

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Golden Nematode Quarantine

I.D. No. AAM-34-04-00001-E
Filing No. 883
Filing date: Aug. 4, 2004
Effective date: Aug. 4, 2004

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

Action taken: Amendment of section 127.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County. The extension of the quarantine to certain lands currently owned or operated by Martens Farms is in response to the recent detection of golden nematode on that farm. The extension of the quarantine to a field

currently owned or operated by Hoeffner Farms is consistent with the most recent revisions to the federal regulations at 7 CFR sections 301.85-1 through 301.85-10 which extend the federal golden nematode quarantine to that field.

The golden nematode, *Globodera rostochiensis*, non-indigenous to the United States, is a microscopic eelworm native to Europe. It is one of the world's most destructive crop pests, which attacks potatoes, tomatoes and eggplants by boring into their roots. The resulting damage by the golden nematode affects the growth and crop yield of the plant and may result in the death of the plant. Once established in the soil, the golden nematode is easily spread to non-infested areas through the movement of the infested plants and infected soil. The golden nematode was discovered in Europe during the 19th century and was first detected in the United States on a potato farm on Long Island in 1941. The pest subsequently spread beyond that farm to other areas on Long Island. The emergence of this pest prompted the establishment of a cooperative federal-state golden nematode control program shortly after the end of World War II. The program was dedicated to the control of the golden nematode and included laboratory analysis, research, survey activities and quarantine enforcement. In 1967, the golden nematode was detected on a farm near the Town of Prattsburg in Steuben County and subsequently spread to parts of Cayuga, Genesee, Livingston, Orleans, Seneca and Wayne Counties. The establishment of federal and state golden nematode quarantines as well as restrictions on the movement of host materials played key roles in preventing the further spread of the golden nematode. As of 2002, the quarantines had effectively confined this pest to 6,000 acres of farmland in Nassau and Suffolk Counties on Long Island and the Counties of Cayuga, Genesee, Livingston, Orleans, Seneca, Steuben and Wayne in western New York State. However, the golden nematode has since been detected on a farm in the Town of Mentz in Cayuga County and a farm in the Town of Fremont in Steuben County. Accordingly, it is necessary to extend the golden nematode quarantine to the lands owned and operated by these farms.

Based on the facts and circumstances set forth above, the department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. Since the Federal quarantine has not yet been revised to address the recent detection of the golden nematode on certain lands currently owned or operated by the Martens Farm in the Town of Mentz in Cayuga County, the failure to immediately extend the State quarantine to those areas will promote the spread of this pest to uninfested areas within and outside New York State, through the movement of infested plants and infected soil. Although the federal quarantine has been extended to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County, that quarantine only addresses the interstate movement of infested plants and infected soil. Consequently, the failure to immediately extend the State quarantine to that field will promote the spread of this pest to uninfested areas within New York State. This would not only result in damage to potato, tomato and eggplant crops in New York and other states, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the potato, tomato and eggplant producers and producers of soil-bearing commodities, such as nursery stock and onions, throughout New York State. The consequent loss of business to these producers would harm the agriculture industry which is important to New York State's economy and as such, would harm the general welfare. Given the potential for the spread of the golden nematode beyond the areas currently infested and the detrimental consequences that would have, it

appears that this rule should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Host materials (potatoes, tomatoes and eggplants) and soil.

Purpose: To modify the golden nematode quarantine to prevent the further spread of this pest.

Text of emergency rule: Section 127.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding new subdivisions (l) and (m) to read as follows:

(l) *That area located in the Town of Fremont in Steuben County and bounded by a line beginning at a point on Babcock Road which intersects a farm road at latitude/longitude coordinates N42°26'12.5" W77°34'30.4" then west along the farm road to coordinates N42°26'12.2" W77°34'41.0", then south to coordinates N42°26'09.6" W77°34'40.9" then west to coordinates N42°26'09.4" W77°34'50.7" then south to coordinates N42°26'00.7" W77°34'50.3" then east to coordinates N42°25'59.9" W77°34'40.4", then south to coordinates N42°25'54.7" W77°34'40.0" then east to coordinates N42°25'56.3" W77°34'37.7" then northeast to coordinates N42°25'58.9" W77°34'35.0" then east to coordinates N42°25'58.9" W77°34'34.1" then north to N42°26'05.8" W77°34'32.5" then east to N42°26'05.7" W77°34'29.9" then north to the point of beginning.*

(m) *That area located in the Town of Mentz in Cayuga County currently owned or operated by Martens Farms which lies in an area bounded as follows: beginning at the intersection of Tow Path Road and Maiden Lane following Tow Path Road west to a point where it intersects with the Town of Mentz boundary, following north along Town of Mentz boundary to a point where it intersects with Maiden Lane, followed eastward back to the intersection of Maiden Lane and Tow Path Road, in the Town of Mentz in the county of Cayuga.*

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 November 1, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Robert Mungari, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County.

