legislative objectives of Education Law section 207.

NEEDS AND BENEFITS:

The proposed repeal is necessary to delete obsolete provisions relating to leaves of absences for State Education Department Employees. These provisions have been superceded by provisions in the Civil Service Law, federal law or collective bargaining agreements.

COSTS:

(a) Costs to State: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementing and continued administration of the rule: None.

The proposed repeal is necessary to delete obsolete provisions relating to the internal rules of the Department and does not impose any costs on the State, local governments or private parties.

PAPERWORK:

The proposed repeal does not impose any reporting or other paperwork requirements.

LOCAL GOVERNMENT MANDATES:

The proposed repeal relates to the internal administration of the State Education Department and does not impose any program, service, duty or responsibility upon any county, city, town village, school district, fire district or other special district.

DUPLICATION:

The proposed repeal relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed repeal is necessary to delete obsolete provisions relating to leaves of absences for State Education Department employees. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed repeal, which relates solely to the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed repeal is necessary to delete obsolete provisions relating to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

The proposed repeal relates to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the repeal that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed repeal relates to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on rural areas. Because it is evident from the nature of the repeal that it does not affect rural areas, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for rural areas is not required and one has not been prepared.

Job Impact Statement

The proposed repeal relates to the internal organization of the State Education Department and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed repeal that no substantial impact will occur, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Resource Management Plan for Surfclams

I.D. No. ENV-48-03-00003-E
Filing No. 208
Filing date: Feb. 12, 2004
Effective date: Feb. 12, 2004

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

Action taken: Amendment of Subpart 43-2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0308 and 13-0309

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

Specific reasons underlying the finding of necessity: This rulemaking will implement the Department of Environmental Conservation's (Department) management plan for the protection of surfclams, and thereby enable the Department to increase the annual surfclam harvest limit for 2004 and alleviate the economic hardship imposed on the New York surfclam industry by current regulations.

ECL subdivision 13-0309(15) states that until regulations are adopted implementing a management plan for the protection of surfclams, the annual harvest limit for surfclams taken from certified waters of the Atlantic Ocean may not exceed 500,000 bushels. The 2002 surfclam population assessment survey shows a significant increase in the surfclam biomass since the previous survey in 1999. Upon analyzing the results from the survey, examining surfclam catch reports, and receiving recommendations from the surfclam industry, the Department has decided to raise the annual harvest limit for surfclams taken from the Atlantic Ocean. However, the limit cannot be increased beyond 500,000 bushels until the regulations implementing the management plan are adopted. With the adoption of these amendments to subpart 43-2, the Department may, in accordance with ECL 13-0309(15), increase the surfclam annual harvest limit to allow the fishery to remain economically viable and yet remain protective of the surfclam resource in the state.

The promulgation of this regulation on an emergency basis is necessary in order that the Department may increase the annual harvest limit for surfclams for 2004. If the emergency rule were not adopted, the surfclam industry would continue to operate under the 500,000 bushel annual harvest limit until January 1, 2005, and would lose the economic benefit of the increased harvest limit for 2004.

Secondly, this rulemaking will eliminate the daily harvest limit, but retain a weekly harvest limit. This will allow surfclam harvesters to take more surfclams during a single trip and reduce the number of fishing trips needed to take the weekly harvest limit. During the winter and at times of poor weather, it is of vital importance to reduce the number of trips a commercial fisherman must make but still remain economically viable in a competitive fishery.

Lastly, this rulemaking will implement provisions of the management plan that call for streamlining the process of issuing surfclam permits. The rule will reduce the number of surfclam permits the department issues each year, and will also decrease the number of permits an individual must possess to be allowed to take surfclams. These changes in the process of issuing surfclam permits must become effective as soon as possible; current surfclam permits will expire on December 31, 2003 and the process must be complete before the need arises to issue permits for the upcoming year.

Subject: Resource management plan for surfclams found in the New York State waters of the Atlantic Ocean.

Purpose: To change the time frame within which the department must evaluate surfclam population survey data and announce changes in the annual harvest limit; remove the daily harvest limit for surfclams taken by mechanical means from the Atlantic Ocean; and amend the process of issuing Surfclam/Ocean Quahog Atlantic Ocean permits.

Text of emergency rule: Title 6 NYCRR Subpart 43-2, entitled Atlantic Ocean, is amended as follows:

Section 43-2.1 is amended to read as follows:

§ 43-2.1 Purpose.

The purpose of this Subpart is to promote and support the maintenance of viable surf clam and ocean quahog populations in the Atlantic Ocean portion of the Marine and Coastal District. The Marine and Coastal District includes the waters of the Atlantic Ocean within three nautical miles from the coastline and all other tidal waters within the State, including the Hudson River up to the Tappan Zee Bridge. The provisions of this Subpart require [resident and nonresident] surf clam and ocean quahog mechanical harvesting permits, establish specific controls over the possession and design of mechanical harvesting gear, set weekly vessel harvest limits and [yearly] *annual* harvest [quotas] *limits*, establish container and tagging requirements and require record keeping and reporting. Such requirements are intended to support the continuation of a viable fishery in the involved waters of the Atlantic Ocean so that the fishery continues to operate in balance with available surf clam and ocean quahog stocks.

Section 43-2.2 through subdivision 43-2.3(a) remains unchanged.

Subdivisions 43-2.3(b) through (j) are renumbered as subdivisions 43-2.3(c) through (k).

New subdivision 43-2.3(b) is adopted to read as follows:

(b) Certified waters means waters which are certified to be in such sanitary condition that shellfish therefrom may be taken for use as food pursuant to Part 41 of this Title.

Renumbered subdivision 43-2.3(j) is amended to read as follows:

(j) Resident means a person whose domicile [has been] *is* within New York State [for a period of six months or more].

Section 43-2.4 is REPEALED and a new Section 43-2.4 is adopted to read as follows:

§ 43-2.4 Permit requirements; issuance and revocation procedures.

(a) Each person participating in harvest operations on board a vessel harvesting surfclams and ocean quahogs from the Atlantic Ocean shall possess a New York State shellfish diggers permit.

(b) Any owner or lessee of a vessel eligible to take surfclams and ocean quahogs by mechanical means from the Atlantic Ocean shall obtain a Surfclam/Ocean Quahog Atlantic Ocean permit prior to harvesting. This

permit shall authorize a holder to take surfclams or ocean quahogs, or both, with the vessel identified on the permit. Nonresidents of the state and foreign corporations may be issued a Surfclam/Ocean Quahog Atlantic Ocean permit provided that the vessel identified on the permit is registered in a state which accords reciprocal clamming privileges to residents of New York and provided that such nonresident is a resident of a state which accords such reciprocal privileges and, in the case of a foreign corporation, it is organized under the laws of a state which accords reciprocal privileges.

(c) Application for a Surfclam/Ocean Quahog Atlantic Ocean permit may be made by fully completing the application form provided by the department for that purpose.

(d) A permit issued to a vessel owner or lessee shall identify the vessel to be used in the harvest of surfclams and ocean quahogs. No vessel may be used in the surfclam and ocean quahog fishery without being specifically identified on a permit issued in the name of the owner or lessee of the vessel. Only a vessel owned by a resident may be identified on a permit issued to a resident.

(e) If an application is made by a domestic corporation, the application shall be signed by the members of the board of directors of such corporation. If all members of the board of directors and all stockholders are residents, such corporation shall be eligible for a resident Surfclam/Ocean Quahog Atlantic Ocean permit. If any member of the board of directors or any stockholder is not a resident, such corporation shall be eligible for a nonresident Surfclam/Ocean Quahog Atlantic Ocean permit only.

(f) Any operator or captain of a vessel eligible to take surfclams and ocean quahogs by mechanical means from the Atlantic Ocean shall obtain a Surfclam/Ocean Quahog Atlantic Ocean Captain/Operator permit. This permit authorizes the resident permit holder to operate a vessel used to take surfclams or ocean quahogs, or both, by mechanical means. Nonresidents of the state may be issued a Surfclam/Ocean Quahog Atlantic Ocean Captain/Operator permit provided that the nonresident is a resident of a state which accords reciprocal clamming privileges to residents of New York. No vessel may be used in the surfclam and ocean quahog mechanical fishery without there being a person on board such vessel whose permit identifies the permit holder as captain or operator.

(g) Permits issued pursuant to this subdivision shall expire on December 31 of the year of issuance.

(h) Licenses or permits issued pursuant to this Part may be revoked by the department pursuant to the provisions of Part 175 of this Title.

(i) Nothing in this Subpart precludes or affects the commissioner's authority to issue summary abatement orders pursuant to Environmental Conservation Law, Section 71-0301, and rules and regulations adopted pursuant thereto, or to take emergency actions summarily suspending a permit as provided in Section 401(3) of the State Administrative Procedure Act.

Section 43-2.5 remains unchanged.

Section 43-2.6 is REPEALED and a new Section 43-2.6 is adopted to read as follows:

§ 43-2.6 Harvest restrictions; surfclams.

(a) The annual harvest limit for surfclams in the certified waters of the Atlantic Ocean shall be 500,000 bushels in the aggregate, provided however that the department may direct that the maximum quantity of surfclams to be taken from certified waters during a given calendar year be increased or decreased. In establishing such adjustment, the department shall afford an opportunity for public comment and consider stock assessments, catch reports and other relevant biological and statistical information. If made, such adjustment shall be announced no later than November 15 of the year preceding its effective date of January 1. Any such adjustment shall be by written directive of the commissioner or the commissioner's designee and written notice of any such directive shall be provided to all permit holders.

(b) The maximum quantity of surfclams to be taken in a calendar year pursuant to subdivision (a) of this section shall be allocated by percent into four calendar quarters as follows:

First Quarter (January, February, March) — 25 percent

Second Quarter (April, May, June) — 25 percent

Third Quarter (July, August, September) — 25 percent

Fourth Quarter (October, November, December) — 25 percent

(c) Any quantity allowed to be taken pursuant to subdivision (b) of this section not taken during a calendar quarter shall be allowed to be taken in the next calendar quarter and shall be in addition to the quantity allocated to that quarter.

(d) Any quantity taken in excess of the quantity allowed to be taken pursuant to subdivision (b) of this section during a calendar quarter shall be deducted from the quantity allowed to be taken in the next calendar quarter.

(e) If it is determined by the department that the maximum allowable harvest of surfclams pursuant to subdivision (b), (c), or (d) of this section may be met before the end of any given calendar quarter, harvesting from certified waters shall be terminated for the remainder of that calendar quarter. Any such termination shall be by directive of the commissioner or the commissioner's designee, and no less than 48 hours written notice of any such directive shall be provided to all permit holders.

(f) No vessel may be used to harvest more than 28 standard cages of surfclams (equivalent to 896 industry standard bushels) in any one week. However, in order to minimize the duration of a fishery closure, no vessel may be used to harvest more than such quantity of surfclams as the commissioner or the commissioner's designee shall direct in any weekly, Sunday through Saturday, or bi-weekly period. Harvest limits shall be by directive of the commissioner or the commissioner's designee, and no less than 48 hours written notice of any such directive shall be provided to all permit holders.

(g) In order to preserve and protect surfclams of less than legal size, the department may establish one or more areas, containing a total of no more than fifteen percent of the estimated standing stock of surfclams, where harvesting is prohibited. In establishing such areas, the department shall consider the effect of any such areas on stocks in harvestable areas. In addition, the department shall consult with the Surfclam/Ocean Quahog Management Advisory Board, afford an opportunity for public comment, and consider stock assessments, catch reports, and other relevant biological and statistical information. Such areas shall, by estimation, contain more than fifty percent sublegal size surfclams by number and, once established, any such area shall be re-evaluated within eighteen months of establishment. In the event that any such area is not re-evaluated, such area shall become available for harvest. The establishment of any such area shall be by written directive of the commissioner or the commissioner's designee, and a minimum of 48 hours written notice of any such directive shall be provided to all permit owners.

(h) It shall be unlawful for any person to exceed the harvest restrictions set forth in this section or in any directive issued pursuant hereto.

Section 43-2.7 through the end of Subpart 43-2 remains unchanged.

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. ENV-48-03-00003-EP, Issue of December 3, 2003. The emergency rule will expire April 11, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Maureen Davidson, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0496, e-mail: mcdavids@gw.dec.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Section 13-0308 established the Surfclam/Ocean Quahog Management Board (Board) to assist the Department of Environmental Conservation (Department) on surfclam and ocean quahog management issues. Subdivision 7 of this section states that the Board shall assist the Department in the development and preparation of a comprehensive long-term management plan for the protection of surfclams in New York waters. Subdivision 13-0309(12) authorizes the Department to fix by regulation open seasons, harvest areas, size limits, catch limits, manner of taking and possession, transportation, identification, sale and permit requirements for surfclams.

2. Legislative objectives:

Surfclams are a commercially important shellfish harvested from New York state ocean waters. The legislature sought to protect the valuable surfclam resource by directing the Department to develop a management plan (ECL 13-0308, 13-0309) and giving the Department the authority to fix regulations controlling the harvest, sale, and permit requirements for surfclams(ECL 13-0309). The proposed rule will implement the provisions of the management plan developed by the Department with the assistance and guidance of the Board.

3. Needs and benefits:

The proposed rule streamlines the process of issuing Surfclam/Ocean Quahog Atlantic Ocean permits by consolidating the resident Atlantic Ocean Permit and the nonresident Atlantic Ocean Permit into a single Surfclam/Ocean Quahog Atlantic Ocean permit and eliminating the permit requirement for crew of surfclam harvesting vessels.

The proposed regulation removes the need for operators and captains of surfclam harvesting vessels to be issued a permit for each vessel they

operate in the fishery. Instead vessel operators/captains will be issued a single Surfclam/Ocean Quahog Atlantic Ocean Operator/Captain permit that will allow them to operate any surfclam vessel permitted to take surfclams from the Atlantic Ocean.

The proposed regulation will provide the Department adequate time to properly evaluate survey data collected during the year before having to announce changes in annual harvest limit in the fall. Most importantly, the proposed rule will eliminate the daily harvest limit of 14 cages per vessel. This will allow surfclam harvesters to take more surfclams during a single trip and reduce the number of fishing trips needed to take the weekly harvest limit. During the winter and at times of poor weather, it of vital importance to commercial fishermen that they be able to reduce the number of trips while remaining economically viable in a competitive fishery.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no costs to regulated parties resulting from this action. Permitted surfclam harvesters will be able to continue to take surfclams at current levels. The adoption of this rule may allow harvesters to take increased amounts of surfclams once the Department evaluates the most recent surfclam population assessment survey.

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

By streamlining the permit process and eliminating two permit types, the proposed rule will save the Department the cost of processing and issuing approximately 112 surfclam permits in 2004. This can represent a substantial savings for the Department, since the surfclam permits are issued at no cost to the permit holder.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

A no action alternative was considered. However, if this rule is not adopted, the Department will not be able to establish, in a timely manner, new surfclam harvest limits that reflect the increase in surfclam biomass found during the most recent surfclam population assessment survey conducted in 2002. The industry has been operating under an additional harvest restriction since April 2003, when the weekly surfclam harvest limit was reduced by a third to prevent the total harvest taken by surfclam harvesters from exceeding the annual harvest limit allowed by law. The proposed regulations will provide the Department the time and opportunity to determine appropriate harvest limits for the surfclam fishery and to remove the economically burdensome restrictions currently in existence. If this rule is not adopted, surfclam harvesters will continue to fish under a daily harvest limit, which increases the number of days they must fish to take the weekly limit, increasing fuel costs, salary costs and exposure to bad weather conditions for the surfclam harvester. Lastly, if this proposed rule is not adopted the Department will not be able to streamline the surfclam permit process and reduce the costs related to issuing these permits. For these reasons, the Department has rejected the no action alternative.

9. Federal standards:

This rule does not exceed any minimum standard of the federal government. There are no federal standards for surfclams found within New York state territorial waters.

10. Compliance schedule:

There is no compliance time necessary for regulated persons to achieve compliance. The proposed rule will streamline the permit process and eliminate the daily harvest limit for surfclams taken from the Atlantic Ocean. The rule will also provide the Department the time and opportunity to evaluate surfclam population survey data and determine annual harvest limits for surfclams that will maintain the economic viability of the surfclam industry and adequately protect the surfclam resources of the state. The regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of the regulations:

There are approximately 60 harvesters permitted to take surfclams by mechanical means from New York state waters of the Atlantic Ocean. The proposed rule will streamline the process of processing surfclam permits by removing the requirement for crew members and deck hands to possess surfclam permits to participate in the fishery. Boat captains and operators in the surfclam fishery will no longer be required to possess a permit for reach vessel they operate in the fishery, but will only need to apply for a single Surfclam Ocean Quahog - Atlantic Ocean Captain/Operator permit to operate any permitted vessel in the fishery.

The proposed rule will eliminate the daily harvest limit of 14 cages per vessel. This will allow surfclam harvesters to take more surfclams during a single trip and reduce the number of fishing trips needed to take the weekly harvest limit. During the winter and at times of poor weather, it is of vital importance to reduce the number of trips a commercial fisherman must make while allowing the fisherman to remain economically viable in the fishery.

