

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-03-00002-A
Filing No. 1117
Filing date: Oct. 14, 2003
Effective date: Oct. 29, 2003

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-31-03-00002-P, Issue of August 6, 2003.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00006-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Special Assistant from 11 to 12.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00007-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Retardation and Developmental Disabilities," by adding thereto the position of Assistant Counsel (Valley Ridge Center).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00008-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Science, Technology and Academic Research," by adding thereto the position of Confidential Aide and by increasing the number of positions of Special Assistant from 1 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00009-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Administration - General," by decreasing the number of positions of Deputy Commissioner from 7 to 6 and by adding thereto the position of Chief Information Officer.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00010-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Administration - General," by deleting therefrom the position of Program Research Specialist 1 and by adding thereto the position of Program Research Specialist 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00011-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt class in the Executive Department and the Department of Family Assistance.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department by deleting therefrom the subheading "Council on Children and Families," and by deleting thereunder the positions of Coordinator of Hard-to-Place Children Activities, Counsel, Director of Policy Planning and Research, Executive Director, Research Associate (11) and Secretary (2); and, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by adding thereto the positions of Coordinator of Hard-to-Place Children Activities, Director Policy Planning and Research and Research Associate (11) and by increasing the number of positions of Counsel from 1 to 2, Executive Director from 1 to 2 and Secretary from 3 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00012-P

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

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

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

Subject: Jurisdictional classification.

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

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

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00013-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Coordinator Safety and Security Services (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00014-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by increasing the number of positions of Secretary 2 from 7 to 8.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00015-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health under the subheading "Helen Hayes Hospital," by increasing the number of positions of Assistant Director Prosthetics and Orthotics from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00016-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Director of Law Enforcement (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00017-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by adding thereto the position of Alternate Fuel Specialist 1 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00018-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete a position from the non-competitive class in the Department of Family Assistance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Tona-wanda Community House Superintendent (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00019-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health under the subheading "Helen Hayes Hospital," by adding thereto the positions of Rehabilitative Aide (7).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00020-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Insurance Department, by increasing the number of positions of Associate Insurance Frauds Investigator from 7 to 10, Senior Insurance Frauds Investigator from 19 to 20 and Insurance Frauds Investigator from 21 to 22.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00021-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by adding thereto the positions of Principal Fiscal Policy Analyst (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00022-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State Department Service under the subheading "All State Departments and Agencies," by deleting therefrom the title of Electric Typewriter Mechanic.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00023-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from the non-competitive class in the Department of Economic Development.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by deleting therefrom the positions of Secondary Materials Marketing Specialist 1 (3).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00024-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from the non-competitive class in the Department of Family Assistance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by decreasing the number of positions of Associate Social Services Medicaid Analyst from 6 to 1.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00025-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of φDirector, Division of Land Utilization (1) and by adding thereto the position of φDirector Real Estate Planning and Development (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-43-03-00026-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by deleting therefrom the position of φAssistant Director of Planting Fields Arboretum (1) and by adding thereto the position of φPark Manager 3 Arboretum (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00027-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Social Services Medicaid Investigator 3 (1) and by adding thereto the position of Medicaid Investigator 3 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00028-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Science, Technology and Academic Research," by decreasing the number of positions of Associate Policy Analyst NYSTAR from 2 to 1 and Associate Program Representative NYSTAR from 3 to 2 and by increasing the number of positions of Senior Policy Analyst NYSTAR from 1 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00029-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the New York State Thruway Authority.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by deleting therefrom the positions of Thruway Division Engineer (4) and by adding thereto the positions of Thruway Division Director (4).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00030-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class and delete a position from the non-competitive class in the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Deputy Commissioner from 4 to 5; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by decreasing the number of positions of Associate Commissioner for Mental Health from 6 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-03-00031-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete a position from the exempt and non-competitive classes in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive

Department under the subheading "Division of Parole," by deleting therefrom the position of Supervising Parole Officer (Special Services); and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Parole," by deleting therefrom the position of Parole Community Relations Assistant (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

Education Department

NOTICE OF ADOPTION

Licensure in Massage Therapy

I.D. No. EDU-33-03-00012-A

Filing No. 1114

Filing date: Oct. 14, 2003

Effective date: Oct. 30, 2003

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

Action taken: Amendment of section 52.15, repeal of section 78.4 and addition of new section 78.4 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 6506(1) and (6), 6507(2)(a) and (4)(a), 7802 (not subdivided) and 7804(2)

Subject: Licensure in massage therapy.

Purpose: To clarify clock hour requirements for programs leading to licensure in massage therapy and requirements for the endorsement of a license in massage therapy issued by another state, country or territory.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-03-00012-P, Issue of August 13, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Action taken: Amendment of section 6.1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1101 and 11-1103

Subject: Managed harvest of beaver and river otter.

Purpose: To establish beaver and river otter trapping seasons for the 2003-2004 license year.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-34-03-00003-P, Issue of August 27, 2003.

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

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

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

Assessment of Public Comment

The Department received one letter from an individual trapper, and another letter from a representative of the New York State Trappers Association (NYSTA) regarding the proposed closure of the river otter trapping season in parts of the Catskills area (wildlife management units 4G, 4H, 4P, 4R, and 4W). The individual trapper inferred that this would result in a loss of income derived from his trap-line. The letter from the NYSTA representative stated objections to the Department's contention that "(1) this area has had very low harvests in recent years, (2) has relatively few otter and (3) the closure is needed to assure stability of the otter population in this area of the state." NYSTA correspondent contends that the Department's reasons are not true. Also, NYSTA disagrees with the Department's statements in the Job Impact Statement and Regulatory Flexibility Analysis, and asserts that trappers will be harmed by the reduction in income associated with the proposed otter season closure, and that small businesses will be harmed by the closure as well.

The Department agrees that the closure of the river otter trapping season will mean that fewer or no otter will be trapped in wildlife management units within the Catskill area. Indeed, the purpose of the closure is to reduce or eliminate trapping mortality of river otter, and allow for population growth. As stated in the regulatory impact statement published with the notice of proposed rulemaking, otter are currently one of the most valuable species being trapped in New York, and trapping pressure on river otter throughout New York is expected to be very high in the 2003-2004 trapping season. The proposal is needed to close an area with relatively few otter, while continuing to allow otter trapping in areas of New York with higher otter populations, thereby resulting in a sustained yield harvest strategy for river otter. The season closure is needed to facilitate river otter population growth in the Catskills area. By closing the season beginning in 2003-2004, the Department anticipates that the river otter population in the Catskills area will grow, allowing the Department to consider re-opening the trapping season once population growth has been documented. The Department believes that the high value of river otter pelts is a compelling reason for taking this action now, rather than delaying trapping season restrictions to some future year.

The NYSTA correspondent cited a review of harvest data provided by the Department. The letter summarized river otter harvest from Department records for approximately twenty years. However, the Department relies primarily upon indices derived from the reported harvest of river otter on a land area basis (river otter harvested per 100 square miles), as well as an analysis of river otter harvested in comparison to a standardized rate of beaver harvest (river otter harvested per 100 beaver harvested). The indices convert harvest to a land area basis, and relate otter harvest to beaver harvest (beaver trapping effort is closely related to otter harvest). By using these indices, the Department is able to make valid comparisons from one part of the State to another, and from one year to another. Based on the mandatory reporting of trapped river otter taken between 1993 and 2001, the Department has determined that the average number of otter taken per 100 square miles (1.4 river otter per 100 square miles) as well as the number of otter taken per 100 beaver harvested (4.5 river otter per 100 beaver harvested) in the Catskills area is the lowest of any other area recently or currently open to otter trapping in New York. To supplement the Department's analysis of river otter population trends, during the last two winters (2002 and 2003) the Department conducted track surveys of

Department of Environmental Conservation

NOTICE OF ADOPTION

Managed Harvest of Beaver and River Otter

I.D. No. ENV-34-03-00003-A

Filing No. 1120

Filing date: Oct. 15, 2003

Effective date: Oct. 29, 2003

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

river otter using standardized methods statewide. These surveys are used to determine whether river otter are present or absent in the survey areas. In both 2002 and 2003, 36 and 57 different sampling sites were surveyed, respectively, in the Catskills area. In both years, no river otter were detected in the sampled areas. Since the Department uses these measures as an index to otter populations, complemented with data indices derived from harvest information, the Department concluded that river otter populations are very low in the Catskills area, and that the trapping season should be closed as a means to allow population growth. A combination of relatively low reproduction potential (a general characteristic of river otter, compared to other species) and the presence of continued sources of mortality (primarily trapping) has very likely kept the population relatively low in the Catskills areas.

While the Department intends to adopt the proposed regulation that will close the trapping season for river otter in the Catskills area, the Department will closely monitor the river otter population throughout New York, including in the Catskills area, and provide trapping opportunities and the associated income benefits associated with the commercial trade in river otter when there is clear evidence that a sustainable harvest of otter can occur. By closing this season now, the Department believes that river otter populations will grow at a faster rate than if the season remained open. The Department continues to maintain that the effect of this closure on both small businesses involved with trapping activities and upon jobs will be negligible. The intent of the closure is to establish a long-term sustained yield basis for river otter harvest, thereby perpetuating the income benefits associated with the harvest of river otter. Moreover, while generation of income is an undeniable aspect of trapping in New York, the strongest dimensions of trapping motivation are related to nature appreciation and personal achievement (Human Dimensions Research Unit publication HDRU Series 91-1, Cornell University, Ithaca, NY). There is no evidence from this report or other sources that jobs or small businesses will be impacted due to the closure of the river otter trapping season in the Catskills area. During the 2002-2003 trapping season, eleven trappers harvested twenty river otter in the Catskills area (1.8 river otter per successful trapper). Based on the Department's records, the average pelt value for river otter in New York was about \$72 per pelt. Therefore, each trapper in the Catskills area grossed about \$130 in 2002-2003 for harvested river otter. However, this does not account for net profit because the Department has no data on individual trapper expenditures required to catch each river otter. From the HDRU report, a majority (68%) of trappers stated that their trapping income was "negligible."

A key reason why this closure is needed is due to the fact that the Department has established open trapping seasons for river otter congruent with the timing and duration of open trapping seasons for beaver (in those areas where any otter trapping is allowed). With the continuing high beaver populations and the associated damage caused by beaver flooding, it remains necessary to hold relatively long beaver seasons in many areas of New York to keep beaver populations within acceptable levels. However, by necessity this has meant long river otter trapping seasons in the same areas, because beaver and river otter live in very similar or the same aquatic habitats. Given the high value of river otter pelts and the relatively low value of beaver pelts, it is essential that the Department develop a separate regulatory and management scheme for river otter and beaver so that management objectives for each species may be attained. The Department has conducted research on new trap designs (beaver-specific trigger modifications for body-gripping traps) that enable beaver to be caught while avoiding a majority of river otter in the same trap. The Department will be discussing these findings with the New York State Trappers Association and other stakeholders, and will consider proposing a new regulation to require the use of these devices in areas of the state where the otter season is not open, based on input from all stakeholders, including trappers, and evaluations of any law enforcement concerns. With this technological advancement, it likely will be feasible to establish short river otter trapping seasons in some of the wildlife management units closed to river otter trapping while holding longer beaver seasons, thereby allowing for the management and control of river otter trapping mortality, and allowing river otter population growth. The Department will also continue to monitor river otter populations through its winter track surveys, and analysis of harvest information. For these reasons, the Department is adopting the subject rule as originally proposed.