The modification of the golden nematode quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of this injurious pest.

3. Needs and benefits:

The golden nematode, *Globodera rostochiensis*, non-indigenous to the United States, is a microscopic eelworm native to Europe. It is one of the world's most destructive crop pests, which attacks potatoes, tomatoes and eggplants by boring into their roots. The resulting damage by the golden nematode affects the growth and crop yield of the plant and may result in the death of the plant. Once established in the soil, the golden nematode is easily spread to non-infected areas through the movement of the infested

plants and infected soil. The golden nematode was discovered in Europe during the 19th century and was first detected in the United States on a potato farm on Long Island in 1941. The pest subsequently spread beyond that farm to other areas on Long Island. The emergence of this pest prompted the establishment of a cooperative federal-state golden nematode control program shortly after the end of World War II. The program was dedicated to the control of the golden nematode and included laboratory analysis, research, survey activities and quarantine enforcement. In 1967, the golden nematode was detected on a farm near the Town of Prattsburg in Steuben County and subsequently spread to parts of Cayuga, Genesee, Livingston, Orleans, Seneca and Wayne Counties. The establishment of federal and state golden nematode quarantines as well as restrictions on the movement of host materials played key roles in preventing the further spread of the golden nematode. As of 2002, the quarantines had effectively confined this pest to 6,000 acres of farmland in Nassau and Suffolk Counties on Long Island and the Counties of Cayuga, Genesee, Livingston, Orleans, Seneca, Steuben and Wayne in western New York State. However, the golden nematode has since been detected on a farm in the Town of Mentz in Cayuga County and a farm in the Town of Fremont in Steuben County. Accordingly, it is necessary to extend the golden nematode quarantine to certain lands owned or operated by these farms.

The effective control of the golden nematode within the areas of the State where this pest has been found is important to protect New York agriculture generally, and potato, tomato and eggplant producers in New York, specifically. The failure to immediately extend the golden nematode quarantine to certain lands owned or operated by these two farms will promote the spread of this pest to uninfested areas through the movement of infested plants and infected soil. This would not only result in damage to potato, tomato and eggplant crops in New York and other states, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the potato, tomato and eggplant producers and producers of soil-bearing commodities, such as nursery stock and onions, throughout New York State. It is estimated that there are 530 potato producers, 1,212 tomato producers and 124 eggplant producers in New York. They employ an estimated 2,420 people and generate 92.7-million dollars in revenue per year. The consequent loss of business to these producers would harm the agriculture industry which is vastly important to New York State's economy and as such, would harm the general welfare.

4. Costs:

(a) Costs to the State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties:

Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. Depending upon the availability of resources and personnel, cleaning and sanitizing will be provided free of charge by the United States Department of Agriculture (USDA) and/or the Department. If, however, resources and personnel are not available at a given point in time, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. Regulated parties will incur an initial capital cost of \$400.00 for the purchase of a gasoline-powered power washer to clean and sanitize the equipment. It is estimated that one worker earning \$10.00 per hour can clean and sanitize equipment in one hour. Since a potato field is entered 11 times a growing season for purposes of planting, crop management and harvest, regulated parties will incur, at most, annual costs for continued compliance with the rule of \$110.00 (\$10.00 per hour × 11). Of course, these costs will be lower to the extent scheduling permits the USDA and/or the Department to clean and sanitize the equipment.

Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.* infested) acreage while maintaining populations of the golden nematode below a level at which the pest can spread. Since the cost for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None.

(ii) It is anticipated that the Department will be able to use existing personnel to administer the extension of the quarantine and to perform the

necessary cleaning and sanitizing of equipment in the extended quarantine area.

5. Local government mandate:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

None. The failure of the State to modify the quarantine to reflect the areas in which the golden nematode has been detected would result not only in damage to potato, tomato and eggplant crops in New York and other states, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the potato, tomato and eggplant producers and producers of soil-bearing commodities, such as nursery stock and onions, throughout New York State.

9. Federal standards:

The extension of the quarantine to certain lands currently owned or operated by Hoeffner Farm in the Town of Freemont in Steuben County is consistent with the most recent revisions to the federal regulations at 7 CFR sections 301.85-1 through 301.85-10. Accordingly, this part of the amendment does not exceed any minimum standards for the same or similar subject areas. The extension of the quarantine to certain lands currently owned or operated by Martens Farm in the Town of Mentz in Cayuga County is in response to the recent detection by the Department of golden nematode on that farm. The federal quarantine has not yet been revised to address this detection of the pest.

10. Compliance schedule:

Immediate.

Regulatory Flexibility Analysis

1. Effect on small business:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County.

The rule will affect these two farms, both of which are small businesses.

It is anticipated that the rule will have no impact on local governments.

2. Compliance requirements:

Farming and construction equipment on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone.

Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations.

It is anticipated that the rule will have no impact on local governments.