2. Compliance requirements:

There are no new compliance requirements associated with the proposed rule. The Department may increase or decrease the annual or the weekly harvest limits for surfclams, and surfclam harvesters must comply with the new harvest limits. Currently, harvesters who take surfclams by mechanical means must file weekly trip reports with the Department. This requirement will remain in effect.

3. Professional services:

None.

4. Compliance costs:

There are no capital costs associated with compliance with this rule.

5. Minimizing adverse impact:

The proposed rule is beneficial for permitted surfclam harvesters. It removes the surfclam permit requirement for crew and deck hands on surfclam harvesting vessels and reduces the number of days needed for harvesters to take the weekly harvest limit. This last change will reduce the exposure of surfclams harvesters to bad weather and rough seas. The proposed regulations will also enable the Department to increase the surfclam harvest limit, thus leading to a potential increase in revenue for surfclam harvesters.

6. Small business and local government participation:

The proposed rule implements the surfclam resource management plan recently adopted by the Department. The Department developed this management plan with the assistance and guidance of the Surfclam/Ocean Quahog Management Advisory Board. The Board was established in law, Environmental Conservation Law Section 13-0308, to assist the Department in the development of the management plan, serve as a forum for the review of scientific data and the exchange of ideas, concerns, and recommendations about the surfclam fishery. The management plan was published in the Environmental Notice Bulletin and public comment was solicited in the notice. The proposed rule has no impact on local governments.

7. Economic and technological feasibility:

The changes required by this action have been determined to be economically feasible for all affected parties. There is no additional technology required for small businesses, and this action does not apply to local governments, so there are no economic or technological impacts for any such bodies.

Rural Area Flexibility Analysis

The proposed amendments to Subpart 43-2 will not impose an adverse impact on rural areas. The proposed regulations involve the harvesting of surfclams from New York state waters of the Atlantic Ocean. Surfclams are found only in waters of the marine and coastal district of New York, which area includes the counties of Nassau, Suffolk and Queens. The Department of Environmental Conservation (Department) has determined that there are no rural areas within the marine and coastal district. Consequently, the Department has determined that this rule does not impact rural areas or any public or private entities located in rural areas. Further, the emergency rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The Department of Environmental Conservation (Department)has determined that the proposed regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The proposed rule implements the Department's management plan for the protection of surfclams. The amendments to 6 NYCRR subpart 43-2 will streamline the permit process and remove the requirements for crew and deck hands to possess a surfclam permit and for boat operators or

captains to possess multiple permits if they operate more than one boat in the fishery. The proposed rule will eliminate the daily harvest limit of 14 cages per vessel, allowing surfclam harvesters to take more surfclams during a single trip and reduce the number of fishing trips needed to take the weekly harvest limit. Lastly, the proposed rule will allow the Department time to evaluate surfclam population assessment data and determine appropriate annual harvest limits in a timely fashion.

The 2002 surfclam population assessment survey shows a significant increase in the surfclam biomass since the previous survey in 1999. Upon analyzing the results from the survey, examining surfclam catch reports, and receiving recommendations from the surfclam industry, the Department has determined that surfclam harvest limits can be increased while maintaining protection of the surfclam resource. Additional proposed changes will streamline the surfclam permit process, and will have no negative effect on jobs. Based on the above and the Department's experience in adopting regulations similar to those contained in this proposal, the Department has concluded that there will not be a substantial adverse impact on jobs or employment opportunities as a consequence of these amendments. These proposed amendments will likely have a positive impact on employment opportunities in the surfclam fishery.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sanitary Condition of Shellfish Lands

I.D. No. ENV-09-04-00003-P

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

Proposed action: Amendment of section 41.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

Subject: Sanitary condition of shellfish lands.

Purpose: To redesignate certain shellfish lands.

Text of proposed rule:

6 NYCRR Section 41.3, "Shellfish Lands in Suffolk County," is amended as follows:

Clause 41.3(b)(4)(v)('a') is repealed.

New clause 41.3(b)(4)(v)('a') is adopted to read as follows:

('a') During the period December 1 through April 30, both dates inclusive, all that area of Mecox Bay, including tributaries, lying north and west of a line extending northeasterly from the southeasternmost corner of the residence at 97 Cobb Isle (said residence is a two-story, white painted house with two, second-story, circular windows and two closely- spaced chimney flue pipes) to the southeastern end of Bay Avenue, on the opposite, eastern shoreline; and all that area of Sams Creek and Swan Creek, lying easterly of a line extending northerly from the northwest corner of the residence at 168 Dune Road (said residence is a two-story, flat roofed, white house with large ornamental, circular openings) to an orange marker located at the western entrance to Swan Creek; and all that area of Burnett Creek, Channel Pond, and the unnamed creeks between Bay Avenue and Swan Creek, along the northeastern shoreline of Mecox Bay.

Clause 41.3(b)(4)(v)('b') is amended to read as follows:

('b') During the period [April 15] *May 1* through November 30, both dates inclusive, all of Mecox Bay and its tributaries.

Subparagraph 41.3(b)(4)(vi) through the end of Section 41.3 remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa P. Tettelbach, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0478, e-mail: lptettle@gw.dec.state.ny.us

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

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

Regulatory Impact Statement

Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is Environmental Conservation Law (ECL) Section 13-0307. Subdivision 1 of Section 13-0307 of the ECL requires the Department of Environmental Conservation (Department) to periodically conduct examinations of shellfish lands within the marine district to ascertain the sanitary condition of said lands. Subdivision 2 of this Section requires that the Department certify which shellfish lands are in such sanitary condition that shellfish may be taken therefrom for food. Such lands are designated as "certified" shellfish lands. All other shellfish lands are designated as "uncertified" shellfish lands.

The statutory authority for promulgating regulations with respect to the harvest of shellfish is Section 13-0319 of the ECL.

Legislative objectives:

There are two purposes of the legislation: to protect public health and to ensure that shellfish lands are appropriately classified as certified or uncertified for the harvest of shellfish. This legislation requires the Department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in regulation, Part 47 of Title 6NYCRR, promulgated pursuant to Section 13-0319 of the ECL. Shellfish lands which meet these criteria must be designated as certified. Shellfish lands which do not meet these sanitary criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

Needs and benefits:

To protect public health and to comply with ECL 13-0307, the Bureau of Marine Resources' shellfish sanitation program conducts and maintains sanitary surveys of shellfish growing areas (SGA) in the marine district of New York State. Maintenance of these surveys includes the regular identification of shoreline pollution sources which actually or potentially affect the sanitary condition of shellfish growing areas, and the regular collection and bacteriological examination of water samples to monitor the sanitary condition of shellfish growing areas.

Annually, water quality evaluation reports, which include any updates to the periodic shoreline pollution source reports, are prepared by the staff of the shellfish sanitation program for each SGA which contains certified shellfish lands. These reports present the results of statistical analyses of water quality data gathered by the program and any changes to the pollution source inventory. Each report includes a summary and recommendations for the appropriate classification of that particular shellfish growing area. The report summary may state that all, or portions of, the SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of, that SGA should be designated as certified for the harvest of shellfish based on the criteria in 6 NYCRR Part 47. These reports are on file at the Bureau of Marine Resources office in East Setauket, NY.

In a report titled, "Special Analysis of Mecox Bay" dated October 2003, prepared by shellfish sanitation program staff, the summary states that the fecal coliform data analysis demonstrated water quality in a portion of the growing area that now meets the bacteriological criteria for certified shellfish lands, as specified in 6 NYCRR Part 47, "Certification of Shellfish Lands", during a specific part of the year. The report recommends that this portion of Mecox Bay be reclassified as certified, for the harvest of shellfish during the period from December 1 through April 30, both dates inclusive. This recommendation calls for an extension of the seasonal harvest period by two weeks, which currently ends on April 14.

This analysis also determined that the water quality in a small portion of the existing seasonally certified shellfish growing area, no longer meets the bacteriological criteria for certified shellfish lands (from December 1 through April 14), also specified in 6 NYCRR Part 47. It is recommended that this portion of Mecox Bay be designated as uncertified for the harvest of shellfish throughout the year.

Regulations which designate previously uncertified shellfish lands as seasonally certified, are needed to ensure that the State's shellfish resources on lands which meet the sanitary criteria are readily available for commercial and recreational use. The classification of previously uncertified lands as certified, during a specific portion of the year, should provide commercial shellfish diggers with additional harvesting opportunities and new sources of income, by increasing the amount of harvest area available and extending the length of the program by two weeks. It also provides benefits to individuals who wish to harvest shellfish recreationally for their own consumption.

Regulations which designate shellfish lands as uncertified, as proposed for the small portion of Mecox Bay, no longer meeting the criteria for a certified shellfish land, are needed to prevent the harvest and subsequent sale of shellfish for human consumption. The direct harvest of shellfish for use as food is allowed from certified shellfish lands only. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses which may cause the transmission of infectious disease to the shellfish consumer.

This rulemaking provides the benefit of protecting public health, specifically the health of shellfish consumers, by designating this small area as uncertified. The taking of shellfish from uncertified shellfish lands is

prohibited by Section 13-0309 of the Environmental Conservation Law. These regulations also benefit the shellfish industry. Seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By preventing the harvest of shellfish from lands which fail to meet the sanitary criteria, these regulations are intended to ensure that only wholesome shellfish are allowed to be harvested and sold to shellfish consumers.

It is important to note that the overall benefit of reopening approximately 150 acres of previously uncertified shellfish lands for commercial and recreational harvest should exceed the negative impacts from the closure of approximately 20 acres.

Costs:

There will be no costs to state or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non-capital expenses, in order to comply with these proposed regulations. The annual cost of continuing compliance may take the form of potential lost income if productive harvest areas are closed. Conversely, the reopening of previously uncertified shellfish lands is likely to provide immediate economic benefit to commercial shellfish harvesters whose livelihoods depend on access to certified shellfish lands.

The Department cannot provide an estimate of potential lost income to shellfish harvesters when areas are designated as uncertified, due to the large number of variables that are associated with commercial shellfish harvesting. Those variables are listed in the following three paragraphs.

As of December 31, 2003, the Department had issued 1,826 New York State shellfish digger's permits. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish digger permits for that type of recreational harvest is unknown. The Department's records do not differentiate between full-time and part-time commercial or recreational shellfishing.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors unrelated to the Department's proposed regulatory action.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the Department. Without this information, the Department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The Department's actions to designate areas as certified (open) or uncertified (closed) are not dependent on the resources in a particular area. They are based solely on public health concerns and the legal mandate to designate as uncertified those shellfish lands where water quality is not acceptable or where sources of fresh fecal material or other poisonous and deleterious substances may contaminate shellfish growing areas.

There are no new costs to the Department associated with this rulemaking. Administration and enforcement of the proposed amendment are covered by existing programs.

Local government mandates:

The proposed rule does not impose any mandates on local government.

Paperwork:

No new paperwork is required.

Duplication:

The proposed amendment does not duplicate any state or federal requirement.

Alternatives:

There are no significant alternatives. By law (ECL, Section 13-0307), once the Department has determined that a shellfish land no longer meets the sanitary criteria for a certified shellfish land, the Department must designate that land as uncertified for the harvest of shellfish. This is necessary to protect public health. Conversely, once the Department has determined that an uncertified shellfish land meets the sanitary criteria, the Department must designate that land as certified and open the area to shellfish harvesting.

Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among participating member states. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary – each state adopts its own standards. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial nonconformity with NSSP guidelines can result in sanctions being taken by FDA and the NSSP, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non-conforming state's product from interstate commerce.

Compliance schedule:

Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes to certified and uncertified areas by mail, either prior to, or concurrent with the adoption of new regulations.

Compliance with new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, recordkeeping or any action by the regulated parties in order to comply, except that harvesters must observe the new closure lines. Therefore, immediate compliance can be readily achieved.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. ENV-14-03-00003-P, Issue of April 9, 2003.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. ENV-14-03-00003-P, Issue of April 9, 2003.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. ENV-14-03-00003-P, Issue of April 9, 2003.

Department of Health

EMERGENCY RULE MAKING

Adult Day Health Care Regulations

I.D. No. HLT-44-03-00003-E
Filing No. 206
Filing date: Feb. 13, 2004
Effective date: Feb. 13, 2004

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 NYCRRR.

Statutory authority: Public Health Law, sections 2803(2), 2807(3) and 2808

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 non-emergency 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.

Substance of emergency rule: The proposed regulations repeal Parts 425, 426 and 427 of 10 NYCRR and add a new Part 425 to Title 10 NYCRR to replace existing requirements in a more comprehensive framework that provides a systematic approach to care.

The definitions have been expanded to include additional salient terms that better explain the adult day health care program to registrants, providers and other interested parties. The definitions specify that each adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, but further allow a registrant's individual visit to be for fewer than five hours depending on the assessed needs of the registrant. Unless otherwise permitted by the Department, each approved session will consist of the majority of registrants in attendance for at least five hours. A section on application requirements is explicitly included for ease of reference, and is complimented by a section that identifies the process to be used in applying to make changes in a program, and specifies that a program operator may apply for approval to run a session where the majority of registrants are or will be attending for fewer than five hours.

The proposed regulations provide for general requirements for operation, as well as specified minimum program and service components that must be available. At a minimum, services provided to each registrant must include nutrition services in the form of at least one meal and necessary supplemental nourishment, planned activities and ongoing assessment of each registrant's health status in order to provide coordinated care planning and case management. Additional services may be provided in accordance with the care plan. At least the following program components must be available: case management, interdisciplinary care planning, nursing services, nutrition, social services, assistance with activities of daily living, planned individualized therapeutic or recreational activities, pharmaceutical services, and referrals for dental services. Additionally, specialized services for registrants with AIDS or HIV and religious services and pastoral counseling may be provided.

The regulations contain requirements for the assessment of individuals for admission and for retention in the program, the development of an individualized care plan for each registrant, and prescribe that the provision of needed care be based on the interdisciplinary registrant assessment and individualized care plan.

A section of the regulations provides standards for programs designated as Acquired Immune Deficiency Syndrome (AIDS) adult day health care programs.

The regulations also include standards relating to general records and clinical records, and for confidentiality of records. Provisions are also included for a quality improvement process that provides for at least an annual review of the operator's program evaluation.

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 proposed rule making, I.D. No. HLT-44-03-00003-P, Issue of November 5, 2003. The emergency rule will expire April 12, 2004.

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 a 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, 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

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, its inclusion on the agenda of the State Hospital Review and Planning Council for its December 4, 2003 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its February 5, 2004 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:

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, its inclusion on the agenda of the State Hospital Review and Planning Council for its December 4, 2003 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its February 5, 2004 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.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Expedited HIV Testing of Women and Newborns

I.D. No. HLT-09-04-00001-E
Filing No. 204
Filing date: Feb. 11, 2004
Effective date: Feb. 11, 2004

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

Action taken: Amendment of section 69-1.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 576, 2500-a and 2500-f

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

Specific reasons underlying the finding of necessity: Immediate adoption of this amendment is necessary to protect the public health and welfare and to prevent harm to infants born in New York State. The New York State Department of Health is actively engaged in the prevention of mother-to-child HIV transmission. Recent advances in medical knowledge

concerning the prevention of perinatal HIV transmission have demonstrated that antiretroviral therapy, given to prevent HIV transmission, is most efficacious when given prenatally, during labor, or within the first 12 hours of an infant's birth. Although approximately 94 percent of women are tested for HIV during prenatal care, the HIV status of six percent is unknown at presentation for delivery. Women at high risk for HIV who have received no prenatal care are over-represented within this group. In 1999, the Department implemented expedited HIV testing in the labor and delivery setting so that providers can initiate partial antiretroviral regimens either to the mother in labor or to the infant immediately after birth. The turn-around-time for reporting the result was 48 hours from the drawing of blood from the mother (with her consent) or from the newborn (no consent required).

Heretofore, the program has been limited by the lack of a point-of-care rapid HIV test. In cases of HIV-exposure in a newborn where prenatal and/or intrapartum antiretroviral therapy (ART) were not given, studies have shown that therapy must be started for the newborn within 12 hours of birth to be effective in reducing the risk of transmission. The expedited HIV testing protocols in most New York State birth facilities did not meet this 12-hour timeline for initiating prophylactic newborn ART. In 2001 to 2002, over 1400 HIV-infected women gave birth in New York State. Of these, one hundred mother/infant pairs were first identified as HIV-infected/exposed through expedited HIV testing in the labor, delivery or in the immediate newborn period. In the vast majority of cases (98 of 100), the median time from the mother's admission to the collection of the specimen for expedited HIV testing was 2.5 hours. However, even when testing was performed on-site, results were not returned for at least 20 hours, and treatment was not initiated in the newborn until 22.5 hours after birth. Clearly, achieving timelier reporting of expedited HIV test results is hampered by the lack of a point-of-care rapid test.