Department of Health

EMERGENCY RULE MAKING

Smoking Cessation Products

I.D. No. HLT-39-03-00003-E

Filing No. 1111

Filing date: Oct. 8, 2003

Effective date: Oct. 8, 2003

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

Action taken: Amendment of sections 85.21 of Title 10 NYCRR and 505.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a(4)

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

Specific reasons underlying the finding of necessity: Immediate adoption of this rule is necessary to preserve the public health. Curtailing tobacco use is a public health priority. Numerous studies have shown the health risks associated with cigarette smoking including higher incidences of lung cancer, asthma and heart disease. The Medicaid program began covering prescription smoking cessation products on October 1, 1999. Since that time, drug manufacturers have changed the prescription status of the majority of these products, including nicotine replacement patches, so that they are now available only as over-the-counter items. This rule is needed for Medicaid recipients who are being treated with such smoking cessation and nicotine replacement products to get Medicaid coverage of them. Failure to adopt this regulation immediately will result in an interruption in patient care and increased health risk detrimental to the public health.

Subject: Smoking cessation products.

Purpose: To add over the counter (OTC) smoking cessation products to the list of Medicaid reimbursable OTC products.

Text of emergency rule: A new subdivision (t) is added to section 85.21 of Part 85 of 10 NYCRR to read as follows:

85.21 Establishment of list of reimbursable, nonprescription drugs. Pursuant to section 365-a of the Social Services Law, nonprescription drugs included in the therapeutic categories listed in this section may be reimbursed in the New York State Medical Assistance Program.

* * * * *

(t) Smoking Cessation

The first sentence of paragraph (3) of subdivision (f) of section 505.3 of 18 NYCRR is hereby amended to read as follows:

(3) Payment will only be made for nonprescription drugs listed in [Part 528 of this Title] 10 NYCRR section 85.21.

* * * * *

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-39-03-00003-P, Issue of October 1, 2003. The emergency rule will expire December 6, 2003.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained in Section 365-a(4) of Social Services Law which allows the Commissioner of the New York State Department of Health (DOH), by regulation, to specify certain non-prescription drugs to be reimbursed as an item of medical assistance.

Legislative Objective:

The legislative objective of this authority is to provide Medicaid reimbursement for medically necessary care, services, and supplies.

Needs and Benefits:

Governor Pataki and Commissioner of Health Novello have acknowledged that curtailing tobacco use is a matter of public health and have made a strong commitment to support New Yorkers efforts to quit smok-

ing. As a result, the Medicaid Program began coverage of prescription smoking cessation agents October 1, 1999. Since that time drug manufacturers have changed the prescription status of the majority of these products, especially nicotine replacement patches, so that they are now available only as over-the-counter (OTC) items. These amendments are needed for Medicaid recipients who are being treated with these smoking cessation and nicotine replacement products to get Medicaid coverage of these OTC products. Interruption of Medicaid coverage would be particularly threatening to Medicaid recipients who have initiated treatment successfully with prescription versions of these products and who may find them unavailable now that they have been converted to OTC products. Failure to continue smoking cessation therapy brings the high risk of resumption of tobacco use.

Numerous studies have shown the health risks associated with cigarette smoking including higher incidences of lung cancer, asthma, and heart-related diseases such as coronary artery disease. The Commissioner has determined that an interruption in patient treatment and the health risk of non-coverage of these products poses an immediate health risk to the Medicaid population. As a result, it is the Department's commitment to make OTC smoking cessation products immediately available to the Medicaid population.

Costs:

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

This amendment will not increase costs to the regulated parties. It will increase revenues to providers to the extent that Medicaid will provide reimbursement for products not currently covered by the Medicaid Program, such as nicotine replacement gum.

Costs to State and Local Government:

The only cost to State and Local Government is associated with Medicaid reimbursement of OTC agents in the form of State and local shares. For SFY 00-01, State share amounted to \$312,596 and the local share was \$312,596.

Costs to the Department of Health:

There will be no additional costs to DOH for implementation of this rule.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village, school district, fire district, or other special district, other than that described in "Costs to State and local Government".

Paperwork:

This amendment will not impose any additional paperwork requirements.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

The Department has examined and supports other methods of smoking cessation activities and has provided smoking cessation resource information to our Medicaid providers and local tobacco coalitions. However, many of these resources include the use of smoking cessation products as an integral part of a successful smoking cessation regimen. The Department has covered these products on a prescription basis but now needs to cover the OTC as soon as possible so that Medicaid recipients will not suffer any lapse in treatment.

The Department recognizes that other changes need to be made to regulations governing Medicaid coverage of prescription and OTC drugs and is committed to a full review and revision of these regulations to reflect current practices. However, due to the immediate need to cover OTC smoking cessation products, that action will take place following the filing of this amendment.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective on the date of filing.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This amendment affects 4,085 pharmacies actively enrolled in the Medicaid Program. This amendment will allow pharmacies to receive Medicaid reimbursement for over-the-counter (OTC) smoking cessation agents. The cost of providing OTC tobacco cessation products is provided

in the following table. This data represent gross amounts unless otherwise noted.

Smoking Cessation Products	Fiscal Year 00-01*	Fiscal Year 01-02**
All Agents-Prescription and OTC	\$5,138,892	\$3,885,960
Prescription Agents	\$3,888,508	\$2,971,488
OTC Agents	\$1,250,384	\$914,472
	\$312,596	
	(58 county share)	

* Data Source DOH/OMM Audit, Fiscal & Program Planning Data Mart (5/15/2001)

** Data from 4/1/01 through 11/30/01

Fifty-eight (58) local social services districts administer the Medicaid Program in New York State and share in the cost of services provided to eligible recipients who receive Medicaid through their districts. For SFY 00-01, the local share for OTC smoking cessation products was \$312,596.

Compliance Requirements:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

There are no initial capital costs of compliance with this rule. The Department has provided data regarding the increase in gross pharmacy expenditures in the above table. The local government share of is also detailed in the above table.

Economic and Technological Feasibility:

The slight increase in Medicaid pharmacy costs associated with OTC smoking cessation products is offset by the long term savings in decreased hospital stays and other health care costs related to smoking and its secondary effects.

The proposed amendment will not change the way provider's bill for services or affect the way the local districts contribute their local share of Medicaid expenses for pharmacy. Therefore, there is no concern about the technological feasibility of this amendment.

Minimizing Adverse Economic Impact:

This regulation has no specific impact on small businesses other than to allow Medicaid reimbursement to pharmacies for OTC smoking cessation products. This should be seen by those pharmacies as a benefit. The slight increase in Medicaid costs to local governments as a result of the proposed rule should ultimately be offset by long term savings on healthcare associated with smoking related illnesses in the Medicaid population. Both the Governor and the Commissioner have made public statements regarding their commitment to helping Medicaid eligible individuals to quit smoking.

Opportunity for Small Business and Local Government Participation:

The Department has discussed this proposed rule with representatives of the Pharmacists' Society of the State of New York and has presented it to the Department's Pharmacy Advisory Committee (composed of pharmacists actively participating in the Medicaid program) and the Department's Medical Advisory Committee (composed of physicians actively participating in the Medicaid program). Information regarding the rule finalization was sent to all local districts and the Office of Medicaid Management did not receive any comments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required because the proposed rule, which merely adds over the counter smoking cessation products to the list of products covered by Medicaid, does not impose an adverse impact on rural areas and will not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based on the fact that almost all of the products being added to the list of covered OTC products have previously been covered as prescription items.

Job Impact Statement

The Department has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities. This rule makes available Medicaid reimbursement for over the counter smoking cessation products which were previously available by prescription only. No impact on employment is anticipated.

EMERGENCY RULE MAKING

Arboviral Infection Reporting

I.D. No. HLT-43-03-00044-E

Filing No. 1115

Filing date: Oct. 14, 2003

Effective date: Oct. 14, 2003

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

Action taken: Amendment of section 2.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 206(1)(e), 225(4), (5)(a), (h), (i) and 260(1)(d)

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

Specific reasons underlying the finding of necessity: Immediate adoption of this rule is necessary to monitor the magnitude and scope of illness caused by arthropod-borne viruses, and enable timely case reporting and investigation, as well as the implementation of control interventions, as needed.

Arboviral infections are usually transmitted to people by arthropod vectors (primarily mosquitoes and ticks), and include viruses capable of causing symptoms ranging from asymptomatic or mildly symptomatic infection, to encephalitis, coma and death. Current communicable disease reporting requirements specify the reporting of encephalitis and meningitis, and with the exception of yellow fever, do not include other arboviral infections specifically by virus or disease name. Arboviral infections are of increasing importance to public health officials as evidenced by the ongoing West Nile virus outbreak.

West Nile virus was introduced to the metropolitan New York City area in 1999. The virus has rapidly dispersed across the United States and now only four states currently remain free of evidence of West Nile virus in various surveillance systems. This untreatable, potentially fatal mosquito-borne virus has affected every county in New York State. Late August through November is the time of year when the virus is most likely to be transmitted from mosquitoes to humans. A significant and further alarming discovery was made in 2002 when public health investigations determined that West Nile virus can be transmitted from person to person through blood transfusion. During the 2002 West Nile virus outbreak in the United States, a total of 23 persons were reported to have acquired West Nile virus infection after receiving blood components.

Because of the possibility of recurrent West Nile virus epidemics, blood collection agencies across the country now screen for the presence of West Nile virus and may identify individuals with asymptomatic or mild West Nile viral infection. Through the end of August 2003, the CDC is aware of over 150 presumptive West Nile virus-viremic blood donors reported from 11 states. Reporting of these viremic donors to State and local health departments will provide critical information about the presence and spread of West Nile virus in the State, and will allow timely implementation of prevention efforts.

In addition to West Nile virus, several arboviruses, such as Eastern equine encephalitis virus, Jamestown Canyon encephalitis virus, LaCrosse encephalitis virus, and Powassan encephalitis virus, have been found in various locations across New York State. Other mosquito-borne arboviruses, such as St. Louis encephalitis virus, have been introduced into New York State as a result of significant dispersal of native United States strains through major geographic expansion of infected mosquito populations that started along the Mississippi River valley. These viruses are currently known to be transmitted to people only through the bite of an infected mosquito and usually cause severe neurological symptoms in symptomatic individuals. Health care providers who suspect arboviral infection in these symptomatic patients can submit serum or cerebrospinal fluid specimens for arboviral laboratory diagnostic tests.

The rule change will enable the New York State Department of Health to identify potential mosquito- and tick-borne virus-associated infections in blood donors and other individuals who may not have encephalitis or meningitis symptoms. Requiring the reporting of these individuals will prevent further serious human infection through the earliest possible recognition of a problem, assist in defining the incidence and clinical spectrum of illness, and instituting recommendations for disease prevention on a timely basis.

Subject: Communicable disease arboviral infection reporting.

Purpose: To add arboviral infections to the list of reportable diseases.

Text of emergency rule: Subdivision (a) of Section 2.1 is amended to read as follows:

2.1 Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

- Amebiasis
- Anthrax
- Arboviral infection (as defined in Section 2.2 of this Part)
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chancroid
- Chlamydia trachomatis infection
- Cholera
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Encephalitis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemolytic uremic syndrome
- Hemophilus influenzae (invasive disease)
- Hepatitis (A; B; C)
- Hospital-associated infections (as defined in section 2.2 of this Part)
- Legionellosis
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- Measles
- Melioidosis
- Meningitis
 - Aseptic
 - Hemophilus
 - Meningococcal
 - Other (specify type)
- Meningococcemia
- Mumps
- Pertussis (whooping cough)
- Plague
- Poliomyelitis
- Psittacosis
- Q Fever
- Rabies
- Rocky Mountain spotted fever
- Rubella
- Congenital rubella syndrome
- Salmonellosis
- Severe Acute Respiratory Syndrome (SARS)
- Shigellosis
- Smallpox
- Staphylococcal enterotoxin B poisoning
- Streptococcus pneumoniae invasive disease
- Syphilis, specify stage
- Tetanus
- Toxic Shock Syndrome
- Trichinosis
- Tuberculosis, current disease (specify site)
- Tularemia
- Typhoid
- Vaccinia disease (as defined in section 2.2 of this Part)

Viral hemorrhagic fever
Yellow Fever
Yersiniosis
* * *

A new subdivision (h) is hereby added to Section 2.2 to read as follows:
(h) *As used in this part, the term arboviral infection shall mean:*

(1) *persons with arthropod-borne viral infection including but not limited to the following viruses: Eastern equine encephalitis virus, Western equine encephalitis virus, West Nile virus, St. Louis encephalitis virus, dengue, Powassan virus, Jamestown Canyon virus, La Crosse virus, yellow fever virus.*

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 January 12, 2003.