In November 2002, the U.S. Food and Drug Administration approved the first of a new generation of point-of-care rapid HIV tests. The test is waived under the Clinical Laboratories Improvement Act (CLIA) and may be performed under the supervision of a licensed physician, nurse practitioner or physician assistant, provided the facility performing the test has obtained a CLIA number and is registered with the Clinical Laboratories Evaluation Program (CLEP).

The availability of point-of-care HIV testing offers providers the opportunity to intervene during this most critical time frame for perinatal HIV transmission: labor and delivery. The purpose of this emergency and proposed rule making, which amends 10 NYCRR, Subpart 69-1.3(l)(2), is to ensure that the HIV exposure status is available as soon as possible for all newborns whose mothers have not been tested for HIV during the current pregnancy or for whom HIV test results are not available at delivery. By requiring a maximum turn-around-time of twelve hours from the time the mother consents to testing or from the time of the infant's birth to the receipt of the result of the expedited HIV test, medical providers and patients will have information that is critical for the administration of antiretroviral medication during labor and delivery and to the newborn immediately after birth.

As a result of the Expedited HIV Testing regulations (effective August 1999) and the consequent increase of prenatal and expedited HIV testing, along with the prompt initiation of treatment to HIV-infected mothers, the rates of perinatal HIV transmission in New York State have decreased: from 10.9% in 1997 to 3.9% in 2001. New, rapid, point-of-care HIV testing technology can provide test results within 20 to 40 minutes. In most cases, this technology will allow obstetricians to have preliminary HIV test results before the mother delivers, when the initiation of antiretroviral therapy can be of significant benefit. In light of the advances in testing technology, the Department is proposing a regulatory change to 10 NYCRR 69-1.3(l)(2) that would apply in cases where a woman presents for delivery with no documentation of her HIV status. In these cases, the amended regulation would require the birth facility to arrange an immediate HIV screening test of the mother with her consent or of her newborn without consent with results available as soon as possible, but in no event longer than 12 hours after the mother provides consent for testing or, if she does not consent, 12 hours after the time of the infant's birth. Reducing the turn-around-time for expedited HIV testing allows health care providers to provide antiretroviral therapy in time to reduce the risk of mother-to-child transmission of HIV.

The emergency rule will take effect upon filing with the Secretary of State.

Subject: Expedited HIV testing of women and newborns.

Purpose: To amend the current comprehensive program in response to recent advances in medical knowledge and the rapid HIV testing technology to enhance protection of newborns.

Text of emergency rule: Paragraph (2) of Subdivision (l) of Section 69-1.3 of NYCRR is amended to read as follows:

(2) if no HIV test result obtained during the current pregnancy is available for the mother not known to be HIV-infected, arrange an immediate screening test of the mother with her consent or of her newborn for HIV antibody with results available as soon as practicable, but in no event longer than [48 hours] *12 hours after the mother provides consent for testing or, if she does not consent, 12 hours after the time of the infant's birth.*

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 May 10, 2004.

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:

Public Health Law (PHL) section 2500-f requires the commissioner to promulgate regulations to implement a comprehensive program for the testing of newborns for HIV and/or the presence of HIV antibodies. The proposed revision to the regulation amends the current comprehensive program in response to recent advances in medical knowledge concerning the prevention of perinatal HIV transmission and the availability of rapid HIV testing technology, with at least one device suitable for "point-of-care" use.

Legislative Objectives:

In the memorandum accompanying the comprehensive newborn testing bill (Chapter 220 of the Laws of 1996), the legislature indicated its purpose was "to ensure that newborns who are born exposed to HIV receive prompt and immediate care and treatment and counseling that can enhance, prolong and possibly save their lives". Transmission of HIV from mother to newborn can be prevented in many cases by the administration of antiretroviral medications, which are recommended to be given to the mother starting during the second trimester of pregnancy, continued during labor, and given to the newborn after birth. The proposed amendment to 10 NYCRR, Subpart 69-1.3(2) will ensure that the HIV exposure status is available for all newborns whose mothers have not been tested for HIV during the current pregnancy or for whom HIV test results are not available at delivery. By requiring that HIV test results be available as soon as is practicable but in no case later than twelve hours from the time of the mother's consent to testing or the time of the infant's birth, the Department intends to ensure that medical providers and patients have the information they need to make decisions about preventive treatment in a timely manner.

Needs and Benefits:

Improvements in medical knowledge and major advances in medical technology have occurred since the current program for the Expedited HIV Testing of Women and Newborns was implemented in August 1999. To date, the success of New York State's efforts to reduce perinatal HIV transmission to the lowest possible level has resulted in a decrease in the rate of perinatal HIV transmission for all HIV-exposed infants born in New York from 10.9% in 1997 to 3.9% in 2001. However, transmission is still occurring in instances where the HIV exposure status of an infant was identified too late to provide effective intervention. In such infants therapy must begin within 12 hours of birth to be effective in reducing the risk of transmission. In an addendum to the NYSDOH PCR study, published in the New England Journal of Medicine on 4/1/99, it was demonstrated that when ARV was given to the newborn within 12 hours of birth there was a 5.9% rate of HIV transmission. There was no significant benefit if ARV was begun after 12 hours birth as the transmission rate increased to 25%. The ability to have results from expedited HIV testing as soon as possible in cases where there was no history of prenatal HIV testing, coupled with the administration of prophylactic antiretroviral therapy, ideally during labor but no later than 12 hours of birth, is of vital importance in further reducing perinatal HIV transmission. To reduce perinatal HIV transmission to the greatest extent possible, facilities are urged not to view the 12-hour turn-around-time as the goal of testing, but as the outside limit for offering effective therapeutic interventions to prevent transmission of HIV from the mother to her newborn.

Costs:

Costs to State and Local Governments:

The cost to State Government is minimal and can be covered by existing programs and staff. There is no cost to local government except to the extent they own and operate maternity hospitals. Any cost to the State and local governments will be reduced by the savings to the Medicaid program by reducing the costs of care as fewer incidences of HIV transmission to newborns occur. Local governments that operate medical facilities will incur costs as described in the section on Costs to Regulated Parties noted below.

Costs to Regulated Parties:

The approved rapid test is CLIA-waived due to low complexity and may be performed either in the centralized laboratory or at the point-of-care, subject to appropriate NYSDOH approvals. The Department will work closely with facilities to assist them in meeting the turn-around-time requirements of this proposal.

The vast majority (141) of the 159 birthing facilities currently hold a clinical laboratory permit in HIV testing or are eligible for fast-track approval for a permit in HIV testing. These facilities already have or could readily develop the capability of generating HIV test results on-site within twelve hours without additional costs. This is especially true for facilities with around-the-clock centralized laboratory services. Reagent, equipment, personnel and overhead costs for testing a single specimen using an instrument-based method (*i.e.*, EIA) are approximately $15 for routine testing, but up to ten times that amount for 'on demand' (STAT) testing. Birth facilities would incur costs directly related to this proposal whenever expedited testing needed to be performed in the laboratory outside normal testing hours, and qualified staff needed to be called in specifically to run one test. Facilities using such an on-call staffing approach to expedited newborn HIV testing would incur up to 1.5 times the usual hourly wage for a medical technologist, which is estimated to be $40 per hour (including benefits) or $50 per hour (including benefits) if the technologist is a supervisor.

The Department will work closely with facilities that do not have current capacity to consistently generate results in 12 hours or less, and assist them in meeting regulatory requirements. Costs of introducing in-house HIV testing include costs of reagents, devices and human resources necessary to validate the test method and write protocols, at an estimated maximum one-time cost of $1000. Facilities that conduct testing at point of care, *i.e.,* in the labor and delivery department, would also incur minimal costs associated with initial training and ongoing competency assessment of non-laboratory testing personnel, *i.e.*, labor and delivery nursing staff, although technologists may also travel to patient floors to lend their expertise in the performance of tests and interpretation of results. The cost of conducting initial training for a group of 8 or fewer nurses can be estimated by multiplying the hourly wage of a supervisor-qualified technologist by 8 hours of training in device use, troubleshooting, record keeping and quality assurance activities, and adding the cost of 25 test devices. The device designated for point-of-care testing has a list price of $10.00-$15.00 for each test kit.

Overall, the Department estimates that the costs of performing tests at the point-of-care are likely to be less than, or equal to, the costs of expedited HIV tests currently performed in a centralized laboratory. This estimate is based on the fact that rapid HIV tests do not require the purchase or maintenance of expensive laboratory equipment and that the cost of testing devices (OraQuick®, SUDS®) and the salaries of personnel conducting the tests are comparable. The cost of expedited HIV testing done in a reference laboratory (cost at one commercial laboratory is $75.00/expedited test) may not change, but birth facilities using these laboratories will have to ensure that they will be able to report results within the 12-hour turn-around-time. The cost to the birth facility in time spent to provide pre-test HIV counseling is not expected to differ from the current cost of expedited HIV testing, which includes reimbursement rates of $52 for testing and $44 for counseling ($96.00/expedited test).

In light of the advances in testing technology, and the benefits of early initiation of antiretroviral therapy to prevent mother-to-child transmission of HIV, many birth facilities will opt to use a rapid HIV test device that generates results in a half-hour or less. Facilities may perform rapid HIV testing either in the laboratory itself or at the point-of-care subject to appropriate NYSDOH approval. Laboratories with an HIV testing permit may choose to conduct "stat" testing 24 hours a day, 7 days a week using a standard instrument-based (*e.g.*, EIA) testing technology within the 12 hour time limit. However, testing using rapid testing devices is encouraged to obtain HIV tests results as soon as possible. While procedures such as immediate transport of specimens by courier to a near-by laboratory, may, in theory, be effective for meeting a 12-hour turn-around-time, the Department's experience with such complex arrangements shows them to usually be an unacceptable alternative for on-site expedited testing.

Of the 159 regulated hospitals and birthing centers affected by this amendment, 141 hold laboratory permits that include HIV and/or diagnostic immunology testing, the latter of which would be allowed, in response to the adoption of this amendment, to add HIV testing through a fast-track mechanism. For any of these 141 facilities that choose to add a new test to an existing HIV or fast-tracked diagnostic immunology permit, costs for protocol development, staff training, test validation and implementation of quality assurance measures are expected to be approximately $1000. There are no additional costs associated with modifying an existing permit to add a category or test. The remaining 18 birth facilities would incur an additional cost if they seek to provide HIV testing on-site, including an initial cost of $1000 plus annual fees based on gross annual receipts.

Facilities offering on-site testing at the point-of-care, *i.e.,* in the labor and delivery suite under the auspices of an existing permitted laboratory, would incur minimal costs for initial training and ongoing competency assessment of non-laboratory testing personnel, *i.e.,* labor and delivery nurses. The cost of conducting initial training for a group of 8 or fewer nurses can be estimated by multiplying the hourly wage of a supervisor-qualified technologist by 8 hours of training (on average approximately $50.00/hour by 8 hours equating to $400.00) in device use, troubleshooting, record keeping and quality assurance activities, and adding the cost of 25 test devices ($15 per test by 25=$375). Therefore, the total training costs would be approximately $775. Cost attributable to periodic competency assessments of one to two hours could be calculated using the same formula. A materials cost of approximately $10.00 - $15.00 a test would be attributable to one single-use device and control materials.

Costs would be offset by revenue generated from third party billing, including Medicaid. Costs of expedited HIV testing in labor, delivery and newborn nursery settings will continue to diminish as efforts to increase prenatal HIV counseling and testing succeed. Any other provider costs associated with rapid HIV testing in the labor and delivery settings are medically appropriate and must continue to be considered part of labor and delivery costs.

Costs to the Department of Health:

The Department will use existing staff to review and approve HIV testing applications, and to conduct on-site surveys of applicant facilities.

Local Government Mandates:

This amendment to the current regulation will not impose any new program services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district, except for those local governments operating hospitals with maternity services.

Paperwork:

Paperwork related to point-of-care rapid HIV tests does not significantly differ from that currently required by expedited testing regulations. This paperwork includes the clinician's written order for testing, notation of the completion of pre- and post-test counseling, documentation of the acquisition of the test specimen and recording the test result in the medical record. Some paperwork will be required of birth facilities that seek an addition to an existing permit, and for those that choose to seek a new HIV testing permit.

Duplication:

None.

Alternatives:

There are no alternatives to the 12-hour time limit proposed by this amendment because a longer time period would result in some HIV-exposed infants not being detected in time to administer therapy to prevent HIV transmission. Because advances in scientific knowledge and medical technology allow for rapid HIV testing, the Department determined that the proposed revision to the regulation is the best approach to protect the public health.

Federal Standards:

There are currently no Federal regulations related to prenatal or newborn testing. The Federal government has provided only recommendations and guidelines for these activities. The proposed regulatory change is consistent with current federal recommendations.

Compliance Schedule:

The Department has already advised regulated parties that this emergency amendment is in place. The Department understands that many facilities previously initiated activities to implement rapid HIV testing. The Department understands that facilities have been in compliance since the first emergency regulation's November 2003 effective date.

Regulatory Flexibility Analysis

Effect on Small Businesses:

The proposed rule will impact an estimated three birth hospitals and four birthing centers that meet the definition of a small business (independently owned and employs 100 or fewer individuals). No real impact on small businesses is expected, since regulations requiring expedited HIV testing are already in place. No new costs to local governments are anticipated, except for those operating hospitals with maternity services.

Compliance Requirements:

The reporting, recordkeeping and other affirmative acts that impact small businesses or local governments would not change with this proposed amendment. Current regulations require hospitals and birthing centers to assess whether mothers who present for delivery have a negative HIV test result from the current pregnancy or a positive HIV test result during or prior to the pregnancy. If no test result is documented, the mother is offered consented expedited HIV testing. If she declines, an expedited HIV test is performed on her infant, without consent. Current regulations require a turn-around-time for preliminary HIV test results of no more than 48 hours from the time the specimen is collected. The proposed rule change would decrease the turn-around-time to within 12 hours after the mother's consent for testing, or if she does not consent, within 12 hours of the infant's birth.

Professional Services:

Impacted small businesses and local governments would need the same staff of health care providers (doctors, nurses, nurse practitioners, physicians assistants), counseling and support staff as they currently employ. No additional staff would be needed.

Compliance Costs:

The percentage of women receiving prenatal counseling and testing is steadily increasing, and the need for expedited HIV testing in the intrapartum period is decreasing. As of December 2002, hospital data indicate that approximately 94% of all women giving birth have documentation of their HIV status before delivery. This rate was 62% in July 1999, one month before expedited testing in delivery settings was implemented. Using these data, the need for expedited HIV testing has clearly decreased through the years, from an estimated 120,000 mothers/infants in 1999 to less than 15,000 in 2002. At $52 per test, the total statewide testing cost in 1999, estimated to be $6.24 million per year, has decreased to $780,000 per year. This number is expected to continue to decline as more women accept prenatal HIV testing. The cost for expedited HIV testing using rapid, point-of-care testing kits is not expected to exceed the cost of expedited testing as currently performed and would be considerably less if facilities choose to take advantage of point-of-care rapid testing.

Economic and Technological Feasibility:

The proposed amendment to the regulatory program is economically and technologically feasible since it is not anticipated that additional staff would be required and rapid, point-of-care testing technology is readily available.

Minimizing Adverse Impact:

Provider costs associated with rapid, point-of-care expedited HIV testing are medically appropriate and must be considered part of labor and delivery costs. Current reimbursement rates for expedited HIV testing subsidize the costs incurred by the delivery facility ($44 for counseling and $52 for testing), and will continue. Since preventing HIV transmission saves the high treatment costs for HIV-infected persons, expedited HIV testing in the labor and delivery setting is actually cost effective. Hospitals and birthing centers also realize savings as a result of this program by not having to employ outreach staff to find mothers after discharge since post-test counseling can be done while the mother is still in the hospital.

Small Businesses and Local Government Participation:

In advance of publication, the proposed amendment to the regulation was discussed at a two hour meeting held on March 23, 2003 by the Greater New York Hospital Association with representatives from 31 birthing facilities and the Health and Hospitals Corporation attending, and on April 30, 2003 at a videoconference hosted by the Hospital Association of New York State and broadcast to birthing facilities statewide.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Forty-four counties meet the definition of a rural area (population less than 200,000) and an additional 11 counties have towns that are classified as rural (towns with population densities of 200 persons or less per square mile). The proposed amendment to the current regulation applies to hospitals and birthing facilities in 55 counties. These facilities already follow the Expedited HIV Testing regulation; significant program expansion is not expected. There are no birth facilities in the remaining seven counties.

Reporting, Recordkeeping and Other Compliance Requirements:

The reporting, recordkeeping and other affirmative acts that will impact hospitals in rural areas have already been undertaken to comply with the Expedited HIV Testing regulation. Current regulations require maternity hospitals and freestanding birthing centers to ensure that all women who present for delivery with no documentation of HIV status are counseled about expedited HIV testing, and, arrange that an immediate HIV screening test of the mother with her consent or of her newborn without consent is performed. Technological advances mean that rapid HIV screening tests can now be performed at the point-of-care. Birth facilities can choose to use the new technology for rapid HIV testing, or to continue with the expedited HIV testing program already in place at their facilities. If the new technology is not chosen, the decreased turn-around-time for the return of preliminary test results will have to be negotiated with either the hospital-based or the commercial laboratories that perform expedited HIV testing.

Professional Services:

Hospitals in rural areas would not need additional professional staff to provide this service for women without known HIV test results.

Costs:

According to current annualized data, fewer than 50 maternity patients or newborns in any hospital or birthing center operated in rural areas require expedited HIV testing. This number will continue to diminish as efforts to promote prenatal HIV testing succeed. If an average of $52 (the total per test average cost of ELISA or SUDS testing, exclusive of counseling) for each expedited HIV test is used to estimate the total cost of expedited testing (test device, equipment and personnel), the total annual cost for rapid expedited HIV testing in each rural birth facility will be approximately $2,600, or less, depending on the number of maternity patients or newborns needing rapid testing.

Minimizing Adverse Impact:

Additional provider costs associated with testing are medically appropriate and must be considered part of labor and delivery costs. However, preventing HIV transmission is cost effective because of the high cost of treatment for HIV-infected persons. Hospitals and birthing centers will realize savings as a result of this program by not having to employ outreach staff to find mothers after discharge since post-test counseling can be done while the mother is still in the hospital.

Rural Area Participation:

In advance of publication, the proposed amendment to the regulation was discussed at a two hour meeting held on March 23, 2003 by the Greater New York Hospital Association with representatives from 31 birthing facilities and the Health and Hospitals Corporation attending, and on April 30, 2003 at a videoconference hosted by the Hospital Association of New York State and broadcast to birthing facilities statewide.

Job Impact Statement

A Job Impact Statement is not attached because this amended rule will not have a substantial adverse impact on jobs and employment opportunities as apparent from its nature and purpose.

Higher Education Services Corporation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

World Trade Center Scholarships

I.D. No. ESC-09-04-00002-EP
Filing No. 205
Filing date: Feb. 12, 2004
Effective date: Feb. 12, 2004

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

Action taken: Addition of section 2201.2 to Title 8 NYCRR.

Statutory authority: Education Law, sections 652.2, 653.9, 544.4, 608 and 668-d

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

Specific reasons underlying the finding of necessity: These regulations address a program that was effective July 23, 2002 and retroactive to April 1, 2001. These regulations provide necessary classification of program criteria.

Subject: World Trade Center scholarships.

Purpose: To define "severely and permanently disabled," and "impact area."

Text of emergency/proposed rule: New section 2201.2 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.2 World Trade Center Memorial Scholarships.

(a) Definitions. As used in sections 608 and 668-d of the Education Law, the following terms shall have the following meanings:

(1) Impact Area:

(i) the secure zone established by the City of New York comprising that area surrounding the World Trade Center which is bordered by Broadway to the East, the Hudson River to the West, Chambers Street to the North and Rector Street to the South during the period of time beginning at 8:45 a.m., Eastern Standard Time, on September 11, 2001 and ending on May 30, 2002; or

(ii) the crash site of United Airlines flight 93 in Shanksville, Pennsylvania on September 11, 2001; or

(iii) the crash site of American Airlines flight 77 on the grounds of the Pentagon on September 11, 2001.

(2) Severely and Permanently Disabled: An innocent victim is severely and permanently disabled when a doctor of medicine or osteopathy, licensed to practice in a state, has determined that such person is unable to engage in any occupation for remuneration or profit due to a physical or mental impairment. Such physical or mental impairment shall have been sustained in the Impact Area as a direct result of the September 11, 2001 attack on the United States of America or while engaged in the subsequent rescue and recovery efforts.

(3) Physical or mental impairment. For purposes of this section, "physical or mental impairment" is an impairment resulting from anatomical, physiological or psychological abnormality which is demonstrable by medically acceptable clinical and laboratory diagnostic techniques and which did not exist prior to September 11, 2001 unless said impairment was worsened as a direct result of the September 11, 2001 terrorist attacks and now prevents the victim from engaging in any occupation for remuneration or profit.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 11, 2004.

Text of rule and any required statements and analyses may be obtained from: Donna Fesel, Senior Attorney, Office of Counsel, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: Donna_Fesel@hesc.com

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

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

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

Regulatory Impact Statement

Statutory authority:

Education Law sections 652.2, 653.9 and 655.4 authorize the New York State Higher Education Services Corporation, through its Board of Trustees, to promulgate regulations to facilitate the administration of student financial aid programs. Education Law sections 608 and 668-d authorize the World Trade Center Memorial Scholarships (WTC Scholarship).

Legislative objectives:

The legislature enacted the WTC Scholarship program to provide assistance to victims and families of victims of the terrorist attacks of September 11, 2001 or the subsequent rescue and recovery efforts (9-11 attacks). This assistance is in the form of undergraduate awards covering the cost of attendance at the State University of New York, City University of New York, or a commensurate amount to attend an eligible college or university. This regulation serves these objectives by providing detailed definitions for the statutory terms "severely and permanently disabled" and "impact area."

Needs and benefits:

The purpose of this rule is to provide guidance to potential recipients and schools by specifying the "impact area" and defining "severely and permanently disabled," the eligibility criteria for this scholarship.

The definition of "impact area" includes the "secure zone" as established by the City of New York around the World Trade Center, the crash site in Shanksville, Pennsylvania, and the crash site at the Pentagon. This definition also identifies the periods of time during which an injury resulting in death or severe and permanent disability must have occurred to satisfy eligibility criteria.

It is necessary to define "severely and permanently disabled" because this terminology is undefined in the statute. This definition also prescribes the means by which severe and permanent disability is established. Severe and permanent disability is defined as a condition, due to injury or illness as a result of the 9-11 attacks, that prevents an individual from being employed or will result in death. The regulation further clarifies that severe and permanent disability is established upon certification by a doctor of medicine or osteopathy.

Defining these terms will clarify eligibility for applicants and schools, and speed determination of eligibility for an award under this program.

Costs:

a. It is anticipated that there will be no costs to regulated parties for the implementation of, or continuing compliance with this rule, except for programmatic administration costs.

b. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule. It is anticipated that there will be no costs for the implementation of, or continuing compliance with, this rule, with the exception of programmatic administration costs. As this rule merely implements an existing State financial aid program, it does not result in any costs not already mandated by statute.

Between the 2001 and 2003 academic years (June 1, 2001 — May 31, 2004) HESC expects to pay approximately $506,564.3 to thirty-two (32) students based upon the severe and permanent disability of a victim as defined by this regulation. As of October 7, 2003, HESC has verified the disability of thirty-six (36) victims using this definition of severe and permanent disability. Five (5) victims do not meet this definition. Currently, one hundred-two (102) applicants are eligible for this scholarship based on the severe and permanent disability of a victim. Twenty-eight (28) of these are not yet of college age. Future costs are dependent on new applications received for this award and future SUNY costs of attendance.

c. The source of the cost data in (b) above is HESC's transaction records for this program. These records include the number of applications received based on the severe and permanent disability of a victim, the amount of money paid to these applicants and the number of awards pending payment to these applicants for the spring 2004 academic term.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This rule will require potential recipients of WTC Scholarships to submit an application as well as supporting documentation to establish their eligibility for this program. No additional paperwork will be required.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping or conflicting with this rule were identified.

Alternatives:

HESC considered not promulgating any regulations defining impact area and severe and permanent disability. This alternative is unfeasible because it would not provide potential applicants or their schools with the definitions they need to evaluate eligibility for this program.

Federal standards:

This rule does not exceed any minimum standards of the Federal Government. Indeed, our definition of "severely and permanently disabled" is based on the Department of Education's definition of total and permanent disability found in Part 682 of Title 34 of the Code of Federal Regulations.

Compliance schedule:

Regulated parties will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption and Proposed Rule Making, seeking to add a new section 2201.2

to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption and Proposed Rule Making, seeking to add a new section 2201.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Job Impact Statement

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption and Proposed Rule Making, seeking to add a new section 2201.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Office of Mental Health

EMERGENCY RULE MAKING

Patients Committed to the Custody of the Commissioner

I.D. No. OMH-09-04-00004-E
Filing No. 210
Filing date: Feb. 17, 2004
Effective date: Feb. 17, 2004

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

Action taken: Amendment of Part 540 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), (c) and 31.04; Criminal Procedure Law, art. 730

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

Specific reasons underlying the finding of necessity: This rule is necessary to streamline the currently lengthy and involved process of making determinations regarding fitness to stand trial and return to court of patients against whom criminal charges are pending.

Subject: Patients committed to the custody of the commissioner pursuant to Criminal Procedure Law, art. 730.

Purpose: To establish a faster and more appropriate process for determination of fitness to stand trial and return to court of a patient against whom criminal charges are pending.

Substance of emergency rule: Part 540 currently provides that the clinical director of a State operated forensics facility may apply to the court for the return of a patient in the custody of his or her facility where that patient's mental status has changed in terms of their capability of understanding the court proceedings and participating in their own defense. The current regulation involves a review by the hospital forensic committee in accordance with requirements of Section 540.9. This rule will streamline the process of making determinations regarding the fitness to stand trial and the return to court of the patients involved. It will establish that the clinical director is responsible for determining whether a patient remains an incapacitated person or is fit to stand trial. It outlines that the clinical director may designate certain facility psychiatrists to examine the patient and prepare a report and recommendation to the clinical director. While the clinical director will review and consider these recommendations, he or she need not follow them.

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 May 16, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: §§ 7.09(b), 7.09(c) and Section 31.04(a) of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction, the authority to administer the forensic psychiatric program, and the power to adopt regulations for quality control, respectively. Article 730 of the Criminal Procedure Law establishes the role of the Commissioner of Mental Health in the process of determining the fitness to stand trial.

2. Legislative Objectives: Article 7 and Article 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Article 730 of the Criminal Procedure law reflects the role of the Commissioner of Mental Health in the process of determining the fitness to stand trial.

3. Needs and Benefits: This amendment will streamline proper decision making regarding changes in custody status of patients who have been committed to the custody of an Office of Mental Health (OMH) forensic facility by a criminal court after having been found to have a mental illness which renders them incapable of understanding the court proceedings against them or participating in their own defense. OMH has a responsibility to take steps, in the interest of public safety, to see that these individuals are kept at the appropriate level of custody and are promptly returned to the court when their mental status changes.

Currently Part 540 provides that the clinical director may apply to the court for the return of a patient in the custody of his or her facility where that patient's mental status has changed in terms of their capability of understanding the court proceedings and participating in their own defense. The current regulation involves a review by the hospital forensic committee in accordance with requirements of Section 540.09. The hospital forensic committee reviews, due to difficulty of scheduling and additional paperwork, often consume a period of several weeks. This adds unnecessarily to the patient's length of stay and delays the defendant's ability to face a fair and speedy trial. It also results in over crowding as patients who might otherwise return to court await the committee's action. This situation has become critical and immediate action is necessary to address it.

This rule will streamline the process of making determinations regarding the fitness to stand trial and the return to court of the patients involved. It will establish that the clinical director is responsible for determining whether a patient remains an incapacitated person or is fit to stand trial. It outlines that the clinical director may designate certain facility psychiatrists to examine the patient and prepare a report and recommendation to the clinical director. While the clinical director will review and consider these recommendations, he or she need not follow them.

In summary, this amendment streamlines the process of determining fitness to stand trial. It supports sound decision making and it maintains the final decision making authority of the clinical director. This new process will meet all the requirements and expectations of the court orders involved.

4. Costs: It is estimated that this amendment could result in a savings of at least 2,000 hours of staff time per year at Mid-Hudson Forensic Psychiatric Center. It is also estimated that by streamlining this process there will be a reduction at that facility in patient length of stay, averaging between 14 to 21 days and resulting in a savings to the State of at least $100,000 in associated costs.

There will also be significant savings to local governments. As required by subdivision (c) of Section 43.03 of the Mental Hygiene Law, the costs of care of patients receiving services while being held pursuant to order of a criminal court must be paid by the county in which such court is

located. OMH currently provides services to approximately 350 patients admitted under Article 730 of the Criminal Procedure Law. Counties are currently billed at a rate of $301.00 per day of inpatient service. Based on an estimated 14 to 21 days reduction in length of stay the annual savings to counties, on a statewide basis, will be between $1,475,000 to $2,212,000.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts. This regulation applies only to state-operated forensic facilities.

6. Paperwork: This rule should decrease and simplify the paperwork requirements.

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

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative was rejected. This change is critical and is needed immediately to address census and staffing issues, improve treatment for patients, and provide for a safer environment for patients and staff.

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

10. Compliance Schedule: These regulatory amendments will be effective upon their adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose any adverse economic impact on small businesses, or local governments. There will be significant savings to local governments. As required by subdivision (c) of Section 43.03 of the Mental Hygiene Law, the costs of care of patients receiving services while being held pursuant to order of a criminal court must be paid by the county in which such court is located. OMH currently provides services to approximately 350 patients admitted under Article 730 of the Criminal Procedure Law. Counties are currently billed at a rate of $301.00 per day of inpatient service. Based on an estimated 14 to 21 days reduction in length of stay the annual savings to counties, on a statewide basis, will be $1,475,000 to $2,212,000.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule will have a positive economic impact on rural counties.

There will be significant savings to rural county governments. As required by subdivision (c) of Section 43.03 of the Mental Hygiene Law, the costs of care of patients receiving services while being held pursuant to order of a criminal court must be paid by the county in which such court is located. OMH provides services to approximately 350 patients admitted under Article 730 of the Criminal Procedure Law. Counties are currently billed at a rate of $301.00 per day of inpatient service. Based on an estimated 14 to 21 days reduction in length of stay the annual savings to counties, on a statewide basis, will be between $1,475,000 to $2,212,000.

Rural counties have been especially concerned about these costs since they can have a proportionately larger budget impact and are difficult to plan for or to address in the local budget process.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves procedural changes to custody determinations regarding patients at state operated forensic facilities and will not have any adverse impact on jobs and employment activities. It will have a positive impact on staffing at Mid-Hudson Forensic Psychiatric Center by reducing the amount of staff time necessary to conduct reviews and prepare documentation regarding custody determinations under Criminal Procedure Law Article 730.

Department of Motor Vehicles

NOTICE OF ADOPTION

Junk and Salvage Vehicles

I.D. No. MTV-51-03-00010-A
Filing No. 211
Filing date: Feb. 17, 2004
Effective date: Feb. 25, 2004

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

Action taken: Amendment of Part 81 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 415-a(15) and 1224(2)

Subject: Junk and salvage vehicles.

Purpose: To increase the value of abandoned vehicles from $750 to $1,250 as mandated by statute.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-51-03-00010-P, Issue of December 24, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Michele Welch, Counsel's Office, 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

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enforcement of Motor Vehicle Liability Insurance Law

I.D. No. MTV-09-04-00006-P

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

Proposed action: This is a consensus rule making to amend Part 35 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 318(1)(e)

Subject: Enforcement of Motor Vehicle Liability Insurance Law.

Purpose: To clarify exemption from insurance lapse provision.

Text of proposed rule: Subdivision (g) of Section 35.11 is amended to read as follows:

(g) Acceptable proof of storage in a commercial garage, commercial storage area, or a repair shop registered pursuant to Article 12-A of the Vehicle and Traffic Law. *However, if the registrant submits proof involving a facility that was not properly registered as a repair shop pursuant to Article 12-A of the Vehicle and Traffic Law, the motorist must file a complaint with the Department's Office of Vehicle Safety stating that to the best of his or her knowledge the facility was operating without proper registration and that he or she was not aware that the facility was not properly registered. If a repair shop is located in another state, proof submitted by a registrant shall be deemed acceptable only upon verification by the Department that such repair shop is legally registered or licensed in such other state.*

Text of proposed rule and any required statements and analyses may be obtained from: Michele Welch, Counsel's Office, 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

Section 318(1) of the Vehicle and Traffic Law provides that DMV must suspend a motor vehicle registration if there is an insurance lapse associated with such vehicle. Part 35.11 of the Commissioner's Regula-

tions sets forth criteria to exempt a registrant from an insurance lapse suspension. Once such exemption provides that if the vehicle was housed in a repair shop during the period of the lapse, the suspension will be waived as long as the repair shop was properly registered pursuant to Article 12-A of the VTL.

This proposed amendment, which clarifies this repair shop exemption, is twofold. First, it provides that if the vehicle was housed in an out-of-state repair shop during the lapsed period, the exemption will be triggered as long as DMV can certify that the shop was properly registered or licensed in accordance with the laws of that state. Second, the amendment provides that if the registrant asserts that, unbeknownst to him or her, the repair shop was not properly registered under New York State law, the exemption will be triggered if the registrant files a complaint about the subject facility with DMV's Office of Vehicle Safety.

These amendments comport with and further clarify the current repair shop exemption contained in Part 35, and therefore, are consensus in nature.

Job Impact Statement

A Job Impact Statement is not submitted with this consensus rulemaking because it will have no impact on job development in the State. This rule concerns an exemption from the insurance lapse provisions of section 318(1) of the Vehicle and Traffic Law.