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

Regulatory Impact Statement

Statutory Authority:

Sections 225(4) and 225(5)(a), (h), and (i) of the Public Health Law ("PHL") authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to "investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health." PHL Section 206(1)(e) permits the commissioner to "obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state." PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection and control of persons and things infected with or exposed to such diseases.

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding arboviral infections to the list of reportable disease. This change will permit enhanced disease monitoring and vector population intervention measures, if necessary, to prevent further transmission.

Needs and Benefits:

Arthropod-borne viruses (arboviruses) are transmitted to people primarily by the bite of an infected arthropod, typically by a mosquito or tick. Arboviruses can cause asymptomatic infections or a clinical illness that ranges in severity from a self-limited febrile illness to a severe neurologic illness with high fever, malaise, photophobia, encephalitis, meningitis, coma or death.

Arboviruses have been present in New York State for decades and include Eastern equine encephalitis virus, California encephalitis viruses and Powassan encephalitis virus. Over the past thirty years, other mosquito-borne viruses normally found in other areas of the country or the world, were introduced into New York State and resulted in epidemic illness. Examples are St. Louis encephalitis virus in 1975 and West Nile virus in 1999. Since its introduction in New York State, there have been over 175 human West Nile virus cases with 15 fatalities.

Existing communicable disease reporting requirements only include the reporting of encephalitis and meningitis, and with the exception of yellow fever, do not include the specific arboviral infections by name. Although encephalitis and meningitis are reportable conditions, infection with arboviruses may result in mild symptoms or no symptoms and go unreported.

In 2002, public health investigations documented that West Nile virus can be transmitted from person to person via infected blood donations and organ transplants. In response to this new mode of West Nile virus transmission, blood collection agencies in 2003 implemented a West Nile virus-screening program of blood donors. Due to the widespread testing of donors, it is anticipated that individuals with asymptomatic or mild West Nile viral infection will be detected but the number of cases is expected to be low.

This rule change will enable the New York State Department of Health (NYSDOH) and local health departments to detect and document diagnosed cases of mosquito and tick-borne viral infections, even those cases

that do not progress to encephalitis or meningitis. The NYSDOH and local health departments will receive identifying information on blood donors who screen positive for West Nile virus, in the absence of encephalitis or meningitis symptoms. Local health department staff will follow-up with the West Nile virus positive donors to counsel them, determine their travel history and evaluate geographic areas of risk.

In summary, adding arboviral infections to the reportable disease list will permit the NYSDOH to more comprehensively monitor for the full range of symptoms associated with these diseases, and permit case reporting, investigation, and intervention to be made on a timely basis.

COSTS:

Arthropod-borne diseases primarily cause encephalitis and/or meningitis symptoms in patients. Encephalitis and meningitis are already included on the communicable disease list in 10 NYCRR Section 2.1. This change will require all arboviral infections to be reported and will clarify the NYSDOH's authority to investigate these cases, including mild or asymptomatic cases. The number of additional cases of arboviral infections that will be reported is expected to be low. It is expected that there will be increased costs related to investigating cases and, potentially, implementing control strategies.

Costs to Regulated Parties:

It is imperative to the public health that cases of arboviral infection be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality and to protect the public health.

The costs associated with implementing the reporting of this disease are expected to be minimal as reporting processes and forms already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting communicable disease to public health authorities.

Costs to Local and State Governments:

Costs associated with the reporting of arboviral infections are expected to be mitigated because the staff who are involved in reporting this disease at the local and State health departments are the same as those currently involved with reporting of other communicable diseases listed in 10 NYCRR Section 2.1. Arbovirus enhanced surveillance activities are long-standing and ongoing in most local health departments partially as a result of the importation of West Nile virus into the Western hemisphere in 1999. Local health department staffs have been aggressively monitoring and investigating reports of arboviral infection in their jurisdiction.

Additional costs to local or state governments are associated with investigating and implementing control strategies to curtail the spread of arthropod-borne disease. It is expected that the number of additional cases reported as a result of this change will be low. It is not known how this information will influence county control measures. Control efforts include enhanced vector surveillance, vector population reduction measures and implementation of comprehensive educational campaigns. These intensive efforts are critical to minimize spread.

By potentially decreasing the spread of arthropod-borne virus infections, savings may include reducing costs associated with public health control activities, hospitalization, morbidity, treatment and premature death.

Costs to the Department of Health:

The New York State Department of Health already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of arboviral infections to the list of communicable diseases should not lead to substantial additional costs for data entry, particularly as the Department adopts systems for electronic submission of case reports.

There are additional costs associated with ongoing arbovirus enhanced surveillance; these activities are long-standing and ongoing. New York State Department of Health has been aggressively monitoring and investigating reports of arboviral infection in New York State.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised to include arboviral infections. This form is familiar to and already used by regulated parties.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports from physicians in attendance on persons with or suspected of being infected with arboviral infection, will be required to immediately forward such reports to the State Health Commissioner and to investigate and monitor the cases reported.

Duplication:

There is no duplication of this initiative in existing State or federal law.

Alternatives:

No other alternatives are available.

Reporting of cases of specified arboviral infections is of critical importance to public health. There is an urgent need to conduct surveillance, identify human cases in a timely manner, and reduce the potential for further exposure to contacts.

Federal Standards:

This proposed action is consistent with current CDC standards for reporting of vector-borne diseases.

Compliance Schedule:

This regulation will be effective upon filing of a Notice of Emergency Adoption with the Secretary of State and made permanent by publication of a Notice of Adoption in the *New York State Register*.

Regulatory Flexibility Analysis**Effect on Small Business and Local Government:**

There are approximately 6 hospitals, 15 nursing homes and 1,000 clinical laboratories that employ less than 100 people in New York State. There are 397 licensed clinics; information about how many operate as small businesses is not available. There are approximately 70,000 physicians in New York State but it is not known how many can be categorized as small businesses. This regulation will apply to all local health departments.

It is expected that the proposed rule will have minimal impact on small business (hospitals, clinics, nursing homes, physicians, and clinical laboratories) and local government since encephalitis and meningitis symptoms are already reportable. The number of additional cases of arboviral infections that will be reported is estimated to be low. Existing report forms and systems will be used.

Compliance Requirements:

Hospitals, clinics, physicians, nursing homes, and clinical laboratories that are small businesses and local governments will utilize revised Department of Health reporting forms which are familiar to them.

Professional Services:

No additional professional services will be required since providers are expected to be able to utilize existing staff to report occurrences of arboviral infections.

Compliance Costs:

No initial capital costs of compliance are anticipated. Annual compliance costs will depend upon the number of cases of arboviral infections which is expected to be low because existing reporting forms and mechanisms will be used. The reporting of arboviral infections should have a minimal effect on the estimated cost of disease reporting by hospitals. The cost would be less for physicians and other small businesses.

Minimizing Adverse Impact:

Adverse impacts have been minimized since familiar forms and existing reporting staff can be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

Feasibility Assessment:

Small businesses and local governments will likely find it easy to report conditions due to the availability to them of electronic reporting and tabulation.

Small Business and Local Government Participation:

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

Rural Area Flexibility Analysis**Effect on Rural Areas:**

The proposed rule will apply statewide. A rural area is a county of under 200,000 population or an area with a population density of 175 persons or less per square mile. There are 42 rural counties in New York State and all are in Upstate New York. The number of cases that will be reported from rural areas is estimated to be low and have minimal impact on local health units, physicians, hospitals and laboratories that are located in rural areas.

Compliance Requirements:

Local health units, hospitals, clinics, physicians and clinical laboratories in rural areas will continue to utilize Department of Health reporting forms that will be revised to include arboviral infections.

Professional Services:

No additional professional services will be required. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

Minimizing Adverse Impact:

Adverse impacts have been minimized since familiar forms and existing reporting staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-bb(2) were rejected inconsistent with the purpose of the regulation.

Rural Area Input:

The New York State Association of County Health Officers, including representatives of rural counties, has been informed about this change and supports the need for it.

Job Impact Statement

This regulation will not have a substantial adverse impact on jobs and employment opportunities. It adds arboviral infection to the list of diseases that health care providers must report to public health authorities. The staff who will be involved in reporting arboviral infections at the local and State health departments are the same as those currently involved with reporting, monitoring and investigating other communicable diseases. Although it is not possible to predict the extent of arboviral infection outbreaks, the number of additional cases that will be detected, or the degree of additional demands it will place on existing staff, all are expected to be low and the impact on jobs to be minimal if there is any impact at all.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Motor Vehicle Insurance Repairs Act

I.D. No. INS-43-03-00003-P

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

Proposed action: This is a consensus rule making to amend section 65-4.5(o) (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Insurance Law, art. 51, sections 201, 301

Subject: Regulations implementing the Comprehensive Motor Vehicle Insurance Repairs Act.

Purpose: To correct an obviously erroneous cross-reference in section 65-4.5(o)(3)(ii).

Text of proposed rule: Subparagraph (ii) of Section 65-4.5(o)(3) is amended to read as follows:

(ii) For arbitrations filed on or after March 1, 2002, the arbitrator shall determine if the parties provided and exchanged documents in accordance with the requirements of paragraph (3) of subdivision [(o)] (b) of section [65-4.5] 65-4.2 of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Data, views or arguments may be submitted to: Patricia Mann, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: pmann@ins.state.ny.us

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

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written since the only change being made is a technical correction of an obviously erroneous cross-reference in Section 65-4.5(o)(3)(ii) of Part 65-4.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely corrects an erroneous cross-reference in Section 65-4.5(o)(3)(ii) of Part 65-4.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Address Updates

I.D. No. INS-43-03-00004-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 section 4.13 (Regulation Nos. 3 and 97) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Update of addresses of certain offices of the Department of Health and the Education Department for reporting purposes.

Purpose: To update obsolete references to the addresses of certain units.

Text of proposed rule: Subdivision (b) of Section 4.13 is amended to read as follows:

(b) If the Superintendent determines after a hearing that such violations have been demonstrated, the determination which shall include a statement of facts and findings, shall be forwarded:

(1) in the case of physicians and physicians assistants, to the director of the Office of Professional Medical Conduct, *New York State Department of Health*, [Tower Bldg., Empire State Plaza, Albany, NY 12237] 433 River Street, Suite 303, Troy, NY 12180-2299; and

(2) in the case of other health providers, to the director of the Office of Professional Discipline, Education Department, [One Park Avenue] 475 Park Avenue South, New York, NY 10016.

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written. The amendment merely updates the addresses of certain units of the State Department of Health and the State Education Department.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment removes obsolete references to addresses of offices of New York State Department of Health and State Education Department and inserts the current correct addresses.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Motor Vehicle Insurance Repairs Act

I.D. No. INS-43-03-00005-P

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

Proposed action: This is a consensus rule making to amend section 65-4.5(g) (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Insurance Law, art. 51, sections 201, 301

Subject: Regulations implementing the Comprehensive Motor Vehicle Insurance Repairs Act.