Niagara Falls Water Board

EMERGENCY RULE MAKING

Water and Wastewater Treatment and Distribution System

I.D. No. NFW-01-04-00008-E
Filing No. 212
Filing date: Feb. 17, 2004
Effective date: Feb. 17, 2004

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

Action taken: Addition of Parts 1950 and 1960 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-f

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

Specific reasons underlying the finding of necessity: The board has determined that the emergency adoption of regulations is necessary for the preservation of public health, safety and welfare of the people of Niagara Falls, New York, and the service area of the system, inasmuch as the board must be able to effectively regulate all persons who use the system as of the acquisition date, which occurred Sept. 25, 2003.

Subject: Regulation of water and wastewater treatment and distribution system in Niagara Falls.

Purpose: To establish regulations for all person who use the water, wastewater and stormwater facilities located in the City of Niagara Falls and nearby service area.

Substance of emergency rule: The Niagara Falls Water Board has adopted regulations in connection with the Board's acquisition of the water, wastewater and storm water facilities of the City of Niagara Falls (collectively the "System"). The Board acquired the System as of September 25, 2003.

The regulations are in two parts. Part 1950 constitutes the Board's Water Regulations and Part 1960 constitutes the Board's Wastewater Regulations (collectively the "Regulations"). Both parts establish a comprehensive set of rules and regulations with respect to the operation, maintenance and management of the System. The Regulations apply to all persons who use the System and to properties served by the System, located within and outside the City of Niagara Falls (the "Service Area"). The Regulations are substantially the same as the City's ordinances in effect before the Board's acquisition of the System.

Board Water Regulations. The Regulations provide for the beneficial use of the Board's water facilities through the regulation of connection and water use, as well as for the Board's equitable recovery of the cost of the System. Provision is made for the confidentiality of persons who use the System and the information that they provide in accordance with the Freedom of Information Law and other applicable state and federal statutes and regulations.

The Regulations generally require every dwelling, house or other building that uses water to be supplied from the water mains of the Board through a separate service. Provision is also made in these Regulations for temporary service to such properties. The Board does not guarantee to any user any fixed or constant pressure or continuous supply. The Regulations also make provision for applications for water service together with payment of fees to obtain a permit for connection to the System. No work or improvements to supply water may be performed without obtaining such permits from the Board. The Regulations contain various technical requirements for establishment of water service branches upon written application to the Board.

Except in unique circumstances, all water will be furnished to users of the System through a metered service only. The supply of water through separate service must be recorded by one meter only. If additional meters are desired, the Regulations make provisions for such additional meters. The Regulations make extensive provisions for the size and location of meters within dwelling houses and other buildings that are served by the System. Whenever a service is to interconnect in any manner with any other supply of water, other than the Board, a separate detail of such interconnection must be presented and comply with the State Sanitary Code and the Niagara County Health Department. The Board reserves the right to enter, at any reasonable time, and with reasonable notice, any premises where a water meter is installed, to test, examine, repair, remove, replace or modify such meter. All meters remain the property of the Board and the Board has the obligation to repair, excepted in limited circumstances, without cost to the property owner.

The Regulations obligate all users to pay and be liable to pay the Board for such fees, rates and other charges as the Board may establish from time to time. A schedule of such fees, rates and charges is set forth in Section 1950.20. The Service Area is divided into three districts. A schedule of billing for consumption of water in these districts is set forth in the Regulations. Charges for consumption of water by significant industrial users will be billed on a monthly basis. The Regulations provide for procedures to bill and collect unpaid water charges and for discontinuance of service upon appropriate notice to all users.

A tapping application is required for erection, construction, alteration or maintenance of any building or structure or for any other purposes that requires a temporary use of water. Provision is made for application for taps into the water mains and for recovery of real costs of the Board.

No person, other than an employee or authorized contractor of the Board, may open, close or interfere in any manner with any water main, pipe or related equipment belonging to the Board without the written permission of the Board's Director. Similarly, only persons authorized by the Board may operate any fire hydrant or attempt to modify a water meter, except the City Fire Department. The Regulations provide several rules with respect to the general use of fire hydrants, hydrant flow test and charges for fire protection.

The Regulations make cross-reference to the City's Plumbing Code and require that all plumbing work be done by a duly licensed plumber. The Regulations specify various types of attachments and materials that may be used by plumbers in connection with the System.

The Board has established a policy to protect the public water supply against actual or potential cross-connections by isolating within premises contamination that may occur because of undiscovered or unauthorized cross-connection of the premises. The Regulations make extensive provisions to prevent cross-connections and to assure the integrity of protective devices, inspection and testing at least annually. All users of the System are required to prevent cross-connections between the potable water piping system and any other piping system within the user's property. All tests for backflow prevention must be done in conformance with certified backflow prevention device testers and with the assistance of the Niagara County Health Department.

The Regulations authorize the Director of the Board to take any and all actions with respect to property owners or users receiving water service from the Board whenever any provision in the Regulations are contravened including, but not limited to, termination of water service, correction of violations within a set timeframe, disconnection, modification and/or construction of appropriate safety devices and structures, and requirement of the payment of a surcharge or fee. The Regulations provide a process for the resolution of disputes including provision for administrative orders and a hearing to determine all facts, provide a written report to the Board with a

recommendation, based on evidence presented for a final determination as to enforcement action by the Board.

Any person found violating any provision of Part 1950 will be served by the Director with a written notice stating the nature of the violation. Monetary penalties are set forth in the Regulations, including a penalty in the amount of up to $5,000 per day for each violation for significant industrial users.

Board Wastewater Regulations. The Regulations provide for the maximum possible beneficial public use of the Board's publicly owned treatment works through regulation of construction, sewer use and wastewater discharges and provide criteria for equitable distribution of the cost of the Board's publicly owned treatment works. These Regulations establish provisions to prevent the introduction of pollutants which would interfere with the operation of the Board's treatment works, pass through the treatment works to waters of the State or otherwise contaminate the Board's treatment works' sludge. These Regulations govern sewer connections, control of the quantity and quality of discharges, wastewater pretreatment, criteria for distribution of costs, criteria for the use of the Board's treatment work's capacity, issuance of significant industrial user and industrial commercial user permits. The Regulations establish sewer connection standards and conditions as well as penalties and other procedures in cases of violations of the Regulations.

All persons who own any occupied building accessible to the Board treatment works are required at their own expense to connect to the System. No connection may be made to the System except by a plumber duly registered and licensed by the City. All persons are required to use such materials as are approved by the City and the Board for all connections to the System. Interceptors and separators are required to be maintained in efficient and operating condition. With several exceptions, each separate building shall be provided with an independent sewer connection to the System. Every connection requires a permit from the Board upon a written application and inspection by the Board. The Board reserves the right to do any work incident to making connections and the cost of any such work may be charged to the property owner.

The disposal of sanitary wastewater and industrial wastewater to other than the Board treatment works is prohibited, except for certain industrial waste. Industrial waste discharges require a valid SPDES discharge permit. The disposal of hauled waste into the System is also prohibited, except upon a Board permit. The Regulations make provisions for industrial discharges and for significant industrial users as to the quantity and quality of the discharge, and for pretreatment of industrial wastewater. Certain discharges are expressly prohibited and they are set forth in the Regulations with incorporation by reference to 40 CFR Part 262 and 40 CFR Part 403. The Board has established local limits in accordance with the provisions of 40 CFR Part 403. The Regulations require notice of change in volume or character of waste, and for measuring, recording and sampling devices.

Board personnel are authorized to enter upon all properties served by the Board for the purpose of inspection of the premises, observation, measurement, sampling and testing in accordance with the Regulations.

Each Significant Industrial User ("SIU") is required to install either a suitable control manhole or monitoring station. The Regulations provide for such installations and monitoring. The Regulations provide for determination of wastewater characteristics with a sampling program for all SIUs. Each SIU is required to provide protection from slug discharges, and a plan to control slug discharges.

All proposed new industrial users are obligated to apply to the Board for a discharge permit. The Regulations establish the requirements for such applications, the issuance of permits, and for the modification, duration and termination of permits.

The Board has established categorical pretreatment standards in accordance with 40 CFR Parts 405-471. The Regulations make provision for reporting and compliance with pretreatment regulations, and authorize compliance schedules to be established for all industrial users.

All users are obligated to pay the Board such fees, rates and other charges as the Board may establish. The schedule of fees, rates and charges for wastewater services is also contained in Section 1950.20 as well as throughout Part 1960. Board wastewater users are divided into three classes: SIU, Commercial/Small Industrial/Residential and Hauled Waste. The Regulations make provision for the billing and collection of fees, rates and charges with respect to each class of user.

The Board Director is given authority to issue permits as well as to initiate courses of action with respect to users who violate the Regulations, permits, and as determined by the Director including, rejection of waste, requirement of pretreatment program, establishment of control over quantities and rates of discharge, payment of surcharges, requirements for surveillance and monitoring of discharges and reporting as well as for termination of wastewater service. The Regulations make provision for administrative orders as well as for dispute resolution including a hearing with a final determination by the Board based upon recommendations by a hearing officer or the Director.

Provision is made for penalties that may be imposed on all users who violate the Regulations, permits or orders in an amount not exceeding $10,000 per day per violation.

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. NFW-01-04-00008-EP, Issue of January 7, 2004. The emergency rule will expire April 16, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Charles C. Martorana, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 566-1512, e-mail: cmartorana@hiscockbarclay.com

Regulatory Impact Statement

1. Statutory Authority: New York State Public Authorities Law Section 1230-f (7) authorizes the Niagara Falls Water Board (the "Board"), to make and amend rules and Regulations (the "Regulations") governing the exercise and enforcement of its powers and the fulfillment of the purposes of the Niagara Falls Public Water Authority Act, Title 10-B of the Public Authorities Law (the "Act").

2. Legislative Objectives: The legislature has granted the Board jurisdiction, control, possession, supervision and use of the water, wastewater and storm water facilities located in the City of Niagara Falls and related service area (collectively referred to as the "System"). Promulgation of these Regulations are in furtherance of such legislative grant and provide the means whereby the Board can deliver services to persons served by the System, and enables the Board to keep the System in good repair and working order. In addition, promulgation of these Regulations enables the Board to comply with applicable laws of the United States, and the State of New York (the "State") and the rules, regulations, permits and orders of their regulatory agencies.

3. Needs and Benefits: The Board operates, maintains and manages the System. It provides potable water, and receives and treats discharges of wastewater for approximately 55,000 persons who reside or work in the City of Niagara Falls and the adjacent areas served by the System. The Board's Regulations establish a comprehensive program to enable the Board to operate, maintain, repair and manage the System to ensure the uninterrupted delivery of such water and wastewater services.

The Board Water Regulations at Part 1950 provide for the beneficial use of the Board's water facilities through the regulation of connections and water use, as well as for the Board's equitable recovery of the cost of the System. The Regulations generally require every dwelling, house or other building that uses water to be supplied from the water mains of the Board through a separate service. The Board regulates all connections to the System to ensure that only qualified personnel, typically licensed plumbers or qualified employees of the Board, make such connections. In addition, no work or improvements to supply water may be performed without obtaining a permit from the Board.

Except in unique circumstances, all water is furnished to users of the System through a metered service only. The Regulations make provisions for the size and location of the meters within dwelling houses and other buildings that are served by the System. All meters remain the property of the Board and the Board has the obligation to repair, except in limited circumstances, such meters without cost to the property owner. All persons who use the System for potable water and for wastewater are charged, except in certain circumstances, based upon the metered usage of water.

The Board has established a policy to protect the public water supply against actual and potential contamination that may occur because of unauthorized cross-connection of plumbing systems. Also, the Regulations are designed to work in coordination with the Niagara County Health Department and the State Sanitary Code.

The Board Wastewater Regulations at Part 1960 provide for the maximum possible beneficial use of the Board's publicly owned treatment works through the regulation of construction, sewer use and wastewater discharges, and provide criteria for equitable distribution of the cost of the Board's publicly owned treatment works. The Regulations establish provisions to prevent the introduction of pollutants which may interfere with the operation of the Board's treatment works, pass through the treatment works to waters of the State or otherwise contaminate the Board's treatment works' sludge. The Regulations also govern sewer connections,

control of quantity and quality of discharges, wastewater pretreatment, establish criteria for the use of the Board's treatment works capacity, and for the issuance of discharge permits to significant industrial users and industrial commercial users.

The Regulations also regulate industrial discharges and significant industrial users as to the quantity and quality of their discharges and for the pretreatment of industrial wastewater. Certain discharges are expressly prohibited, and are set forth in the Regulations with incorporation by reference to federal Regulations established by the United States Environmental Protection Agency. In addition, the Board has established local limits in accordance with the provisions of 40 C.F.R. Part 403.

The Board also has authorization pursuant to the Act Section 1230-g to engage in special enforcement powers with respect to its wastewater facilities and to otherwise undertake enforcement activity for persons who violate the Regulations with administrative and civil penalties.

4. Costs to Regulated Persons: The Regulations obligate all users of the System to pay and be liable to pay the Board for such fees, rates and other charges as the Board may establish from time to time. A schedule of such fees, rates and charges is set forth in Section 1950.20 and also in several provisions of Part 1960. These rates, fees and other charges include a range from initial tapping and permit application fees, to consumption charges for each calendar quarter, termination fees and other usage fees. Each year, the Board, with the assistance of Black & Veatch New York, LLP, as rate consultant, establishes a budget based on its projected expenses, including, among other things, labor, property maintenance, equipment purchases and maintenance, supplies, capital improvements and debt service. The schedule that the Board develops is designed to enable the Board to pay for these expenses as well as to maintain various covenants with its bondholders.

Rates for water usage and wastewater discharges are based on several factors and are set forth in Section 1950.20. Rates are established based on cubic feet of water consumed for each three months (calendar quarter), with a progressive rate so that the rate decreases per 100 cubic feet for increased consumption. For example, in 2003, consumption of the first 20,000 cubic feet was charged at $1.95 per 100 cubic feet, while the next succeeding 60,000 cubic feet in the same three month period would be charged $1.70 per 100 cubic feet, the next succeeding 120,000 cubic feet in the same three month period would be charged $1.43 per 100 cubic feet and any usage in excess of 200,000 cubic feet for the same three month period would be charged $1.19 per 100 cubic feet. The minimum charge for water consumed in any premises within the City for any calendar quarter, or portion thereof is $25.35. These rates increase for persons and properties located outside of the City of Niagara Falls based on the additional cost that is incurred in the pumping and maintenance of the System beyond the City line.

In addition, sewer rates for Commercial/Small Industrial/Residential Users (CSIRU) and Significant Industrial Users (SIU) are also determined by total metered consumption in each quarter. These rates are set forth in Part 1950.20. Sewer rates for the SIU class of users in each quarter are based on measured quantities of actual discharge parameters: flow, suspended solids and soluble organic carbon. The Regulations authorize the Board to make determinations as to these parameters and provide for five representative 24 hour composite samples taken quarterly, at locations that are adequate for and accessible to the Board representatives. A separate schedule of charges is established for conventional pollutant parameters and for SIUs with discharges that contain substances of concern as set forth in Schedule III of Section 1950.20. In addition to its analysis of the budget to operate and maintain the System, the Board will also seek to recover its real costs which mean the total direct and indirect costs of labor, material, equipment and handling, including overhead costs that it incurs in delivery of special services to individual users.

Costs to the Board, the State and Local Governments: The implementation and continuation of the Regulations should not impose any costs upon the State. The Board will continue to work with the City of Niagara Falls and use various employees of the City for, among other things, billing and collection of the rates, charges and fees. In addition, the Board has reserved the right to use the office of the corporation counsel to assist in the enforcement of any Regulations, permits or orders that have been violated by users of the System. The Board has provided for such expenses in its budget and has sought to recover such expenses as part of its rate structure referenced above. The Board will reimburse the City of Niagara Falls for the use of any employees and equipment to undertake such activities. Also the Board will continue employment of approximately 9.4 persons (measured in person hours) to administer the Board's wastewater pretreatment program.

Cost Methodology: The Board has retained the services of Black & Veatch New York LLP as its rate consultant. Periodically, and at least annually, Black & Veatch will perform a rate study to ensure that the Board rates, fees and other charges will be sufficient to provide for a balanced budget in light of anticipated and estimated expenses as referenced above. Black & Veatch is a recognized expert rate consultant which serves several municipalities and other agencies in the State that provide water and wastewater services to the public.

5. Local Government Mandates: The Regulations will not impose any new program, services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district. The Niagara County Health Department will continue to assist the Board, as it has previously assisted the City, with respect to certain certifications for back flow prevention and compliance with the County Health Law and the State Sanitary Code.

6. Paperwork: The Regulations continue the existing regulatory program that was previously employed by the City of Niagara Falls. No additional or new reporting requirements or paperwork requirements are established for persons regulated by the Board. The Regulations continue to employ application forms for water and wastewater discharge permits, tapping application and the like. In addition, CSIRU's and SIU's will continue to provide monitoring reports, and when served with notices of violations, or administrative orders, such users will be required to provide additional documentation to correct and otherwise address such violations and orders.

7. Duplication: The City of Niagara Falls continues to have on its records, Water Ordinances and Wastewater Ordinances as part of its City Code upon which the Board Regulations are modeled. The Regulations have been established in substantial conformance with such ordinances. It is anticipated that the City will, in the coming year, cancel such ordinances.

8. Alternatives: The Board did not give any consideration to other alternative proposals to the Regulations before deciding to promulgate them.

9. Federal Standards: The Regulations do not exceed any minimum standards of the federal government for the same or similar subject area. The wastewater pretreatment Regulations embodied in 40 C.F.R. Part 403 authorize the Board to establish local limits that may be different than those prescribed generally by these federal regulations. The local limits are set forth in Part 1960.5.

10. Compliance Schedule: The Board has promulgated the Regulations in substantial conformance to the Water and Wastewater Ordinances that have been previously in effect by the City of Niagara Falls for all persons who are served by the System. The Board has not adopted any significant changes and, therefore, it does not anticipate any additional time necessary to require regulated persons to achieve compliance with the Regulations.

Regulatory Flexibility Analysis

1. Effect of Rule: When the Board acquired the System on September 25, 2003 it established by emergency procedure the Regulations in substantial conformance with the Water and Wastewater Ordinances that were previously in effect in the City of Niagara Falls. Accordingly, the Board continued the same regulatory program that was in effect, previously administered by the City, prior to the Board's takeover of the System as of such acquisition date. No new regulation or requirements were established as part of the Board's adoption of the Regulations. Based on the disclosures by the City to the Board as part of the acquisition, the System serves a population of approximately 55,000 persons according to the 2000 census. This includes approximately 19,220 residential, industrial, commercial and governmental accounts. Water consumption and wastewater discharges can be classified pursuant to consumption of water as follows: residential/commercial users, 18,894; industrial users, 272; significant industrial users, 26; and non-resident users, 28. Of these accounts, approximately 275 constitute small businesses within the definition of the State Administrative Procedure Act ("SAPA"). In addition, the System serves the public buildings of the City of Niagara Falls and the Niagara Falls School District and several public buildings of Niagara County. It also provides wastewater services through mutual service agreements to limited portions of the Town of Niagara.

2. Compliance Requirement: No new reporting, recordkeeping or other affirmative acts are required by small business or local governments as a result of the Board's adoption of the Regulations. The same reporting, recordkeeping and actions that were previously required of small businesses and local governments prior to the Board's adoption continue after the Board's adoption of these Regulations. These requirements have included completion of application forms for contractors who need or desire to tap into the System for purposes of construction, repair or rehabilitation

of water and wastewater pipes and other appurtenances, and applications for discharge permits into the wastewater System. Significant industrial users and other commercial and industrial users that are subject to the pretreatment requirements of the Regulations are required to continue to produce monitoring reports, and as necessary pursuant to administrative orders, provide specific periodic monitoring reports including laboratory analyses of their wastewater discharges.

3. Professional Services: No new professional services are required of small businesses or local governments by virtue of the Board's adoption of the Regulations. Again, as in the ordinances that have been in effect in the City of Niagara Falls, industrial users and significant industrial users may need the assistance of consulting engineers, or experts in water and wastewater Systems with respect to the repair, replacement and monitoring of their facilities and discharges.

4. Compliance Costs: No initial or new capital costs will be incurred by regulated businesses, industry or local governments to comply with these Regulations. The Board has adopted the Regulations that have been in effect as ordinances in the City of Niagara Falls. It is difficult to estimate the annual cost for continuing compliance with the Regulations for small business. The compliance cost may vary depending upon the type and/or size of such business and the complexity of its discharges. Moreover, the costs for the Board's pretreatment program are factored into the sewer rates the Board charges all industrial and commercial users and are set forth in Part 1950.20. It is not anticipated that any changes will occur in the compliance cost for local governments as a result of the Board's Regulations. The Regulations continue the same compliance requirements that were in effect before the Board acquired the System on September 25, 2003. There is no change in the economic and technological feasibility of compliance required for small businesses and local governments by virtue of the Board's adoption of these Regulations. There is no additional technology required for small businesses.

5. Economic and Technological Feasibility:

There is no change in the economic and technological feasibility of compliance required for small businesses and local governments by virtue of the Board's adoption of these Regulations. There is no additional technology required for small businesses.

6. Minimizing Adverse Impact: The Regulations provide for the beneficial use of the Board's water and wastewater facilities for all users of the System through the regulation of connection, water use and wastewater discharges as well as for the Board's equitable recovery of costs of the operation, maintenance and management of the System. Provision is made for the confidentiality of persons who use the System and the information that they provide in accordance with the Freedom of Information Law and other applicable state and federal statutes and regulations. Generally, the Board's main function is to make sure that the users receive potable water and that wastewater discharges are conveyed and treated in a manner that protects and preserves the public health, safety and welfare and minimizes the contamination of the waters of the State. The Regulations establish compliance and reporting requirements only as necessary to comply with the Safe Drinking Water Act, the Clean Water Act and other federal and state mandates with respect to water and wastewater. Such mandates do not provide any particular exemptions or accommodations for small businesses and local governments.

7. Small Business and Local Government Participation: The Regulations were adopted by the Board on an emergency basis as authorized by SAPA. The Board is publishing the Regulations at this time with a request for comment by the general public and by persons served by the System. The Board will take into account any comments that it receives in accordance with the requirements of SAPA. The Board has conducted two public hearings with respect to its schedule of rates, fees and other charges upon public notice in accordance with the Public Authorities Law. The Board has made the Regulations available for public inspection and comment at the Board's office and at the Office of the City Clerk of Niagara Falls. It has published public notices of the availability of the Regulations for review and comment. In addition, the Board has conducted several public meetings prior to and after its acquisition of the System and has regularly provided opportunity to the public to comment on any aspects of the Board's activities, including the Regulations.

Rural Area Flexibility Analysis

The System and the Board do not serve any rural areas as defined by Subdivision 7 of Section 481 of the Executive Law. The Board serves the City of Niagara Falls and select urban areas adjacent to or near the City of Niagara Falls. Since no rural areas will be affected by the Regulations, a rural flexibility analysis is not required.

Job Impact Statement

The Regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The City of Niagara Falls, prior to the Board's acquisition of the System, has lost a number of its largest water and wastewater customers in recent years. In 2002, the water System's three largest customers underwent significant changes. DuPont has reduced its demand for water due to the elimination of certain industrial processes. Both SGL Carbon and Carbon Graphite have shut down, the latter having filed for bankruptcy protection.

The population of the City of Niagara Falls has declined in recent years. In 1980 the population in the City was 71,384. In 1990 the population was 61,840, and in 2000 the population was 55,593 persons according to the U.S. Bureau of the Census. In addition, the annual average unemployment rate in the City in 2002 was 11.2% and in the County of Niagara the unemployment rate was 7.5% pursuant to information available from the New York State Labor Department.

Despite the customer and population losses, the City has experienced a recent positive development. In late 2002, the Seneca Indian Nation and the State entered into a compact that provides for the tribe to develop approximately 55 acres of land in the City's downtown area. The long-term plans call for a gaming casino, hotels, a retail complex, restaurants, an entertainment complex and a variety of other attractions. A temporary casino opened December 31, 2002 and currently has approximately 2,200 employees and an average of 20,000 daily visitors on the weekends.

In response to the decline in the industrial sector and the associated revenue loss, several cost saving measures have been established with regard to the System's facilities, operations and maintenance. One such measure deals with staffing. The water facilities have reduced staff levels by 24% since 2000. The 2003 budget eliminated 17 additional jobs within the water and wastewater facilities. A second measure features stringent budget cost controls that have yielded significant expenditure reductions over the last three years. On the revenue side, the Board has assumed from the City nine cellular antenna lease agreements for installation of cell towers at elevated water storage tanks. This currently generates revenue of approximately $168,000 per year in an effort to reduce the reliance on water rates and charges on users.

The Board also intends to conduct a comprehensive rate study for both the water System and the wastewater System. In addition to reviewing the current rate structure and the cost allocations for each customer class, the study should recognize the steady decline of the industrial user class and propose a rate structure to accommodate the changing customer base. In addition, the Board will continue to actively market its hauled waste services to expand its services to businesses that may haul wastewater to the System. The System has capacity to treat more wastewater than is currently discharged by users located in the City of Niagara Falls.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Minor Rate Increase by Woodhull Municipal Gas Company

I.D. No. PSC-39-03-00015-A
Filing date: Feb. 11, 2004
Effective date: Feb. 11, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-G-1043, approving amendments to Woodhull Municipal Gas Company's (Woodhull) schedule for gas service—P.S.C. No. 2.

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

Subject: Minor rate filing.

Purpose: To increase gas revenues by $9,620 or 6.2 percent.

Substance of final rule: The Commission approved Woodhull Municipal Gas Company's (Woodhull) request to increase annual revenues provided

that Woodhull files further revisions by February 20, 2004, 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-G-1043SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Hudson Park Investors, LLC

I.D. No. PSC-40-03-00010-A
Filing date: Feb. 12, 2004
Effective date: Feb. 12, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-E-1225, approving Hudson Park Investors, LLC's request to submeter electricity at One Van Der Donck St., and One Pierpoint St., Yonkers, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To submeter electricity.

Substance of final rule: The Commission authorized Hudson Park Investors, LLC to submeter electricity at 1 Van Der Donck Street and 1 Pierpointe Street in Yonkers, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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-1225SA1)

NOTICE OF ADOPTION

Submetering of Electricity by JDM Washington Street LLC

I.D. No. PSC-43-03-00033-A
Filing date: Feb. 12, 2004
Effective date: Feb. 12, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-E-1350, approving JDM Washington Street LLC's request to submeter electricity at 90 Washington St., New York, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To submeter electricity.

Substance of final rule: The Commission authorized JDM Washington Street LLC to submeter electricity at 90 Washington Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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-1350SA1)

NOTICE OF ADOPTION

Minor Rate Increase by the Village of Arcade

I.D. No. PSC-48-03-00015-A
Filing date: Feb. 13, 2004
Effective date: Feb. 13, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-E-1592, approving modifications to the Village of Arcade's electric tariff schedule, P.S.C. No. 1.

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

Subject: Minor rate filing.

Purpose: To allow the Village of Arcade to increase annual electric revenues.

Substance of final rule: The Commission authorized the Village of Arcade to increase its annual revenues by $298,072 or 5.5% provided that the Village of Arcade files further revisions, 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-1592SA1)

NOTICE OF ADOPTION

Day Ahead Demand Response Program by Niagara Mohawk Power Corporation

I.D. No. PSC-50-03-00004-A
Filing date: Feb. 11, 2004
Effective date: Feb. 11, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-E-1669, approving modifications to Niagara Mohawk Power Corporation's (Niagara Mohawk) tariff schedule P.S.C. No. 207—Electricity.

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

Subject: Tariff filing.

Purpose: To remove the penalty multiplier from the Day Ahead Demand Response Program via load curtailment.

Substance of final rule: The Commission authorized Niagara Mohawk Power Corporation to eliminate the penalty multiplier from its Day Ahead Demand Response Program Via Load Curtailment-Form L11.

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-1669SA1)

NOTICE OF ADOPTION

Transfer of Ownership Interests by Sithe/Independence Power Partners, L.P.

I.D. No. PSC-50-03-00005-A
Filing date: Feb. 13, 2004
Effective date: Feb. 13, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-E-1675, approving the transfer of ownership interest in Sithe/Independence Power Partners, L.P. (Sithe/Independence).

Statutory authority: Public Service Law, sections 70 and 83

Subject: Transfer of ownership interests.

Purpose: To approve the transfer of ownership interest in Sithe/Independence.

Substance of final rule: The Commission authorized the transfer of ownership interest in Sithe/Independence Power Partners, L.P. from Oswego Cogen Company, LLC to Sithe/Independence Equity, LLC.

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-1675SA1)

NOTICE OF ADOPTION

Joint Proposal by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-51-03-00001-A
Filing date: Feb. 12, 2004
Effective date: Feb. 12, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 00-E-0612, requiring Consolidated Edison Company of New York, Inc. (Con Edison) to comply with the provisions of the joint proposal.

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

Subject: Joint proposal.

Purpose: To adopt the terms of the joint proposal regarding power outages at Con Edison's Indian Point No. 2 Nuclear Generating Facility.

Substance of final rule: The Commission adopted the terms of a joint proposal whereby Consolidated Edison Company of New York, Inc. will refund or absorb a total of $135.5 million of replacement power costs associated with investigated outages at its Indian Point No. 2 Nuclear Generating Facility, 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-E-0612SA1)

NOTICE OF ADOPTION

General Retail Access-Multi Retailer Model by Rochester Gas and Electric Corporation

I.D. No. PSC-51-03-00002-A
Filing date: Feb. 12, 2004
Effective date: Feb. 12, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 02-E-0198 approving amendments to Rochester Gas and Electric Corporation's (RG&E) electric tariff schedules, P.S.C. Nos. 18 and 19.

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

Subject: Tariff filing.

Purpose: To comply with the commission's March 7, 2003 order, adopting recommended decision with modifications.

Substance of final rule: The Commission authorized amendments to Rochester Gas and Electric Corporation's electric tariffs, to transition from a single-retailer to a multi-retailer model, 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-E-0198SA5)

NOTICE OF ADOPTION

Transfer of Ownership Interests by Utilco Group, Inc., *et al.*

I.D. No. PSC-51-03-00004-A
Filing date: Feb. 13, 2004
Effective date: Feb. 13, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-E-1694, approving the transfer of ownership interest in Onondaga Cogeneration Limited Partnership.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests.

Purpose: To allow the transfer of ownership interests in Onondaga Cogeneration Limited Partnership to Teton Power Funding, LLC.

Substance of final rule: The Commission authorized the transfer of ownership interest in Onondaga Cogeneration Limited Partnership from Utilco Group, Inc., MEP Holdings, Inc., MEP Investments, LLC and UtilCo SaleCo, LLC to Teton Power Funding, LLC.

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.

(03-1694SA1)

NOTICE OF ADOPTION

General Retail Access—Multi-Retailer Model by Rochester Gas and Electric Corporation

I.D. No. PSC-51-03-00006-A
Filing date: Feb. 12, 2004
Effective date: Feb. 12, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 02-G-0199, approving amendments to Rochester Gas & Electric Corporation's gas schedule, P.S.C. No. 16.

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

Subject: Tariff filing.

Purpose: To comply with the commission's March 7, 2003 order, adopting recommended decision with modifications.

Substance of final rule: The Commission authorized amendments to Rochester Gas and Electric Corporation's Gas Schedule, P.S.C. No. 16, to convert its gas tariff from a single-retailer model to a multi-retailer model, subject to the 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-G-0199SA4)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Rate Increase by the Village of Rockville Centre

I.D. No. PSC-09-04-00011-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, or modify, a proposal filed by the Village of Rockville Centre, NY to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 3—Electricity. The effective date of the filing has been suspended through March 29, 2004.

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

Subject: Major rate increase.

Purpose: To revise rates and charges to increase annual electric revenues by about $2.6 million or 14.6 percent.

Public hearing(s) will be held at: 7:00 p.m. on March 24, 2004, at Rockville Centre (John A. Anderson) Recreation Center, 111 N. Oceanside Rd., Rockville Centre, NY; 9:00 a.m. on March 25, 2004, at Rockville Centre Village Hall, 2nd Fl., One College Place, Rockville Centre, 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: Village of Rockville Centre, N.Y. (the Village) has made a tariff filing to revise its rates and charges to increase annual electric revenues by about $2.6 million or 14.6%. The effective date of the filing is currently suspended through March 29, 2004 in Case 03-E-1568. Under the proposed revisions, the revenue impact would be spread equally across all service classifications. The Village also requested the use of deferred accounting for the rate case expenses. The Commission may approve, modify or reject the rate filing in whole or part.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

Data, views or argument 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: five days after the last scheduled public hearing.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-1568SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request for Lightened Regulation by R.E. Ginna Nuclear Power Plant, LLC

I.D. No. PSC-09-04-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by R.E. Ginna Nuclear Power Plant, LLC (GNPP) for an order providing for lightened regulation of the owner of a wholesale merchant nuclear generating facility.

Statutory authority: Public Service Law, sections 4(1), 10(1), (2), 66(1), 69, 70, 119 and 119-b

Subject: Request for lightened regulation.

Purpose: To consider how the company should be regulated as an electric corporation.

Substance of proposed rule: By petition filed January 13, 2004, R.E. Ginna Nuclear Power Plant, LLC (GNPP) sought an order providing for lightened regulation of it as an electric corporation owning a nuclear generating facility operating in the wholesale electricity market. GNPP requests that the Commission regulate it in the same manner as it has other owners of similar nuclear facilities.

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.
(04-E-0030SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Overpayment Refunds by the Village of Spencerport

I.D. No. PSC-09-04-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Village of Spencerport to use a refund related to overcharges by the New York Power Authority for extraordinary capital improvements.