Purpose: To insert a requirement that was inadvertently not included in the previously revised regulation: the long-standing administrative procedure that the designated administrator of the no-fault arbitration system will consult with the department before making final determinations on requests to recuse an arbitrator for conflict of interest. The rule requires that the determinations be in writing and in a format approved by the department.

Text of proposed rule: Subdivision (g) of Section 65-4.5 is amended to read as follows:

(g) Conflict of interest and disqualification of arbitrator. No person shall serve as an arbitrator in any arbitration in which such person has any financial or personal interest or bias. If a party challenges an arbitrator, the specific grounds for the challenge shall be submitted in writing to the designated organization, which shall determine, *in consultation with the Insurance Department*, within 15 calendar days after receipt of the chal-

lenge, whether the arbitrator shall be disqualified. Such *written* determination, *in a format approved by the Department*, shall be final and binding. If an arbitrator should resign, be disqualified or be otherwise unable to perform necessary duties, the designated organization shall assign another arbitrator to the case.

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

Data, views or arguments may be submitted to: Patricia Mann, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: pmann@ins.state.ny.us

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

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written since the only changes being made are to insert a requirement that was inadvertently not included in the previously revised regulation: the long-standing administrative procedure that the designated administrator of the No-Fault administration system will consult with the Insurance Department before making final determinations on requests to recuse an arbitrator for conflict of interest. The rule also provides that determinations shall be in writing and in a format approved by the Department. These changes are technical in nature and are non-controversial.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely clarifies existing procedures for disqualification of arbitrators for conflicts of interest. It inserts a long-standing administrative procedure that was inadvertently not included in the previously revised regulation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Distribution and Sale of Publications and Forms

I.D. No. INS-43-03-00032-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 section 9.1(a), and Appendix 6 (Regulation 46) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Distribution and sale of publications and forms.

Purpose: To delete numerous obsolete references to documents that are no longer published, to add more modern references to documents, and to refer to the Insurance Department's website address.

Text of proposed rule: Section 9.1(a) of Part 9 is amended to read as follows:

(a) Except as otherwise provided in subdivisions (b) and (c) of this section, a fee shall be charged in accordance with the itemized schedule attached hereto (see Appendix 6) for any blank, report, pamphlet, document or other publication of the *Insurance Department* furnished or distributed to the public. *Many of the current year publications listed in Appendix 6 are also available electronically (with no charge) through the Insurance Department's website located at <http://www.ins.state.ny.us/mailing.htm>.*

Appendix 6 of Part 9 is amended. See Appendix.

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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

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

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written since the only changes being made are to delete numerous obsolete references to documents that are no longer published; to add references to certain new documents and the prices therefor; and to refer to the Insurance

Department's website address for the availability of current year publications in electronic form at no charge.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely deletes obsolete references to documents that are no longer published; adds references to new documents; and refers to the Insurance Department's website address for availability of current year publications.

Office of Mental Health

EMERGENCY RULE MAKING

Comprehensive Outpatient Programs and Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-26-03-00008-E

Filing No. 1113

Filing date: Oct. 10, 2003

Effective date: Oct. 10, 2003

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

Action taken: Amendment of section 588.14(d)(4) and Part 592 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 41.13(a)(3), 41.15(a) and 43.02(a); Social Services Law, sections 364(3) and 364-a(1); L. 2001, ch. 54; and L. 2002, ch. 54

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

Specific reasons underlying the finding of necessity: These amendments allow additional deficit to be converted to supplemental reimbursement consistent with the 2001-2002 and 2002-2003 enacted State budgets. These amendments will avoid a reduction in services that would otherwise take place.

Subject: Comprehensive outpatient programs and medical assistance payment for outpatient programs.

Purpose: To allow for the conversion of net deficit financing for Intensive Psychiatric Rehabilitation Treatment (IPRT) Programs and Partial Hospitalization Programs and increase the Comprehensive Outpatient Programs (COPs) rates and increase the community support program unit of service ceiling.

Text of emergency rule: Part 592 of the Regulations of the Commissioner of Mental Health is amended as follows:

Subdivision (a) of Section 592.3 is amended to read as follows:

(a) This Part applies to any provider of services which has been licensed to operate [a clinic treatment program for adults with mental illness and/or children with serious emotional disturbance or day treatment, continuing treatment or continuing day treatment programs,] *an outpatient mental health program* in accordance with Part [585 or] 587 of this Title and which is designated as a comprehensive outpatient program.

Subdivision (a) of Section 592.4 is amended to read as follows:

(a) Comprehensive outpatient program means a provider of services which has been licensed to operate [a clinic treatment program for adults with mental illness and/or children with serious emotional disturbance or a day treatment, continuing treatment or continuing day treatment programs for adults with mental illness] *an outpatient mental health program* in accordance with Part [585 or] 587 of Title 14 and has been annually designated by a local governmental unit to be eligible to receive supplemental medical assistance reimbursement for a specific program or specific programs under its auspice which agrees to provide the services required in this Part.

Subdivision (e) of Section 592.4 is deleted in its entirety and replaced by:

(e) Comprehensive outpatient program allocation means the maximum amount of comprehensive outpatient program reimbursement that a provider is allowed to retain in each local fiscal year.

Subdivision (a) of Section 592.7 is amended to read as follows:

(a) In order to be designated as a comprehensive outpatient program, a provider of services:

(1) shall currently be receiving or have received during local fiscal year ended in 1989 for upstate and Long Island based providers and local fiscal year ended in 1990 for New York City a State aid grant pursuant to Article 41 of the Mental Hygiene Law or supplemental reimbursement under the Medical Assistance Program pursuant to this Part; [or] *and*;

(2) shall have been designated as a comprehensive outpatient program pursuant to subdivision 592.8(j) of this Part and shall:

(i) ensure that access and admission to services is based upon service availability, and not based on an individual's ability to pay for such services;

(ii) provide priority access to adults with serious mental illness or children with serious emotional disturbance, as applicable. Each program shall establish policies and procedures to ensure priority access to such individuals;

(iii) agree to provide initial assessment services to all patients referred from inpatient or emergency settings within five business days of referral from such setting, *except that for partial hospital programs the requirement shall be within two business days*;

[(iv) agree to provide in each year at least the same percentage of visits under the medical assistance program as were provided in 1990. The local governmental unit, with the approval of the commissioner, may negotiate a different percentage with the provider if the provider shows that it will not reasonably be able to maintain the percentage of visits provided in 1990. This shall not affect the calculation of the provider's rate of reimbursement pursuant to section 592.8 of this Part;

(v) agree to provide a reasonable percentage of visits under the medical assistance program if designated on or after January 1, 1992. Such percentage shall be agreed upon annually with the local governmental unit, but in no case shall the agreed upon percentage in any local fiscal year commencing in or after 1992 be lower than the percentage served by the program in 1990. The local governmental unit, with the approval of the commissioner, may negotiate a different percentage with the provider if the provider shows that it will not reasonably be able to maintain the percentage of visits provided in 1990. This shall not affect the calculation of the provider's rate of reimbursement pursuant to section 592.8 of this Part.]

[(vi)] (iv) agree to engage in annual mental health planning activities with the local governmental unit;

[(vii)] (v) assure that services are provided to all individuals who are part of a designated geographic area or target population for whom the comprehensive outpatient program is responsible as designated in the current local government plan;

[(viii)] (vi) arrange for the provision of or directly provide 24 hour emergency services. For newly designated providers, this must be completed no later than 90 days from the time of designation;

[(ix)] (vii) develop formal agreements with all levels of inpatient care which will:

(a) assure immediate and planned patient access to inpatient services; and

(b) clearly identify responsibility for coordinating treatment and accepting responsibility for treatment and after care from the referring hospital. For newly designated providers, these agreements must be completed no later than 90 days from time of designation.

[(x)] (viii) directly provide or arrange for the provision of case management, home visiting services and other clinically necessary mental health services to maintain patients in programs and minimize patients' absence from treatment. For newly designated providers, this must be completed no later than 90 days from the time of designation;

[(xi)] (ix) *except for partial hospital programs*, review, at least annually, the treatment services, support services and recovery status of each patient. Such review shall be documented;

[(xii)] (x) submit, upon request by the Office of Mental Health or the local governmental unit, in a timely fashion and consistent with the Mental Hygiene Law, Section 33.13 *and applicable federal law* which [governs] *govern* the confidentiality of patient records, all cost, utilization, programmatic or clinical reports and/or documentation required;

[(xiii)] (xi) create a consumer advisory board and/or include consumers on the governing body of the program. For newly designated providers, this must be completed no later than 90 days from the time of designation; and

[(xiv)] (xii) develop staffing patterns which take into account the cultural and ethnic backgrounds of patients.

Subdivision (c) of Section 592.8 is amended to read as follows:

(c) The supplemental rate, for providers with at least one comprehensive outpatient program, shall be calculated as follows:

(1) For [eligible clinic, continuing day treatment and day treatment] outpatient mental health programs which are designated providers pursuant to this Part, grants received for the local fiscal year ended in [1995] 2001 for upstate and Long Island based providers, and for the local fiscal year ended in [1996] 2001 for New York City based providers, shall be added, if applicable, to the annualized eligible deficit approved in the calculation of the [initial] previous supplemental rate.

(2) The sum of grants received by the provider, as recalculated under paragraph (1) of this subdivision, shall be divided by the projected number of annual visits to the provider's designated programs. The projected number of annual visits shall be calculated as follows:

(i) *The combined total of outpatient mental health program visits reimbursed by Medical assistance for each provider shall be calculated by using the average number of visits provided in the most recent three fiscal years multiplied by 90.9 percent.* [For the purpose of this section, the projected number of annual] *These visits shall include all visits reimbursed by Medicaid, including visits partially reimbursed by Medicare. Providers, who [for the local fiscal year ended in 1994] in the three most recent fiscal years earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted to reflect the lower supplemental revenue earned on Medicare/Medicaid dually eligible visits. The calculation of the Medicare/Medicaid adjusted visits shall be based on the percentage of Medicaid supplemental payments earned on Medicare/Medicaid dually eligible visits provided during the [local fiscal year ended in 1994] three most recent fiscal years and the number of dually eligible visits provided in the [federal fiscal year ended in 1994] three most recent fiscal years. The Medicare/Medicaid adjusted visits are calculated by multiplying the projected annual volume of dually eligible visits by the average percentage of Medicaid supplemental revenue earned on these visits during the [local fiscal year ended in 1994] three most recent fiscal years;*

[ii] For providers whose volume of visits reimbursed by Medicaid in 1994 was greater than or equal to 110% of the number of Medicaid visits projected by the OMH for the local fiscal year ended in 1994, the projected number of annual visits shall be 90.9% of visits reimbursed by Medicaid in 1994. Providers, who for the local fiscal year ended 1994 earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of visits adjusted as set forth in subparagraph (2)(i) of this subdivision.

[iii] For providers whose volume of visits reimbursed by Medicaid in 1994 was less than 110% of the number of Medicaid visits projected by the Office of Mental Health for the local fiscal year ended in 1994, the projected number of annual visits shall be the total number of Medicaid units projected by the Office of Mental Health for the local fiscal year 1994. Providers, who for the local fiscal year ended in 1994 earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted as set forth in subparagraph (2)(i) of this subdivision;

[iv] For providers who were initially designated after April 1, 1995, the number of annual visits shall be 90.9% of visits reimbursed by Medicaid in 1994; and

[v] (ii) Rates calculated pursuant to subparagraph[s] (i) [(ii), (iii) and (iv)] of this paragraph are subject to appeal by the local governmental unit, or by the provider with the approval of the local governmental unit. Appeals pursuant to this paragraph shall be made within one year after receipt of initial notification of the most recent supplemental reimbursement rate calculation. However, under no circumstances may the recalculated rate be higher than the rate cap set forth in paragraph (3) of this subdivision.