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

Subject: Refund of overpayments for estimated ancillary and hydroelectric charges.

Purpose: To use a refund for extraordinary capital improvements.

Substance of proposed rule: The Village of Spencerport is proposing to use proceeds from a refund related to overpayments for estimated ancillary and hydroelectric charges from the New York Power Authority for extraordinary capital improvements.

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.

(04-E-0087SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Expired Tariff Options by Niagara Mohawk Power Corporation

I.D. No. PSC-09-04-00014-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 whether to approve or reject, in whole or in part, or modify, a proposal by Niagara Mohawk Power Corporation to make various changes to its rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 207—Electricity, to become effective May 15, 2004.

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

Subject: Expired tariff options.

Purpose: To remove expired tariff options from Service Classification Nos. 3A and 12 that are no longer effective.

Substance of proposed rule: Niagara Mohawk Power Corporation proposes to revise its S.C. No. 3A—Large General Service—Time of Use Rate and S.C. No. 12—Special Contract Rates to become effective May 15, 2004. The company proposes to remove expired tariff options from these service classifications that are no longer effective.

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.

(04-E-0156SA1)

Office of Real Property Services

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Calculation of Railroad Ceilings

I.D. No. RPS-09-04-00005-P

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

Proposed action: Addition of Subpart 200-3 to Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l), 489-g(8) and 489-ii(9)

Subject: Increased depreciation of track in the calculation of railroad ceilings.

Purpose: To establish standards for railroads to receive increased depreciation in the calculation of their ceilings for local real property taxation.

Public hearing(s) will be held at: 1:30 p.m., March 23, 2004 at 16 Sheridan Ave., Albany, NY.

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

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

Text of proposed rule: The State Board of Real Property Services hereby amends Part 200 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York by adding a new Subpart 200-3 to read as follows:

Subpart 200-3 Increased Depreciation

§ 200-3.1. Classification of track.

(a) For purposes of determining railroad ceilings pursuant to this Part, track shall be classified as follows:

(1) "Category I" high speed/high tonnage track shall include all passenger and/or freight main track capable of more than 60 mph and related sidetrack.

(2) "Category II" medium speed/high tonnage track shall include all passenger and/or freight main track capable of at least 40 mph but no more than 60 mph and related sidetrack and electronic classification yards.

(3) "Category III" low speed/medium tonnage track shall include freight main track capable at least 10 mph but no more than 39 mph and related sidetrack.

(4) "Category IV" low speed/low tonnage track shall include freight main track capable of no more than 9 mph, related sidetrack.

(b) The Office of Real Property Services shall establish procedures for the calculation of railroad ceilings for each year's assessment rolls. These procedures shall provide for the depreciation of track. This depreciation may be the same for more than one class of track and may be a single percentage good for all track in a class.

§ 200-3.2 Application for accelerated depreciation.

(a) A railroad company requesting increased depreciation for its track must file an application for this depreciation at the same time as the reports required by subpart 200-2 of this Part. This request shall be on a form prepared by the Office of Real Property Services. A copy of this form shall be filed with the New York State Department of Transportation (NYSDOT) at the same time it is filed with the Office of Real Property Services.

(b) An application for increased depreciation must show planned improvements to the railroad company's system on or after December 31, 2002, and implementation of these improvements. Improvements may include:

(1) increased tonnage or tonnage capabilities
(2) increased level of passenger service
(3) increased number or frequency of passenger trains
(4) improved on-time performance for passenger service
(5) increased average speed for passenger or freight service
(6) safety improvements for the general public or railroad employees
(7) marketing or other economic development initiatives
(8) increased intermodal operations
(9) coordination with intercity and commuter passenger operations
(10) improved maintenance practices and/or scope of maintenance
(11) implementation of technological innovations
(12) fuel conservation
(13) reduction of adverse environmental impacts
(14) such other improvements as the railroad company shall describe.

(c) Applications shall be analyzed by the NYSDOT to determine whether a railroad company has prepared a plan for improvements to its system and whether the railroad has complied with that plan. The NYSDOT shall inform ORPS of its determination.

(d) For each railroad company that has submitted an application for increased depreciation which the NYSDOT has approved, ORPS shall depreciated the company's tracks as follows:

(1) Category I - Such track shall be depreciated to 25 percent good.
(2) Category II - Such track shall be depreciated to 25 percent good.

(3) Category III - Such track shall be depreciated to 15 percent good.

(4) Category IV - Such track shall be depreciated to 10 percent good.

(e) Nothing in this subpart shall be deemed to require a railroad company to submit with an application for increased depreciation any information already submitted to the NYSDOT. Such submitted material may be incorporated by reference in the application.

(f) An application for increased depreciation shall be valid for ten years. A company may submit a new application prior to the expiration of an existing application. Once an application has expired, no increased depreciation shall be granted.

§ 200-3.3 Transition provisions.

(a) Applications for increased depreciation for railroad ceilings established for assessment rolls to be completed in 2004, must be submitted by September 1, 2003, or within 60 days of the effective date of this Subpart, whichever is later.

(b) Any railroad ceiling established for an assessment roll finalized in 2003 shall reflect increased depreciation calculated in the percentages contained in section 200-3.2 (d) of this Subpart.

Text of proposed rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: legal@orps.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: Section 202(1)(l) of the Real Property Tax Law (RPTL) authorizes the State Board of Real Property Services to adopt such rules "as may be necessary for the exercise of its powers and the performance of its duties."

Sections 489-g(8) (for intrastate railroads) and 489-ii(9) (for interstate railroads) of the RPTL requires the State Board to adopt rules providing for increased depreciation of tracks upon application by a railroad operator.

2. Legislative Objectives: This proposal is a component of a program to stimulate the economy of the State by removing disincentives to investment in the railroad industry and to place the property tax borne by railroads on a level with those of competing industries.

3. Needs and Benefits: Titles 2-A and 2-B of Article 4 of the RPTL provide a de facto exemption for railroads operating in New York. Each year the State Board establishes ceilings for transportation property of approximately 20 railroads in each of approximately 385 assessing unit. Taxes are subsequently extended against the lower of the ceiling or the assessment placed on the property by the local assessor.

On January 30, 2003, Governor Pataki signed Chapter 698 of the Laws of 2002, the Rail Infrastructure Investment Act of 2002. This Chapter mandated certain changes in the calculation of railroad ceilings that will lower these ceilings. Among these are increased depreciation for tracks. This increased depreciation is automatic for 2003 ceilings, but will require an application for 2004 assessment rolls. RPTL, '' 489-g and 489-ii require the State Board to promulgate rules for this increased depreciation. The proposal adds a new Subpart 200-3 to provide the process for applying for increased depreciation as well as the standards for granting the depreciation.

4. Costs: (a) To State Government: Minimal. ORPS and NYSDOT have to review applications pursuant to the new statute. This amendment implements the requirements of sections 489-g and 489-ii without adding any extraneous costs.

(b) To local governments: No costs are imposed by this proposal. It is estimated that when fully implemented the provisions of Chapter 698 will reduce property taxes for railroads by 45%. This proposal implements one component of those reductions. Approximately $70,000,000 in State assistance will be available to local governments over the next ten years to cushion the impact of the reduced tax revenues. This assistance will hold local governments harmless for the first two years and provided aid estimated at one-half of the loss for each of the succeeding eight years.

(c) To private regulated parties: Minimal. Those railroad companies receiving ceilings and seeking the increased depreciation will have to file a two-page form, with supporting documentation, once every ten years. This cost is far exceeded by the benefit of the proposal.

(d) Basis of cost estimates: The nature of the amendment.

5. Local Government Mandates: None.

6. Paperwork: Those railroad companies receiving ceilings and seeking the increased depreciation will have to file a two page form, with supporting documentation, once every ten years. ORPS and NYSDOT will have to process those forms.

7. Duplication: There are no comparable State or Federal requirements.

8. Alternatives: Noncompliance with the requirements of sections 489-g and 489-ii. This proposal implements that section without any additional requirements.

9. Federal Standards: There are no Federal regulations concerning this subject.

10. Compliance Schedule: Forms for 2004 will have to be submitted sixty days after the proposal becomes effective.

Regulatory Flexibility Analysis

The amendments proposed would not impose any adverse economic conditions or any reporting, record-keeping or other compliance requirements on small businesses. The proposal does implement the filing requirement, created by chapter 698 of the Laws of 2002, for railroad companies, of whatever size, to file an application for increased depreciation in 2004 and thereafter.

The rule imposes no additional record-keeping or reporting requirements on local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this rule making because the amendments would not impose any adverse economic conditions, any reporting, record-keeping or compliance requirements on public or private entities in rural areas. The proposal codifies the filing requirement, created by Chapter 698 of the Laws of 2002, for railroad companies, wherever located, seeking increased depreciation in 2004 and thereafter.

Job Impact Statement

These amendments implement the filing requirements for railroad companies seeking increased depreciation in 2004 and thereafter imposed by Chapter 698 of the Laws of 2002, the Rail Infrastructure Investment Act. This Act is intended to improve the State's economy by providing incentives for improved rail service. As part of this effort, the proposal should have a positive effect on job opportunities.

Department of State

EMERGENCY RULE MAKING

Filing of Security Interests

I.D. No. DOS-52-03-00019-E
Filing No. 209
Filing date: Feb. 13, 2004
Effective date: Feb. 13, 2004

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

Action taken: Repeal of Part 143 of Title 19 NYCRR adopted on May 22, 1964 and Part 144 of Title 19 NYCRR adopted on September 24, 1986; and addition of new Part 143 to Title 19 NYCRR.

Statutory authority: Uniform Commercial Code, section 9-526(a); and Executive Law, section 96-a

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

Specific reasons underlying the finding of necessity: This rule is being adopted on an emergency basis to preserve the general welfare. Article 9 of the Uniform Commercial Code plays an important role in the economy of the State of New York. Accordingly, the volume and value of international, interstate and intrastate secured transactions filed in the State of New York requires that electronic filing be permitted and encouraged, and that revised Article 9 of the Uniform Commercial Code be otherwise implemented and continued without interruption. Uniform Commercial Code § 9-526 directs the Secretary of State to adopt rules necessary to carry out the provisions of the revised Article 9. This rule is adopted on an emergency basis because, in the Department's opinion, compliance with the requirements of section 202(1) of the State Administrative Procedure Act would be contrary to the public interest that will be served by permitting and encouraging electronic filing of financing statements and amendments under the Uniform Commercial Code and by otherwise ensuring

that the revised Article 9 is effectively administered on a continuing basis, thus avoiding potential disruption and uncertainty relating to the creation, filing and perfection of security interests in the State of New York.

Subject: Filing of secured interests pursuant to Article 9 of the Uniform Commercial Code.

Purpose: To implement the provisions of Article 9 of the Uniform Commercial Code, as revised by Chapter 84 of the Laws of 2001.

Substance of emergency rule: Chapter 84 of the Laws of 2001 substantially revised Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC). This emergency rule has been adopted to implement the provisions of the Revised Article 9. The emergency rule adopts standard forms and procedures for filing UCC documents with the Department of State and other filing offices. The rule prescribes procedures for the delivery and filing of UCC documents. Specific forms are designated as approved UCC forms. Standard formats are prescribed for names entered on UCC forms. Procedures for correcting errors are established. Procedures are also established for submitting and responding to search requests. Fees are established for all UCC services.

Revisions and additions which were first included in other recent emergency adoptions, and which are continued in this emergency adoption, include (1) the addition of provisions permitting submission of UCC financing statements and amendments to the Secretary of State's office by XML transmission, and by such other electronic delivery methods as the Department of State may hereafter make available, and (2) an increase in the fees for services under Revised Article 9 of the UCC and Article 10-A of the Lien Law, effective April 1, 2003, (3) the addition or revision of several official forms, (4) the addition of a provision permitting submission of UCC documents by facsimile transmission, (5) the addition of a provision permitting payment of certain fees by approved credit card or by prepaid account, and (6) the revision of the search logic rules (the revised search logic rules reflect the searching capabilities of the new computer system recently implemented at the Department of State; this new computer system enables off-site searching of UCC records by the public via the internet).

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. DOS-52-03-00019-EP, Issue of December 31, 2003. The emergency rule will expire April 12, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 473-2278, e-mail: jball@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Chapter 84 of the Laws of 2001 substantially revised Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC). Section 9-526 of Revised Article 9 provides that the Secretary of State shall adopt rules to implement Revised Article 9. Subparts 143-1, 143-2, 143-3, and 143-4 consist of implementing rules relating to general instructions, promulgation of approved UCC forms, rules for delivery of UCC forms to filing offices, rules for the filing and indexing of UCC forms, rules for submission of electronic UCC forms, and rules governing search requests.

Section 9-525 of Revised Article 9 provides that fees shall be determined in accordance with Executive Law § 96-a. Executive Law § 96-a provides that the Secretary of State shall determine the fees for services provided by filing offices pursuant to the provisions of the UCC and Lien Law Article 10-A. Executive Law § 96-a further provides that such fees shall be subject to the approval of the Division of Budget. Subpart 143-5 sets forth fees that have been approved by the Division of Budget.

2. Legislative objectives:

UCC Article 9, as revised by Chapter 84 of the Laws of 2001, is based, in substantial part, on the revised Article 9 proposed and recommended by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. Similar legislation has been enacted across the nation by other states. The intent of the Legislature in adopting Chapter 84 of the Laws of 2001 was to ensure that New York's UCC Article 9 is substantially similar to Article 9 in other states. These rules accord with the Legislature's intent by providing and implementing rules by which filers prepare and file UCC forms, rules by which filing offices file and index UCC forms, rules by which the Secretary of State receives and responds to UCC search requests, and rules establishing the fees for filing and search services.

3. Needs and benefits:

These rules are necessary to implement UCC Article 9, as revised by Chapter 84 of the Laws of 2001. By providing rules for filing and indexing, a filer will know what forms to use, as well as how to complete and file those forms. Having those rules, filers can avoid mistakes which could cause expense, delay or jeopardize the perfection and priority of a filer's security interest. By providing rules under which a filing office receives and responds to search requests, a lender or other interested party will be better able to prepare a search request and to evaluate the search results. Having these rules will help a lender to avoid mistakes which could cause expense, delay or jeopardize the perfection or priority of security interests. The fees are required by revised UCC § 9-525 and, as user fees, will defray the cost of administering Revised Article 9.

4. Costs:

a. Costs to regulated parties:

Persons who file UCC forms or request UCC information elect to purchase and use the new approved forms, which are prescribed in § 143-1.3 of the rules. The cost of a form is not known, but the cost per form is expected to be minimal. In addition, the forms are available free on several web-sites, including the Department of State's web site at www.dos.state.ny.us.

In addition, persons who file UCC forms, request UCC searches, or request copies of filed UCC documents, will have to pay the fees for the services set forth in Subpart 143-5 of these rules. These fees first became effective (by prior rule) on April 1, 2003, and are higher than the fees that were in effect prior to that date. However, the rules now permit filing of electronic UCC financing statements and amendments at a cost ($20) that is half the new cost of filing paper-based documents ($40). This fee structure should encourage use of electronic filing. Further, the Department of State has developed and implemented a new computer system that permits interested parties to conduct UCC searches at no cost via the internet. The new computer system also permits interested parties to print their own copies of documents returned by the internet search; again, there is no charge for such copies. It is anticipated that many parties will rely, in whole or in part, on the free internet searches, and it is further anticipated that for some filers, the total cost of a transaction under the new fee structure will be lower under than the total cost of a similar transaction under former Article 9.

b. Costs to the Department of State:

The Department of State will not incur any significant new costs for implementing or continuing administration of these rules. The costs of administering UCC Article 9 are largely attributed to the statute and not significantly to the implementing rules.

The search logic provisions contained in these rules reflect the search capabilities of the new computer system recently installed at the Department of State. This new system permits off-site searching of UCC records by the public via the internet. It is anticipated that the availability of free internet UCC searches will reduce the demand for searches prepared by the Department of State. The Department of State should realize a reduction in the costs associated with performing UCC searches. Revenue derived by the Department of State from fees for performing searches will also be reduced.

c. Costs to other State agencies:

These rules do not impose any costs on other State agencies. (Note however, that with respect to those State agencies that might file UCC documents or request UCC information, to the extent that any such State agency may be required to pay the generally applicable fees for such UCC services, such State agency will be required to pay the new fees specified in Subpart 143-5.)

d. Cost to local governments:

Under Revised Article 9 of the UCC, the Secretary of State's office is the central filing office and the New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and the County Clerk's offices in the other 58 counties, are local-filing offices. Revised Article 9 imposes certain duties on all filing offices, including the County Clerks' offices and the New York City Register's offices, with regard to UCC filings and requests for UCC information. The County Clerks and the New York City Register should not incur any significant new costs for implementing or continuing administration of these rules. The costs of administering UCC Article 9 are largely attributed to the statute and not significantly to the implementing rules.