(3) The supplemental rate for a provider operating [a licensed] an outpatient mental health [clinic, day treatment or continuing day treatment] program shall be the lesser of the rate calculated in paragraph (2) of this subdivision or [\$100.00] *a rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget*, provided, however, the supplemental rate of an Article 31 provider which operates a comprehensive outpatient program shall not be less than an amount that, when added to the base fee, yields an amount that is less than the total of the corresponding fee and supplemental reimbursement for any provider which is not eligible to be designated as comprehensive outpatient program.

Subdivision (h) of Section 592.8 is amended to read as follows:

(h) The Office of Mental Health may amend the supplemental rate *and/or the comprehensive outpatient program allocation* to account for pro-

gram changes required by the Office of Mental Health, *local governmental unit*, or other administrative agency, or approved by the commissioner pursuant to Part 551 of this Title.

(1) *When a provider receives reimbursement under this part which is less than its comprehensive outpatient program allocation in a local fiscal year (beginning with Calendar Year 2001 for upstate or Long Island based providers or Local Fiscal Year 2000-01 for New York City based providers), the local governmental unit may, subject to the approval of the Commissioner of the Office of Mental Health and the Director of the Division of Budget, allocate any amount of the provider's comprehensive outpatient program reimbursement which is less than its comprehensive outpatient program allocation to one or more designated comprehensive outpatient programs within the same county beginning in the following fiscal year. In making such adjusted allocations, the local governmental unit shall consider the extent to which a provider receiving an additional allocation is in compliance with the program requirements set forth in Section 592.7 of this Part. This adjusted allocation process shall be accomplished through the revision of each affected provider's comprehensive outpatient program allocations for the previous fiscal year. In no case shall such adjusted allocation be less than the amount of comprehensive outpatient program reimbursement received by a provider consistent with its applicable comprehensive outpatient program allocation received in either the 2000 local fiscal year or the local fiscal year before the year in which such reimbursement is received, whichever amount is less.*

(2) When a provider closes down one or more program location, but continues to operate the other locations of the designated program the supplemental revenue to the designated program shall be reduced proportionately by the number of Medicaid visits associated with the closed location(s). The State share of the reduced Medicaid supplemental revenue may be allocated to the county in the form of additional local assistance grants, or the visits previously reimbursed to the closed program location(s) may be added to the visits of one or more other designated outpatient programs of the same outpatient category in the same county.

Part 588 of the Regulations of the Commissioner of Mental Health is amended as follows:

Paragraph (4) of Subdivision (d) of Section 588.14 is amended as follows:

(4) Grants, as recalculated pursuant to paragraph (2) of this subdivision, shall be divided by the average annual units of service calculated pursuant to paragraph (3) of this subdivision. [In no event shall such calculation exceed \$101.50.] *The community support program rate cap will be established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget.*

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. OMH-26-03-00008-EP, Issue of July 2, 2003. The emergency rule will expire December 8, 2003.

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

Consolidated Regulatory Impact Statement

1. Statutory Authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants 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.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law provides that the Commissioner shall have the power to adopt regulations to effectuate the provisions and purposes of Article 31.

Paragraph (3) of Section 41.13 of the Mental Hygiene Law provides that a local government shall direct and administer a local comprehensive plan for mentally disabled residents of its area.

Subdivision (a) of Section 41.15 of the Mental Hygiene Law provides that net operating costs of programs incurred pursuant to an appropriate plan and approved by the Commissioner shall be eligible for the state aid.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

Sections 364(3) and 364-a(1) of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction,

in accordance with cooperative arrangements with the Department of Health.

Chapter 54 of the Laws of 2001, the enacted budget for New York State Fiscal Year 2001-2002 and Chapter 54 of the Laws of 2002, the enacted budget for Fiscal Year 2002-2003, provide for payment, by the Office of Mental Health, of state financial assistance, net of disallowances, for community mental health programs pursuant to Article 41 and other provisions of the Mental Hygiene Law.

2. Legislative Objectives: Articles 7, 31 and 41 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs, address the role of local governments and provide direction regarding state aid for local assistance.

Sections 364 and 364-a of the Social Service Law reflect the objective that the Office of Mental Health shall be responsible for establishing and maintaining standards for Medicaid reimbursed mental health programs.

Chapter 54 of the Laws of 2001, the enacted budget for New York State Fiscal Year 2001-2002, included a Medicaid initiative to reduce net deficit financing with a commensurate increase in Medicaid and no impact on gross program levels. This initiative, intended to begin on July 1, 2001, includes converting net deficit financing to Medicaid for Intensive Psychiatric Rehabilitation Programs and Partial Hospital Programs and maximizing Comprehensive Outpatient Programs (COPS) revenue by a conversion of additional net deficit financing and increasing the COPS rate cap as established by the Commissioner of Mental Health and approved by the Division of the Budget.

Chapter 54 of the Laws of 2002, the enacted budget for New York State Fiscal Year 2002-2003, provides for an increase by the Office of Mental Health to the COPS rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget and for an increase in the community support program unit of service rate cap established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget. These changes are intended to begin December 1, 2002.

3. Needs and Benefits: The amendments to these regulations streamline and update the COPS methodology consistent with the 2001-2002 enacted state budget; permit Intensive Psychiatric Rehabilitation Programs (IPRT) and Partial Hospitalization Programs that meet the additional requirements placed upon Comprehensive Outpatient Programs (COPS) to receive supplemental Medicaid payment; convert net deficit financing for IPRT and Partial Hospitalization programs meeting these requirements to Medicaid, in recognition of the reimbursable costs associated with COPS program requirements; and eliminate the need for yearly amendments to the COPS regulations by changing rate cap reference to a rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget. These changes continue to allow providers to achieve efficiencies in the operation of their outpatient treatment programs without a need for a reduction of services.

4. Costs:

a) Costs of regulated parties: Providers designated by counties as operating Comprehensive Outpatient Programs will continue to be required to achieve efficiencies in order to maintain service levels in their outpatient treatment programs. There are no costs associated with replacing additional net-deficit with supplemental Medicaid reimbursement.

b) Costs to State and Local government and the agency: Implementation of these amendments is consistent with the 2001-2002 and 2002-2003 enacted state budgets and is expected to save New York State \$8,736,000 annually. This includes replacing additional deficits with supplemental Medicaid reimbursement. OMH State aid appropriations will be reduced by approximately \$16,067,000 annually. Expenditures for the State share of the supplemental Medicaid reimbursement of eligible providers will total approximately \$7,331,000 annually.

Implementation of these regulations is expected to save local governments \$2,785,000. Local grants will be reduced by approximately \$9,553,000 while expenditures for the local share of the supplemental Medicaid reimbursement of eligible providers will total approximately \$6,768,000.

The above cost analysis addresses all changes to the COPS programs made to comply with the 2001-2002 and 2002-2003 enacted state budget.

The above analysis also does not include the fiscal impact of increasing the community support program rate cap from \$101.50 to \$104.55 as required by the 2002-2003 enacted state budget. That \$3.05 rate change will increase the state share by \$8,300 annually and the state wide local share by \$7,600 annually.

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.

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

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 would have been contrary to the Legislative intent as set forth in the 2001-2002 and 2002-2003 enacted state budgets and would have resulted in reduction in services and program closures, since sufficient funding would no longer be available for existing programs. This alternative was rejected.

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

10. Compliance Schedule: These regulatory amendments will be effective upon their adoption, and shall be deemed to have been effective on and after July 1, 2001. These regulations allow for an increase in the COPS rate ceiling from \$100 per visit to \$200 per visit effective from July 1, 2001 to November 30, 2002 and from \$200 per visit to \$206 per visit effective on and after December 1, 2002. They also allow for an increase in the community support program rate ceiling from \$101.50 to \$104.55, effective on and after December 1, 2002. This compliance schedule is consistent with the 2001-2002 and 2002-2003 enacted state budgets.

Consolidated Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules will not impose any adverse economic impact on small businesses, or local governments.

Consolidated 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 Comprehensive Outpatient Program (COPS) funding for rural and other counties will not be reduced and additional flexibility regarding the funding will be available to rural and other county officials.

Consolidated 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 adjustments to financing mechanisms for existing programs and will not have a substantial adverse impact on jobs and employment activities.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rate Setting for Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. MRD-43-03-00046-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 section 681.14 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09 and 43.02

Subject: Rate setting for intermediate care facilities for persons with developmental disabilities (ICF/DD).

Purpose: To clarify certain provisions of the ICF/DD rate setting methodology.

Text of proposed rule: ° Paragraph (a)(8) is amended to read as follows:

(8) Total reimbursable costs are reimbursable costs trended, as appropriate, per the application of subdivision (g) of this section *except that day program services costs identified in clause (c)(4)(viii)(e) of this section are not subject to the trend factors identified in subdivision (g) of this section, but will be increased by the trend factors used by OMRDD for day services*

similar to those paid for through the add-on described in clause (c)(4)(viii)(e) of this section.

◦ Add new subclause (c)(3)(ii)(b)(4) to read as follows:

(b) The desk audit will examine base year costs against both the prior and subsequent years' costs. OMRDD will determine if costs are recurring, or are atypical and/or expended only in the base year.

(1) If OMRDD determines that base year costs for a facility are recurring, for the base periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section will apply.

(2) If OMRDD determines that base year costs for a facility are atypical and/or were expended only in the base year, OMRDD will expand the desk audit. OMRDD may make adjustments to base year costs so that such costs represent typical and recurring costs.

(3) For a facility whose base year costs are subject to an expanded desk audit per subclause (b)(2) of this subparagraph, OMRDD shall continue the rate in effect on December 31, 2002 or June 30, 2003, and, if applicable, trended to 2003 or 2003-2004 dollars, until OMRDD completes the expanded desk audit. For Region II and III facilities, OMRDD shall notify the provider by December 1, 2002 if the December 31, 2002 rate shall continue. For Region I facilities, OMRDD shall notify the provider by June 1, 2003 if the June 30, 2003 rate shall continue. Upon OMRDD's completion of the expanded desk audit, for the base periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section will apply.

(4) If a facility is subject to an expanded desk audit per subclause (b)(2) of this subparagraph, but the desk audit has not been completed by January 1, 2004 or July 1, 2004, OMRDD shall continue the rate in effect on December 31, 2002 or June 30, 2003 trended to 2004 or 2004-2005 dollars until OMRDD completes the expanded desk audit. Upon OMRDD's completion of the expanded desk audit, for the base periods and subsequent periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section will apply.

◦ Subparagraph (c)(3)(v) is amended to read as follows:

(v) Notwithstanding any other provisions of this section, for over 30 bed facilities the reimbursable operating costs contained in the rates shall be computed as follows. OMRDD shall determine the total reimbursable operating costs (with the exception of education and related service costs, sheltered workshop services, and day training services) included in the payment rate in effect on December 31st or June 30th, of the immediately preceding rate period applicable to that facility. The dollars for sheltered workshop, day program services identified in clause (c)(4)(viii)(e) of this section and day training services shall be revised based upon the number of individuals participating in the program. The reimbursable operating costs plus any revised sheltered work and day training costs will be increased by the trend factor identified in subdivision (g) of this section and may be adjusted for appropriate appeals, *except that day program services costs identified in clause (c)(4)(viii)(e) of this section are not subject to the trend factors identified in subdivision (g) of this section, but will be increased by the trend factors used by OMRDD for day services similar to those paid for through the add-on described in clause (c)(4)(viii)(e) of this section.* Education and related services will be updated in accordance with clause (4)(ix)(c) of this subdivision. To determine the capital cost portion of the subsequent period rate, OMRDD shall review the component relating to capital costs for substantial material changes and, if said changes conform to the requirements of paragraphs (f)(1) and (3) of this section and Subpart 635-4 of this Title, make corresponding adjustments in computing the subsequent period rate.

◦ Subparagraph (c)(4)(vi) is amended to read as follows:

(vi) As appropriate, OMRDD shall apply trend factors to each facility's reimbursable operating costs, except for education and related services. *However, day program services costs identified in clause (c)(4)(viii)(e) of this section are not subject to the trend factors identified in subdivision (g) of this section, but will be increased by the trend factors used by OMRDD for day services similar to those paid for through the add-on described in clause (c)(4)(viii)(e) of this section.*

◦ Clause (c)(4)(viii)(e) is amended to read as follows:

(e) Effective January 1, 2003, a provider may request that a day program services add-on be included in the facility's rate. The day program services add-on for all day program services shall be either the day program services reimbursement included in the rate on December 31, 2002 and adjusted for actual service delivery; or the lower of:

- (1) the actual costs per the *most recent* cost report *accepted by OMRDD net of any surplus calculated for the day program services*, or
- (2) the budget costs.

(3) The costs in subclauses (1) and (2) of this clause are subject to a desk audit. Administrative review of these desk audits shall be in accordance with subdivision 635-4.6(h) of this Title.

◦ Subparagraph (c)(5)(i) is amended to read as follows:

(i) The reimbursable operating costs contained in the subsequent period rates shall be computed as follows. OMRDD shall determine the total reimbursable operating costs (with the exception of education and related service costs, sheltered workshop services, day training services and day program services costs) included in the payment rate in effect on December 31st or June 30th of the immediately preceding rate period applicable to that facility. The dollars for sheltered workshop, day training, and day program services, shall be revised based upon the number of individuals participating in the program. The reimbursable operating costs plus any revised sheltered work day training, and day program services costs will be increased by the trend factor identified in subdivision (g) of this section and may be adjusted for appropriate appeals, *except that day program services costs identified in clause (c)(4)(viii)(e) of this section are not subject to the trend factors identified in subdivision (g) of this section, but will be increased by the trend factors used by OMRDD for day services similar to those paid for through the add-on described in clause (c)(4)(viii)(e) of this section.* Education and related services will be updated in accordance with clause (4)(viii)(e) of this subdivision. OMRDD will determine the capital cost portion of the subsequent period rate by reviewing the component relating to capital costs for substantial material changes. If such changes conform to the requirements of paragraphs (f)(1) and (3) of this section and Subpart 635-6 of this Title, OMRDD will make corresponding adjustments in computing the subsequent period rate.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Acting Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09.

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative Objectives: These proposed amendments will further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law. The enactment of these proposed amendments will clarify reimbursement of providers which operate Intermediate Care Facilities for persons with developmental disabilities (ICF/DD). This is necessary in order to ensure that operators of ICF/DD facilities are appropriately reimbursed so that consumers residing in ICF/DD facilities continue to have their service needs addressed.

3. Needs and Benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for ICF/DD facilities. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities. The specific purposes of the proposed amendments are as follows:

◦ Currently, the ICF/DD rate setting methodology includes a desk audit feature to determine whether a provider's reported costs are atypical and/or expended only in the base year. If it is determined that base year costs include such atypical non-recurring costs, the facility is subject to an expanded desk audit. The proposed rulemaking adds a subclause 681.14(c)(3)(ii)(b)(4) which will enable OMRDD apply the 2004 trend factor to the rate in effect on December 30, 2002 or June 30, 2003 for such facilities, pending completion of the expanded desk audit.

◦ Currently, OMRDD's ICF/DD rate setting and reimbursement methodology allows for the inclusion of certain day program services costs as add-ons to the ICF/DD rates of reimbursement. The ICF/DD rate setting methodology includes a feature which provides that facilities receive annual trend factor adjustments to their rates of reimbursement. The pro-

posed amendments to paragraph 681.14(a)(4) and subparagraphs 681.14(c)(3)(v), (c)(4)(vi), and (c)(5)(i) will clarify that the appropriate trend factor to be applied to the day program services add-on described in clause (c)(4)(vii)(e) and included in the ICF/DD rate shall be the trend factor used by OMRDD for day programs which provide services similar to those paid through the add-on, rather than the annual trend factor which pertains to ICF/DD facilities that provide primarily residential services.

° Finally, in establishing the appropriate reimbursement for the day program services add-on, the current methodology at clause 681.14(c)(4)(viii)(e) limits the reimbursement for the day program services add-on to the budgeted costs or the actual costs of providing these services. The proposed amendment adds language which states that the reimbursement in the add-on to the ICF/DD rate that is derived from actual costs shall be net of any surplus calculated per certified cost reports for that day services program.

4. Costs:

a. Costs to the Agency and to the State and its Local Governments: As of September 2003, there were 629 OMRDD certified ICF/DD facilities providing services to approximately 6,415 persons in New York State.

There are no costs associated with these proposed amendments because they merely clarify certain rate-setting and reimbursement provisions contained in the 681.14 rate setting methodology. As previously stated, the proposed change to clause 681.14(c)(3)(ii)(b) will enable OMRDD apply the 2004 trend factor to the rate in effect on December 30, 2002 or June 30, 2003 for the few facilities for which the expanded desk audit is not completed. OMRDD had originally expected that all desk audits associated with the identification of a new base year would have been completed before the application of the 2004/2004-2005 trend factors, and there is no reason to deprive facilities with pending desk audits of their normal trend factor increases.

Similarly, the proposed amendments to paragraph 681.14(a)(4) and subparagraphs 681.14(c)(3)(v), (c)(4)(vi), and (c)(5)(i) clarify that the appropriate trend factor to be applied to the day program services add-on described in clause (c)(4)(viii)(e) and included in the ICF/DD rate shall be the trend factor used by OMRDD for day programs which provide services similar to those paid through this add-on, rather than the annual trend factor which pertains to ICF/DD facilities that provide primarily residential services. Since both these trend factors used by OMRDD have, in the past, been identical, the amendment merely has the effect of clarifying OMRDD's intention that similar types of services (*i.e.*, day services) be treated equally with respect to trend factor provisions as they might evolve in the future.

The amendment to clause 681.14(c)(4)(viii)(e) serves to emphasize that "actual costs" recognized by OMRDD for reimbursement of the day program services add-on are the costs incurred by the provider of the day program services, net of any surplus determined from certified cost reports.

Pursuant to the Social Services Law, local governments incur no costs for ICF/DD facilities or the State reimburses local governments for their share of the cost of this Medicaid funded program. The proposed amendments will therefore not result in any net cost impacts for local governments because no additional Medicaid services that would entail a local government share are being introduced by the changes.

b. Costs to Private Regulated Parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork will be required by the proposed amendments.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the ICF/DD facilities.

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

10. Compliance Schedule: OMRDD intends to finalize the proposed rule as soon as possible within the time frames mandated under the State Administrative Procedure Act (SAPA). It is anticipated that the Notice of Adoption for these amendments will be timely filed for publication in the December 31, 2003 issue of the *State Register*, so as to achieve a January

1, 2004 effective date. The proposed amendments revise the reimbursement methodology which OMRDD uses to determine rates of reimbursement for ICF/DD facilities. However, they do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These proposed regulatory amendments will apply to voluntary not-for-profit corporations that operate ICF/DD facilities in New York State. As of September 2003, there were 629 OMRDD certified voluntary-operated sites providing services to approximately 6,415 persons in New York State. The OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the above referenced facilities employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business operators of ICF/DD facilities. Further, OMRDD expects that the proposed amendments will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This is because the proposed amendments merely clarify certain rate-setting and reimbursement provisions contained in the 681.14 rate setting methodology.

As stated in the Regulatory Impact Statement, the proposed change to clause 681.14(c)(3)(ii)(b) will enable OMRDD apply the 2004 trend factor to the rate in effect on December 30, 2002 or June 30, 2003 for the few facilities for which the expanded desk audit has not been completed. OMRDD had originally expected that desk audits associated with the identification of a new base year would have been completed before the application of the 2004/2004-2005 trend factors, and there is no reason to deprive facilities with pending desk audits of their normal trend factor increases.

Similarly, the proposed amendments to paragraph 681.14(a)(4) and subparagraphs 681.14(c)(3)(v), (c)(4)(vi), and (c)(5)(i) clarify that the appropriate trend factor to be applied to the day program services add-on described in clause (c)(4)(viii)(e) and that is included in the ICF/DD rate shall be the trend factor used by OMRDD for day programs which provide services similar to those paid for through this add-on, rather than the annual trend factor which pertains to ICF/DD facilities that provide primarily residential services. Since both these trend factors used by OMRDD have, in the past, been identical, the amendment merely has the effect of clarifying OMRDD's intention that similar types of services (*i.e.*, day services) be treated equally with respect to trend factor provisions as they might evolve in the future.

The amendment to clause 681.14(c)(4)(viii)(e) states that "actual costs" recognized by OMRDD for reimbursement of the day program services add-on are the costs incurred by the provider of the day program services net of any surplus determined from certified cost reports.

Pursuant to the Social Services Law, local governments incur no costs for ICF/DD facilities or the State reimburses local governments for their share of the cost of this Medicaid funded program. The proposed amendments will therefore not result in any net cost impacts for local governments because no additional Medicaid services that would entail a local government share are being introduced by the changes.

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these proposed amendments.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these proposed amendments.

5. Economic and technological feasibility: The proposed amendments are concerned with rate/fee setting in the affected facilities or services, and only clarify the reimbursement methodology which describes the way in which OMRDD calculates the appropriate reimbursement of ICF/DD facilities. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: The proposed amendments are not expected to have any adverse economic impact on small businesses or local governments.

7. Small business and local government participation: OMRDD has informed representatives of provider agencies which operate intermediate care facilities for persons with developmental disabilities of the proposed amendments prior to the filing of this Notice. There has been no negative reaction to OMRDD's intention with respect to the proposed amendments.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these proposed amendments is not submitted because the amendments will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed amendments only clarify certain provisions of the rate setting methodology which OMRDD uses in determining the reimbursement of voluntary operated Intermediate Care Facilities for persons with developmental disabilities (ICF/DD). OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties. The amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodology is primarily based upon reported costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodology has been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the proposed amendments only provide revisions to the reimbursement methodology which OMRDD uses in determining the appropriate reimbursement of voluntary agency operated Intermediate Care Facilities for persons with developmental disabilities (ICF/DD). The proposed amendments will clarify certain provisions in the rate setting methodology. These clarifications will not affect staffing patterns. Therefore, it is reasonable to expect that the proposed amendments will have no adverse impact on jobs or employment opportunities in New York State.

Department of Motor Vehicles

EMERGENCY RULE MAKING

Emissions Inspection Sticker Fees

I.D. No. MTV-43-03-00002-E

Filing No. 1112

Filing date: Oct. 9, 2003

Effective date: Oct. 9, 2003

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

Action taken: Amendment of sections 79.6, 79.7 and 79.24 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301, 304 and 305

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

Specific reasons underlying the finding of necessity: The Department of Motor Vehicles is adopting this rule as an emergency rule making in order to maintain sufficient funding and oversight to adequately support the State's efforts to ensure the proper testing of motor vehicle emissions systems and the reduction of air pollutants. The State is required to have a dedicated funding mechanism that supports the level of program oversight required by Federal statute and rule. Without such oversight, it has been demonstrated that an increased level of improper testing of motor vehicle emission systems occurs. As motor vehicles are a major source of air pollutants, this would detract from the State's efforts to maximize cleaner air and the benefit to the public health that results from cleaner air. Ground

level ozone has been associated with increased respiratory problems in children and older adults. Unless sufficient funding and oversight are provided, the State will also be subject to federal sanctions that can range between \$1 and \$2 billion dollars in highway safety funds, potentially disrupting a number of highway safety improvement initiatives by the Department of Transportation. Thus, immediate adoption of this rule is necessary to preserve the public health, safety and general welfare of the citizens of New York.