5. Local government mandates:

Under the former UCC Article 9, the New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and the County Clerk's offices in the other 58 counties were designated as local-filing offices and, thus, were responsible for filing and indexing UCC forms and for responding to information requests. Those duties remain

substantially the same under Revised Article 9 and these rules do not impose any substantial new duties.

6. Paperwork:

The rules designate approved UCC forms, which are national forms that will be used in other states. Those forms are described in § 143-1.3 of the rules. The newly revised forms are, in many respects, similar to the old forms. Completion of the new forms should not impose any new burdens on any person who files a form or requests information on a new form.

A person performing an off-site search of UCC records via the internet will be able simply to type the required information in spaces provided on the web page. Internet searching will not involve completion and submission of the usual Information Request form.

7. Duplication:

The rules do not duplicate, overlap or conflict with any other relevant rules or legal requirements of state or federal governments.

8. Alternatives:

Revised Article 9 requires the Department of State to promulgate implementing regulations and, in doing so, to consider the corresponding regulations adopted by other states. Some other states that have adopted RA9 regulations have adopted versions of the "model rule" promulgated by the International Association of Commercial Administrators (the "IACA Model Rule"). A copy of the IACA Model Rules can be found at following page on the IACA web site: http://www.iaca.org/sts/modrulfu.doc.

In preparing this rule, the Department of State considered the IACA Model Rule. Certain portions of this rule reflect concepts covered by the IACA Model Rule and use language that is substantially similar to that found in the IACA Model Rule. Other portions of this rule reflect concepts covered by the IACA Model Rule but use language that has been revised in a manner believed to be better suited to use in this State. In other portions of this rule (e.g., the fee provisions), the language used is substantially similar to the language used in the rules previously adopted under Former Article 9, in order to provide for as much continuity in interpretation as possible. This rule does not address certain matters covered by the IACA Model Rule (e.g., specifying the precise hours of operation of the UCC filing office), because the Department of State believes such matters are not appropriate for a rule of this type.

9. Federal standards:

There are no federal standards relating to State and local filings pursuant to the UCC.

10. Compliance schedule:

This rule can be complied with immediately. The new forms and the substance of the revised Article 9 have been discussed nationally and statewide for several years. Revised Article 9 has been effective in this State and in most other states since July 1, 2001. Lenders and other persons who do significant UCC business are prepared to comply immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

The rules affect any business or person who files a UCC form with, or requests information from, the Department of State or any of the local-filing offices. Some of the businesses affected will be small businesses. However, the Department of State is unable to determine how many small businesses might be affected.

The rules will have some affect on the New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and on the County Clerks' offices in the other 58 Counties, all of which are designated by UCC Revised Article 9 as local-filing offices.

2. Compliance requirements:

Small businesses, like all other businesses, must use the approved UCC forms when filing UCC related documents. The approved forms are designated in § 143-1.3 of the rules. In addition, small businesses, like all other businesses, must pay the fees for services prescribed in Subpart 143-5 of these rules.

The fees set forth in Subpart 143-5 first became effective (pursuant to a prior rule) on April 1, 2003, and are higher than those applicable prior to that date. However, the search logic rules contained in this rule reflects the searching capabilities of the new computer system recently installed at the Department of State. This new computer system permits off-site searching of UCC records by the public via the internet. The Department of State charges no fee for such internet searches. The public is permitted to print copies of UCC documents retrieved by the internet search system; again, the Department of State charges no fee for such copies. Further, this rule permit UCC documents to be transmitted to the Department of State's office by facsimile transmission and by XML transmission. These delivery methods should simplify filing, particularly where parties located some distance from Albany wish to file quickly. These advantages will be available to all businesses, including small businesses.

The fee applicable to electronic filings under these rules, coupled with the ability to perform free searches via the internet, and to print free copies of the documents found by such internet searches, may result in the overall cost of a UCC transaction being lower under the new rules than it was under the rules implementing former Article 9. For example, under former Article 9, a filer may have ordered at least one official UCC search prior to closing (fee: $7.00 per search), ordered copies of filed documents revealed by that search (fee: $1.50 per page), filed a paper UCC document (fee: $7 for a one-page filing or $12 for a multiple-page filing), ordered a post-closing official search (fee: $7.00), and ordered a copy of the filed UCC document (fee: $1.50 per page). The total fees charged by the Department of State for such a transaction would be at least $21.00 plus the cost of any copies (at $1.50 per page). Under the fee structure that became effective on April 1, 2003 (which fee schedule is continued by this rule), a filer who takes advantage of the electronic filing option may opt to perform his or her own internet search prior to closing (fee: $0), print copies of documents revealed by that search (fee: $0), file electronically (fee: $20.00), perform an internet search following the closing (fee: $0), and print a copy of the filed (fee: $0). The total fee charged by the Department of State for such a transaction would be $20.00. These potential cost savings should be available to all businesses, including small businesses, involved in UCC transactions.

The New York City Register's offices in New York County, Bronx County, Kings County and Queens County, and the County Clerks' offices in the other 58 Counties, must file and index UCC forms in accordance with Subparts 143-1 and 143-2, and accept the fees prescribed in Subpart 143-5 of these rules.

3. Professional services:

Small businesses will not require any professional services to complete or file the approved UCC forms.

4. Compliance costs:

Under the former UCC Article 9, large and small businesses completed and filed UCC forms with the Department of State and with the County Clerks and the New York City Register's offices. Under Revised Article 9, businesses will follow a similar procedure using similar forms. Accordingly, with the exception of the higher filing fees specified in these rules, the Department of State does not anticipate that these rules will impose any new costs on businesses. In addition, the costs associated with compliance with the revised Article 9 and these rules are attributable to the statutory mandates rather than attributable to these implementing rules.

County Clerks and the New York City Register's offices were filing offices under the former Article 9 and their duties under Revised Article 9 are not significantly different. Accordingly, the Department of State does not anticipate these rules will impose any new costs on the counties.

5. Economic and technological feasibility:

The procedures and forms prescribed by UCC Revised Article 9 and these rules are substantially similar to the procedures and forms prescribed by the former UCC Article 9 and the former rules. Compliance with the former rules was economically and technologically feasible for small businesses. Accordingly, the Department of State believes that it will be economically and technologically feasible for small businesses to comply with these rules.

These rules permit, but do not mandate, filing by XML transmission. The Department of State anticipates that bulk filers and service companies will be able to develop the technologies necessary to file via XML transmission, and that filing via XML transmission will be economically and technologically feasible for bulk filers and for service companies and their customers. Again, filers who opt not to file via XML transmission will still be able to file paper-based UCC documents.

The new computer system recently installed at the Department of State permits off-site searching of UCC records by the public via the internet. Small businesses with internet access can use this feature without cost. The Department of State will continue to perform searches for those who request such service. Therefore, small businesses without internet access will continue to be able to obtain UCC searches in the same manner such searches are now obtained. The Department of State will continue to charge the applicable fee for performing such searches. This fee was increased from $7 to $25 on April 1, 2003; this rule continues this fee at $25.

6. Minimizing adverse impact:

Revised Article 9 of the UCC, like its predecessor, is intended to provide uniform rules and procedures for the creation, perfection, amend-

ment and termination of security interests. Accordingly, these rules do not make special provisions for small businesses.

The County Clerks and the New York City Register's offices served as local-filing offices under the former UCC Article 9 and the former rules. Accordingly, their designation as filing local-offices under Revised Article 9 and their compliance with these rules implementing Revised Article 9 should impose no adverse economic impact.

7. Small business and local government participation:

The Department of State previously solicited comments from County Clerks. Representatives of the New York State Association of Counties reacted positively to the new fee schedule which first became effective (pursuant to prior rule) on April 1, 2003, and which is continued in this rule. Based on input from representatives of the New York State Association of Counties, the extra 50 cent fee applicable to certain UCC records indexed against real estate (which had been included in regulations implementing Former Article 9 and in earlier versions of regulations implementing Revised Article 9) was eliminated, and the extra block and lot fees applicable to filings in the counties in New York City and in Nassau County were continued.

Before it implemented the internet search system and the electronic filing systems that are now available, the Department of State solicited participation by service companies and other high-volume filers in intensive stress-testing of the systems. Before it implemented the fee schedule which first became effective (pursuant to a prior rule) on April 1, 2003, and which is continued by this rule, the Department of State sent approximately 10,000 notices to recent UCC filers, service companies, and other potentially affected parties. The Department of State has received numerous telephone calls, e-mails and letters from the business community. For the most part, comments regarding the internet search system, the electronic XML filing system and fax filing system have been very positive; comments regarding the recently introduced systems that permit payment of certain fees by credit card and drawdown account have been positive (some complaints regarding the new payment options have been received; most such complaints involve the inability to use a particular payment option to pay for a particular service, such as the inability to use a drawdown account to pay for filings submitted by the recently introduced UCC e-file system); and comments regarding the new fee schedule have been negative. Most of the negative comments regarding the fee schedule were received within the first few weeks after its adoption on April 1, 2003; the number and the frequency of negative comments have since tapered off considerably. The Department of State believes that negative comments regarding the new fee schedule will continue to taper off as more and more UCC filers become aware of the free internet searching, free internet copying, fax filing capability, new payment options, and electronic filing options that are now available.

Further, the Department of State will continue to review its new UCC e-file system to determine if it can be modified in a manner that will permit the use of drawdown accounts to pay the processing fees applicable to documents submitted by that system.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Revised Article 9 applies uniformly throughout the State. Similarly, these rules will apply uniformly throughout the State, including rural areas of the State. (Note that these rules include provisions for additional filing fees to be charged by filing offices in New York City and Nassau County; such provisions are similar to those found in prior rules implementing UCC Article 9).

2. Reporting, recordkeeping and other compliance requirements:

These rules do not impose any reporting or record keeping requirements. The paper work requirements are described in paragraph 6 of the regulatory impact statement.

3. Costs:

The Department of State does not anticipate that persons who file UCC forms or request UCC information under this rule will be required to incur any significant initial capital cost. Persons who wish to file UCC documents electronically, or to perform UCC searches via the internet, will need appropriate computer equipment and software and internet access; however, this rule does not require electronic filing, and a person who does not wish to perform a UCC search via the internet will still be permitted to order a search from the filing office.

A person filing a UCC document or requesting UCC information under this rule will be required to fill in an approved form and pay the applicable fee; the annual cost to any such person will depend on the number of filings and information requests such person makes each year. The approved forms are prescribed in § 143-1.3 of this rule. The cost of a form is expected to be minimal. In addition, the forms are available free on several web-sites, including the Department of State's web site at www.dos.state.ny.us. The fees are set forth in Subpart 143-5 of this rule. These fees are uniformly applied to all filers, so there should be no variation in such costs for different types of public and private entities in rural areas.

4. Minimizing adverse impact:

The Department of State is not aware of any information suggesting that these rules may impose any adverse impact on rural areas. Fees for services rendered under Revised Article 9 of the UCC and Article 10-A of the Lien Law are maintained at the amounts which first became effective (by prior rule) on April 1, 2003. The fees apply uniformly throughout the State (subject to the provisions, similar to those found in prior rules implementing UCC Article 9, for additional filing fees to be charged by filing offices in New York City and Nassau County). Further, internet searching of the department of State's UCC records is now available, and these rules permit submission of documents by electronic means (XML transmission) and by facsimile. These innovations permit easier searching and filing by all, particularly by those located in areas more distant from Albany.

5. Rural area participation:

The Department of State previously solicited comments from County Clerks. Representatives of the New York State Association of Counties reacted positively to the new fee schedule which first became effective (pursuant to prior rule) on April 1, 2003, and which is continued in this rule. Based on input from representatives of the New York State Association of Counties, the extra 50 cent fee applicable to certain UCC records indexed against real estate (which had been included in regulations implementing Former Article 9 and in earlier versions of regulations implementing Revised Article 9) was eliminated, and the extra block and lot fees applicable to filings in the counties in New York City and in Nassau County were continued.

Before it implemented the internet search system and the electronic filing systems that are now available, the Department of State solicited participation by service companies and other high-volume filers in intensive stress-testing of the systems. Before it implemented the fee schedule which first became effective (pursuant to a prior rule) on April 1, 2003, and which is continued by this rule, the Department of State sent approximately 10,000 notices to recent UCC filers, service companies, and other potentially affected parties. The Department of State has received numerous telephone calls, e-mails and letters from the business community. For the most part, comments regarding the internet search system, the electronic XML filing system and fax filing system have been very positive; comments regarding the recently introduced systems that permit payment of certain fees by credit card and drawdown account have been positive (some complaints regarding the new payment options have been received; most such complaints involve the inability to use a particular payment option to pay for a particular service, such as the inability to use a drawdown account to pay for filings submitted by the recently introduced UCC e-file system); and comments regarding the new fee schedule have been negative. Most of the negative comments regarding the fee schedule were received within the first few weeks after its adoption on April 1, 2003; the number and the frequency of negative comments have since tapered off considerably. The Department of State believes that negative comments regarding the new fee schedule will continue to taper off as more and more UCC filers become aware of the free internet searching, free internet copying, fax filing capability, new payment options, and electronic filing options that are now available.

Further, the Department of State will continue to review its new UCC e-file system to determine if it can be modified in a manner that will permit the use of drawdown accounts to pay the processing fees applicable to documents submitted by that system.

Job Impact Statement

This rule will not have any substantial impact on jobs or employment opportunities. The procedures for filing, indexing and requesting information under Revised Article 9 of the Uniform Commercial Code (UCC) and this rule are similar to the procedures under the former Article 9 and the former implementing rules. Accordingly, UCC Revised Article 9 and this rule should have not have a substantial impact on jobs or employment opportunities.

The search logic provisions contained in this rule reflect the new searching capabilities of the new computer system recently installed at the Department of State. This new computer system permits off-site searching of UCC records by the public via the internet. The Department of State anticipates that private businesses, including small businesses, will offer

UCC searching services to lenders and others with a need for such services. This should create some new private sector jobs and employment opportunities.

Assessment of Public Comment

The Department of State has received no comments since the Notice of Emergency Adoption and Proposed Rule Making was filed on December 15, 2003. However, the Department of State has received comments regarding prior emergency adoptions of prior versions of this rule, as summarized below:

The Department of State previously solicited comments from County Clerks. Representatives of the New York State Association of Counties reacted positively to the new fee schedule which first became effective (pursuant to prior rule) on April 1, 2003, and which is continued in this rule. Based on input from representatives of the New York State Association of Counties, the extra 50 cent fee applicable to certain UCC records indexed against real estate (which had been included in regulations implementing Former Article 9 and in earlier versions of regulations implementing Revised Article 9) was eliminated, and the extra block and lot fees applicable to filings in the counties in New York City and in Nassau County were continued.

Before it implemented the internet search system and the electronic filing systems that are now available, the Department of State solicited participation by service companies and other high-volume filers in intensive stress-testing of the systems. Before it implemented the fee schedule which first became effective (pursuant to a prior rule) on April 1, 2003, and which is continued by this rule, the Department of State sent approximately 10,000 notices to recent UCC filers, service companies, and other potentially affected parties. The Department of State has received numerous telephone calls, e-mails and letters from the business community. For the most part, comments regarding the internet search system, the electronic XML filing system and fax filing system have been very positive; comments regarding the recently introduced systems that permit payment of certain fees by credit card and drawdown account have been positive (some complaints regarding the new payment options have been received; most such complaints involve the inability to use a particular payment option to pay for a particular service, such as the inability to use a drawdown account to pay for filings submitted by the recently introduced UCC e-file system); and comments regarding the new fee schedule have been negative. Most of the negative comments regarding the fee schedule were received within the first few weeks after its adoption on April 1, 2003; the number and the frequency of negative comments have since tapered off considerably. The Department of State believes that negative comments regarding the new fee schedule will continue to taper off as more and more UCC filers become aware of the free internet searching, free internet copying, fax filing capability, new payment options, and electronic filing options that are now available.

The Department of State will continue to review its new UCC e-file system to determine if it can be modified in a manner that will permit the use of drawdown accounts to pay the processing fees applicable to documents submitted by that system.

Department of Taxation and Finance

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Sales on Indian Reservations

I.D. No. TAF-38-03-00017-C

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

The notice of proposed rule making, I.D. No. TAF-38-03-00017-P was published in the *State Register* on September 24, 2003.

Subject: Sales on Indian reservations.

Purpose: To implement the collection of excise taxes and sales and compensating use taxes on retail sales made to non-Indians on New York State Indian reservations, pursuant to L. 2003, chs. 62 (part T3) and 63 (part Z).

Substance of rule: The proposed rule would amend the cigarette tax regulations, the tobacco products tax regulations, the motor fuel and diesel motor fuel tax regulations, the petroleum business tax regulations, and the sales and use tax regulations to implement the collection of excise taxes and sales and compensating use taxes on retail sales made to non-Indians on New York State Indian reservations, pursuant to L. 2003, chs. 62 (part T3) and 63 (part Z).

Changes to rule: At this time, no changes have been made to the rule as originally proposed.

Expiration date: September 23, 2004.

Text of proposed rule and changes, if any, may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153