Subject: Emissions inspection sticker fees.

Purpose: To increase the fees for emission inspection stickers.

Text of emergency rule: Subdivision (c) of section 79.6 is amended to read as follows:

(c) The fee for a certificate representing that a vehicle has passed a combined safety and enhanced emissions inspection (high or low) is [\$4] \$6.

Paragraph (1) of subdivision (c) of section 79.7 is amended to read as follows:

(c) Inspection Fees. (1) Except as modified by paragraph (2) below, an inspection station may charge a fee which may not exceed, but may be less than, the fee set by the following schedule.

Vehicle Groups	Inspection Fees
MGW (maximum gross weight) for inspection purposes is the weight indicated on the vehicle registration certificate.	
Group 1	
(a)(1) Safety inspection of all passenger vehicles, including suburbans, with seating capacities of fifteen persons or less, plus drivers, and trucks of 10,000 pounds MGW and under.	\$10.00
(2) Trucks over 10,000 up to 18,000 pounds MGW, except when the registrant requests a Group 2 (heavy vehicle) inspection.	\$15.00
(b) Safety inspection of trailers of 18,000 pounds MGW and under except those trailers over 10,000 pounds MGW for which the registrants have requested heavy vehicle inspection.	\$6.00
Group 2	
(a)(1) Safety inspection of all tractors, trucks over 18,000 pounds MGW, trucks 10,000 pounds to 18,000 pounds MGW when requested by the registrant, passenger vehicles with seating capacities greater than fifteen persons, plus drivers.	\$20.00
(2) All trailers over 18,000 pounds MGW and those trailers over 10,000 pounds MGW for which the registrants request heavy vehicle inspection.	\$12.00
(b) All semi-trailers	\$12.00
Group 3	
Motorcycles	\$6.00
Emissions Inspection Fees (includes Low Enhanced, Diesel, and High Enhanced)	
High Enhanced Emissions Inspection (required for all non-exempt vehicles registered in NYMA)	[\$25.00] 27.00
Low Enhanced Emissions Inspection (required for all non-exempt vehicles registered outside the NYMA)	\$ [4.00] 6.00
Diesel Emissions Inspection (required for all non-exempt vehicles registered in the NYMA)	\$25.00

Paragraph (h) of section 79.24 is amended to read as follows:

(h) High enhanced emission reinspection procedure and fees. If a vehicle fails a safety, emissions and/or gas cap portion of the inspection, and is not removed from the station for repair, there shall be no charge for reinspection of such vehicle. If a vehicle fails a safety or emissions or gas cap portion of the inspection and is removed from the inspection station for repairs, that inspection station or any other station must conduct a full inspection on the failed portion during the reinspection of the vehicle and must charge according to the following chart:

Fails	Passes	Must Reinspect	Reinspect Charge
Safety	emissions, gas cap	safety	\$10
emissions	safety, gas cap	emissions	[\$25] 27
gas cap	safety, emissions	gas cap	\$ [4] 6
Safety, emissions	Gas cap	Safety, emissions	[\$35] 37
Safety, emissions, gas cap	-----	Safety, emissions, gas cap	[\$35] 37
Safety, gas cap	Emissions	Safety, gas cap	[\$14] 16
Emissions, gas cap	Safety	Emissions, gas cap	[\$25] 27

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 January 6, 2004.

Text of emergency 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

Regulatory Impact Statement

1. Statutory authority: As part of the State Budget, Vehicle and Traffic Law § 305(a)(2) was amended to provide that the fee for a certificate representing that an emissions inspection has been successfully completed shall be set by the Commissioner through regulation, at an amount not to exceed four dollars, or eight dollars if performed on a biennial basis. This legislative amendment represents a maximum two-dollar increase that may be charged for emissions inspection stickers for inspections that are performed on an annual basis.

2. Legislative objectives: In amending Vehicle and Traffic Law § 305(a)(2), the Legislature sought to address the current State revenue shortfall. The proposed rule is in accord with the public policy objectives that the Legislature sought to advance by amending Vehicle and Traffic Law § 305(a)(2).

3. Needs and benefits: The proposed revisions are necessary to effectuate the provisions of Vehicle and Traffic Law § 305(a)(2) and the economic objectives of the State Legislature. The revisions would also help to maintain sufficient funding and oversight to adequately support the State's efforts to ensure the proper testing of motor vehicle emissions systems and the reduction of air pollutants.

4. Costs: a. There will be no costs to regulated businesses, since the proposed rule would allow affected businesses to pass on the fee increase to customers. Motorists would be required to pay an additional \$2 for emissions inspections.

b. The Department, the State and local governments (for the implementation of and continuing compliance with the rule). The total estimated cost to the Department to revise forms and send out memoranda and notifications is approximately \$6,500.

Other State and local agencies are not affected by this rule, and, therefore, this rule will not impose any costs on those agencies.

5. Local government mandates: This rule does not affect local governments, and, therefore, imposes no mandates on local governments. Approximately 800 political subdivisions in NYS perform their own inspections, but are specifically exempt from having to pay the fee for an inspection certificate by Vehicle and Traffic Law § 305(b).

6. Paperwork: There are no additional reporting requirements associated with this rule.

7. Duplication: This rule does not duplicate, overlap, or conflict with any other State or federal statute or regulation.

8. Alternatives: The Department of Motor Vehicles did not identify or consider any other significant alternatives.

9. Federal standards: The proposed rule does not exceed any federal minimum standards.

10. Compliance schedule: The Department of Motor Vehicles anticipates that affected inspection stations will be able to comply with the proposed rule immediately.

Regulatory Flexibility Analysis

1. Effect of rule: The requirements of the rule will affect inspection stations that perform emission inspections on motor vehicles. There are approximately 13,400 inspection stations statewide, about 8,800 of which are active licensed inspection stations in the Upstate Region of the State, and 4,600 in the New York Metropolitan Area (NYMA) that may be affected by the proposed rule making. The Department estimates that approximately 95% of the inspection stations in New York State are considered small businesses.

Approximately 800 political subdivisions in NYS perform their own inspections, but are specifically exempt from having to pay the fee for an inspection certificate by Vehicle and Traffic Law § 305(b). The rule will, therefore, have no impact on local governments.

2. Compliance requirements: All inspection stations that perform emission inspections will have to pay the increased fee for the emission inspection stickers and the combined safety and enhanced inspection emission sticker. However, as a means to minimize economic impacts to inspection stations, the proposed rule allows affected businesses to pass on the fee increase to customers. There are no additional record keeping or reporting requirements associated with this proposal. The rule will have no impact on local governments.

3. Professional services: Inspection stations will not require additional professional services in order to comply with the rule. The rule will have no impact on local governments.

4. Compliance costs: Inspection stations will be required to pay an increased fee for emission inspection stickers. However, as a means to minimize economic impacts to inspection stations, the proposed rule allows affected businesses to pass on the fee increase to customers. The rule will have no impact on local governments.

5. Economic and technological feasibility: The inspection stations affected by the regulation have the economic and technological ability to comply with the regulation. This rule does not impose any costs on small businesses and does not require the use of technology for compliance. Accordingly, compliance with the rule is economically and technologically feasible for small businesses. The rule will have no impact on local governments.

6. Minimizing adverse impact: This rule is the direct result of a legislative budgetary increase aimed at addressing the New York State revenue shortfall. As a means to minimize economic impacts to small businesses, however, the proposed rule allows affected businesses to pass on the fee increase to customers. The rule will have no impact on local governments.

7. Small business and local government participation: A draft of the proposed rule has been circulated to motor vehicle inspection station and repair shop associations to solicit input from those small business entities that may be affected by the rule. Other State and local agencies are not affected by this rule, and, therefore, this rule will not impose any costs on those agencies.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted, because the proposed rule will not impose an adverse impact, nor reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted, because the Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

NOTICE OF ADOPTION

Tioga County Motor Vehicle Use Tax

I.D. No. MTV-32-03-00006-A

Filing No. 1116

Filing date: Oct. 14, 2003

Effective date: Oct. 29, 2003

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

Action taken: Addition of section 29.12(u) to Title 15 NYCRR.

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

Subject: Tioga County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-32-03-00006-P, Issue of August 13, 2003.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standby Rates Issues

I.D. No. PSC-43-03-00001-P

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

Proposed action: Pursuant to a notice soliciting comments issued in Case 02-E-0551 *et al.*, the Public Service Commission is considering criteria for exempting certain combined heat and power generation facilities from the application of standby rates, and other standby rate exemption, rate phase-in, and rate issues.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), (2), (3), (5), 66(1), (4), (5), (10), (12), 71 and 72

Subject: Standby rates issues.

Purpose: To consider criteria for standby rate exemptions or phase-ins.

Substance of proposed rule: Pursuant to a Notice Soliciting Comments issued in Case 02-E-0551 *et al.*, the Public Service Commission is considering criteria for exempting certain combined heat and power facilities from the application of standby rates, and other standby rate exemption, rate phase-in, and rate issues. The Commission may grant, deny or modify, in whole or in part, the relief proposed.

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.

(02-E-0551SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by JDM Washington Street LLC

I.D. No. PSC-43-03-00033-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by JDM Washington Street LLC to submeter electricity at 90 Washington Street, New York, NY.

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

Subject: Case 26988—submetering of electricity for new master metered residential rental units.

Purpose: To permit electric submetering.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new or renovated master metered residential rental properties owned or operated by private or government entities. The JDM Washington Street LLC has submitted a proposal to master meter and submeter this new residential rental complex. The total building electric usage for this complex will be master metered and each unit will be individually submetered. The submetering plan sets forth proposals on electric rates, economic benefits, security, dispute resolution, grievance procedures and metering in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at 90 Washington Street, New York, New York.

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

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

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

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

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

(03-E-1350SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transition of Plattsburgh Airbase Redevelopment Corporation and its Electric Customers by New York State Electric & Gas Corporation

I.D. No. PSC-43-03-00034-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 115.

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

Subject: Plattsburgh Airbase Redevelopment Corporation and its electric customers.

Purpose: To transition tariffed electricity rates.

Substance of proposed rule: New York State Electric & Gas Corporation (NYSEG) proposes to transition the Plattsburgh Airbase Redevelopment Corporation (PARC) and its' electric customers from PARC electricity rates to full NYSEG tariffed electricity rates.

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

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

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

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

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

(03-E-1463SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gas Manufacturing Incentive Rate by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-43-03-00035-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 9.

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

Subject: Rider I - gas manufacturing incentive rate.

Purpose: To establish a new Rider I.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. proposes to implement a new Rider I—Gas Manufacturing Incentive Rate in its gas tariff schedule, P.S.C. No. 9. Rider I will be

applicable to new non-governmental manufacturing customers who utilize gas for industrial or commercial processes, occupy new or vacant premises and receive either a substantial real property tax incentive, energy rebates under the City of New York's Energy Cost Saving Program or a comprehensive package of local municipality or state economic incentives.

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

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

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

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

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

(03-G-1461SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Merchant Function Backout Credit and Transition Balancing Account by KeySpan Gas East Corporation

I.D. No. PSC-43-03-00036-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: Merchant function backout credit and transition balancing account.

Purpose: To allow the account to continue until May 31, 2005.

Substance of proposed rule: KeySpan Gas East Corporation, d/b/a KeySpan Energy Delivery Long Island proposes changes to its Schedule P.S.C. No. 1—Gas to allow its Merchant Function Backout Credit and Transition Balancing Account to continue through May 31, 2005.

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.

(99-G-1469SA7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Merchant Function Backout Credit and Transition Balancing Account by The Brooklyn Union Gas Company

I.D. No. PSC-43-03-00037-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: Merchant function backout credit and transition balancing account.

Purpose: To allow the account to continue until May 31, 2005.

Substance of proposed rule: The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York proposes changes to its Schedule P.S.C. No. 12—Gas to allow its Merchant Function Backout Credit and Transition Balancing Account to continue through May 31, 2005.

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.

(99-G-1469SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Distributed Generation Commercial and Industrial by Corning Natural Gas Corporation

I.D. No. PSC-43-03-00038-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Corning Natural Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 4.

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

Subject: S.C. No. 19—distributed generation commercial and industrial to P.S.C. No. 4—Gas.

Purpose: To file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.

Substance of proposed rule: Corning Natural Gas Corporation proposes to establish Service Classification No. 19—Distributed Generation Service—Non-Residential to its P.S.C. No. 4—Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission's April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.

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.

(02-M-0515SA13)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Internal Corporate Ownership Restructuring by Charter Communications Holding Company, LLC

I.D. No. PSC-43-03-00039-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 reviewing a petition submitted by Charter Communications Holding Company, LLC for approval of an internal corporate ownership restructuring including new intermediate corporate parent entities affecting the ownership of various cable service systems operating as Charter Communications.

Statutory authority: Public Service Law, section 222

Subject: Restructuring of corporate ownership structure.

Purpose: To reorganize where the company will continue to hold the same 100 percent wholly owned parent interest in the revised chains of ownership structure for these subject cable systems, franchises and State certificates of confirmation.

Substance of proposed rule: The Public Service Commission is considering the internal corporate ownership restructuring affecting the ownership of various cable service systems operating as Charter Communications.

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

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

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

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

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

(03-V-1379SA1)

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

Waiver of Franchise Procedures by the Town of Angelica

I.D. No. PSC-43-03-00040-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 the Town of Angelica (Allegany County) for a waiver of sections 594.1, 594.2, 594.3, 594.4(b)(2) and to amend 594.4(a)(3) to shorten the waiting period for requests for proposals from 60 days to 30 days, pertaining to the cable television franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of certain sections of Title 9 NYCRR Part 594, Franchising Procedures.

Purpose: To expedite the franchising process with Time Warner Cable.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Angelica (Allegany County) for a waiver of Sections 594.1, 594.2, 594.3, 594.4(b)(2) and to amend 594.4(a)(3) to shorten the waiting period for request for proposals from 60 days to 30 days pertaining to the cable television franchising process. A waiver of this rule is required to expedite the franchising process between the Town of Angelica (Allegany County) and Time Warner Cable.

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

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

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

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

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

(03-V-1412SA1)

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

Issuance of Debt by Long Island Water Corporation

I.D. No. PSC-43-03-00041-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Long Island Water Corporation for authority to issue and sell long-term debt.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of debt.

Purpose: To issue bonds or other forms of indebtedness.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the request of Long Island Water Corporation for authority to issue and sell long-term debt to pay for the construction of new facilities during the next two years that will serve the public.

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

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

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

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

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

(03-W-1338SA1)

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

Transfer of Assets by Brettview Water Co., Inc.

I.D. No. PSC-43-03-00042-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 joint petition filed by Brettview Water Co., Inc. and the Town of East Fishkill requesting approval to transfer all of the water supply assets of Brettview Water Co., Inc. to the Town of East Fishkill.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of assets.

Purpose: To approve the transfer.

Substance of proposed rule: On October 8, 2003, Brettview Water Co., Inc. and the Town of East Fishkill filed a joint petition requesting approval to transfer all of the water supply assets of Brettview Water Co., Inc. to the Town of East Fishkill for \$600,000. The water company provides flat-rate water service to 274 customers in three contiguous subdivisions known as Brettview, Country Park Acres, and Gustav Fink Section 2. All of the subdivisions are located in the Town of East Fishkill, Dutchess County. No fire protection service is provided. The Commission may approve or reject, in whole or in part, or modify the petition.

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

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

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

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

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

(03-W-1456SA1)

Department of Taxation and Finance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State, New York City and Yonkers Withholding Tables I.D. No. TAF-43-03-00045-P

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

Proposed action: This is a consensus rule making to amend sections 171.5(b)(1), 251.1(b) and 291.1(b); repeal Appendixes 10, 10-A, and 10-C; and addition of new Appendixes 10, 10-A, and 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 671(a)(1); 697(a); 1309; 1312(a); 1329(a); 1332(a); and Model Local Law, section 7 found in section 1340(c); Codes and Ordinances of the City of Yonkers, sections 15-105; 15-108(a); 15-121; and 15-130; Administrative Code of the City of New York, sections 11-1771(a); 11-1797(a); 11-1909; and 11-1943

Subject: New York State, City of New York and City of Yonkers withholding tables and other methods.

Purpose: To provide withholding tables and other methods and to reflect the revision of certain tax rates and the tax table benefit recapture for wages and compensation paid on or after January 1, 2004.

Substance of proposed rule: Section 671(a)(1), section 1309, section 1329(a), and section 7 of the Model Local Law contained in section 1340(c) of the Tax Law and section 11-1771(a) of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of New York State personal income tax, City of Yonkers income tax surcharge, City of Yonkers earnings tax on nonresidents, and City of New York personal income tax on residents reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals Appendixes 10, 10-A and 10-C of Title 20 NYCRR and enacts new Appendixes 10, 10-A and 10-C of such Title to provide new New York State, City of Yonkers, and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2004. The new tables and other methods reflect the revision of the New York State, City of Yonkers, and City of New York tax tables and the tax table benefit recapture in Chapters 62 and 63 of the Laws of 2003 and a New York City local law. This rule also reflects the decreases in the New York State, City of Yonkers and City of New York supplemental withholding tax rates applied to supplemental wage payments.

Text of proposed rule and any required statements and analyses 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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations that are necessary to enforce the personal income tax. Section 1329(a) of the Tax Law and section 15-105 of the Codes and Ordinances of the City of Yonkers provide that the City of Yonkers Income Tax Surcharge shall be withheld in the same manner and form as that required by sections 671 through 678 of the Tax Law, except where noted; section 1332(a) of the Tax Law and section 15-108(a) of the Codes and Ordina-

nances of the City of Yonkers provide that the City of Yonkers Income Tax Surcharge shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Section 7 of the Model Local Law found in section 1340(c) of the Tax Law and sections 15-121 and 15-130 of the Codes and Ordinances of the City of Yonkers provide with respect to the withholding of the City of Yonkers nonresident earnings tax, that the provisions of Part V of Article 22, as described above, shall have the same force and effect as if they were incorporated into the Codes and Ordinances of the City of Yonkers, except where noted. Section 1309(not subdivided) of the Tax Law provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) of the Tax Law provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Tax Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by tax regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York; section 11-1909 (not subdivided) and section 11-1943 (not subdivided) provide that after January 1, 1976 the laws found in Parts V and VI of Article 22 of the Tax Law, which contain sections 671 through 699 of the Tax Law and which pertain to the withholding of tax and the procedural and administrative aspects of the state tax law, shall have the same force and effect as if they were incorporated into the Administrative Code of the City of New York, except where noted.

2. Legislative objectives: New Appendixes 10, 10-A, and 10-C of Title 20 NYCRR contain the revised New York State, City of Yonkers and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2004. The amendments reflect the revision of the tax tables and the tax table benefit recapture in Chapters 62 and 63 of the Laws of 2003. The rule also reflects the decrease, to 8.20 percent, for the New York State supplemental withholding tax rate; the decrease, to 0.41 percent, for the City of Yonkers supplemental withholding tax rate; and the decrease, to 4.80 percent, of the New York City supplemental withholding tax rate, which rates are to be applied to supplemental wage payments. Although the City of Yonkers Earnings Tax on Nonresidents withholding tables and other methods are included as part of the new Appendix 10-A, no revision was required for these tables and other methods included therein by the Laws of 2003.

3. Needs and benefits: This rule sets forth New York State, City of Yonkers and City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2004, reflecting the revision of the tax tables and the tax table benefit recapture contained in Chapters 62 and 63 of the Laws of 2003. This rule benefits taxpayers by providing New York State, City of Yonkers and City of New York withholding rates that more accurately reflect the current income tax rates. If this rule was not promulgated, the use of the existing withholding tables would cause some over withholding for some taxpayers.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law, the Codes and Ordinances of the City of Yonkers, and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of New York State, City of Yonkers and City of New York personal income tax on residents, and City of Yonkers nonresident earnings tax reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendixes 10, 10-A, and 10-C of Title 20 NYCRR to the rates of the New York State income tax, the City of Yonkers income tax surcharge on residents and the City of Yonkers nonresident earnings tax, and the City of New York personal income tax on residents, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to revise the New York State withholding tables and other methods, the City of Yonkers income tax surcharge on residents and earnings tax on nonresidents withholding tables and other methods, and the City of New York personal income tax on residents withholding tables and other methods arises due to the statutory change in the rates of New York State and City of New York

personal income tax, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Management Services Bureau, Operations Support Bureau and Bureau of Fiscal Management.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be sent copies of the new tables and other methods as part of the employer's guide which is routinely revised.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since the Tax Law, the Codes and Ordinances of the City of Yonkers, and the Administrative Code of the City of New York mandate that New York State, City of Yonkers and City of New York withholding tables and other methods be promulgated (see Section 1 of this statement), there are no viable alternatives to providing such tables and other methods. The only alternative to promulgating this rule would be to allow the current withholding tables to remain in effect. This alternative, however, would require that employers withhold at rates that do not reflect the personal income tax rates of New York State, City of Yonkers and City of New York which will be in effect for the 2004 tax year.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: Affected employers will be receiving the required information in sufficient time to implement the revised New York State, City of Yonkers and City of New York withholding tables and other methods for wages and other compensation paid on or after January 1, 2004.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, which are currently subject to the New York State, City of Yonkers, and City of New York withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the New York State, City of Yonkers, and City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised New York State, City of Yonkers, and City of New York withholding tables and other methods. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms or other paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any of such services.

4. Compliance costs: Small businesses and local governments are already subject to the New York State, City of Yonkers, and City of New York withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: Sections 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1332 of the Tax Law mandates, in part, that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the meth-

ods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the New York Conference of Mayors, the Association of Towns of New York State, the New York State Association of Counties, the Deputy Secretary of State for Local Government and Community Services, the Small Business Council of the New York State Business Council, the National Federation of Independent Businesses, the Division of Small Business of the New York State Department of Economic Development and the Retail Council of New York State.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(13) of the State Administrative Procedure Act, who is currently subject to the New York State, City of Yonkers and City of New York withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The number of employers that are also public or private interests in rural areas cannot be determined with any degree of certainty. According to information supplied by the former New York State Office of Rural Affairs, there are 44 counties throughout New York State that are rural areas (having a population of less than 200,000) and 71 towns in the remaining 18 counties of New York State that are rural areas (with population densities of 150 people or less per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the New York State, City of Yonkers and City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms or other paperwork.

Further, many employers currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the New York State, City of Yonkers and City of New York withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of Yonkers and City of New York purposes. As such, these changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Sections 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1332 of the Tax Law mandates, in part, that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the withholding requirements.

5. Rural area participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the New York Conference of Mayors, the Association of Towns of New York State, the New York State Association of Counties, the Deputy Secretary of State for Local Government and Community Services, the Small Business Council of the New York State Business Council, the National Federation of Independent Businesses, the Division of Small Business of the New York State Department of Economic Development and the Retail Council of New York State.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. These amendments provide new New York State, City of Yonkers and City of New York withholding tables and other methods, applicable for compensation paid on or after January 1, 2004, which reflect the revision of the tax tables and the tax

table benefit recapture in Chapters 62 and 63 of the Laws of 2003. The rule also reflects the decreases in the New York State, City of Yonkers and City of New York supplemental withholding tax rates applied to supplemental wage payments.