3. Professional services:

In order to comply with the amendments, the two farms will have to have their farming and construction equipment cleaned and sanitized before it leaves the quarantine zone. Depending upon the availability of resources and personnel, this service will be provided by the United States Department of Agriculture (USDA) and/or the Department. Otherwise, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone.

It is anticipated that the rule will have no impact on local governments.

4. Compliance costs:

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

Regulated parties will incur an initial capital cost of \$400.00 for the purchase of a gasoline-powered power washer to clean and sanitize the equipment.

(b) Annual cost for continuing compliance with the proposed rule:

Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. Depending upon the availability of resources and personnel, cleaning and sanitizing will be provided free of charge by the United States Department of Agriculture (USDA) and/or the Department. If, however, resources and personnel are not available at a given point in time, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. It is estimated that one worker earning \$10.00 per hour can clean and sanitize equipment in one hour. Since a potato field is entered 11 times a growing season for purposes of planting, crop management and harvest, regulated parties will incur, at most, annual costs for continued compliance with the rule of \$110.00 (

\$10.00 per hour × 11). Of course, this cost will be lower to the extent scheduling permits the USDA and/or the Department to clean and sanitize the equipment.

Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.* infested) acreage while maintaining populations of the golden nematode below a level at which the pest can spread. Since the cost for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

It is anticipated that the rule will have no impact on local governments.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. The rule minimizes adverse economic impact by limiting the modified quarantined areas to only those areas where the golden nematode has been detected. The rule also minimizes adverse economic impact by providing that the USDA and/or Department will clean and sanitize farm and construction equipment free of charge, depending upon the availability of resources and personnel. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

It is anticipated that the rule will have no impact on local governments.

6. Small business and local government participation:

The Department has contacted the owners, operators and representatives of the two farms which are affected by the extension of the quarantine.

It is anticipated that the rule will have no impact on local governments.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. However, cleaning and sanitizing will be provided at no charge by USDA and/or the Department, depending upon the availability of resources and personnel. Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.* infested) acreage while maintaining populations of the golden nematode below a level at which the pest can spread. Since the cost for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

It is anticipated that the rule will have no impact on local governments.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County.

The rule will affect these two farms, both of which are in rural areas.

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

The rule will not require any reporting or recordkeeping requirements for regulated parties.

With respect to compliance requirements, farming and construction equipment on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. Depending upon the availability of resources and personnel, this service will be provided by the United States Department of Agriculture (USDA) and/or the Department. Otherwise, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.* infested) acreage while maintaining populations of the

golden nematode below a level at which the pest can spread. Since the cost for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

3. Costs:

Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. However, cleaning and sanitizing is provided free of charge by USDA and/or the Department, depending upon the availability of resources and personnel. If resources and personnel are not available at a given point in time, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. Regulated parties will incur an initial capital cost of \$400.00 for the purchase of a gasoline-powered power washer to clean and sanitize the equipment. It is estimated that one worker earning \$10.00 per hour can clean and sanitize equipment in one hour. Since a potato field is entered 11 times a growing season for purposes of planting, crop management and harvest, regulated parties will incur, at most, annual costs for continued compliance with the rule of \$110.00 (\$10.00 per hour × 11). Of course, these costs will be lower to the extent scheduling permits the USDA and/or the Department to clean and sanitize the equipment.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act Section 202-bb(2), the amendments were drafted to minimize adverse impact on all regulated parties, including those in rural areas. The rule minimizes adverse economic impact by limiting the modified quarantined areas to only those areas where the golden nematode has been detected. The rule also minimizes adverse economic impact by providing that the USDA and/or Department will clean and sanitize farm and construction equipment free of charge, depending upon the availability of resources and personnel. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

The Department has contacted the owners, operators and representatives of the two farms which are affected by the extension of the quarantine. Both farms are located in rural areas of the State.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The modification of the quarantine area is designed to prevent the spread of the golden nematode to other parts of the State. It is estimated that there are 530 potato producers, 1,212 tomato producers and 124 eggplant producers in New York. They employ an estimated 2,420 people and generate 92.7-million dollars in revenue per year. A spread of the infestation would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the spread of the golden nematode, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the production of potatoes, tomatoes and eggplant in New York State.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Laboratory Accreditation

I.D. No. CJS-16-04-00019-A

Filing No. 885

Filing date: Aug. 6, 2004

Effective date: Aug. 25, 2004

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

Action taken: Amendment of section 6190.5(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 995-b(1)

Subject: Laboratory accreditation.

Purpose: To require interim inspections during the mid-point of forensic laboratories' re-accreditation cycle.

Text or summary was published in the notice of proposed rule making, I.D. No. CJS-16-04-00019-P, Issue of April 21, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Mark Bonacquist, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, (518) 457-8420

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Professional Licensure in Mental Health Counseling

I.D. No. EDU-34-04-00011-P

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

Proposed action: Addition of section 52.32 and Subpart 79-9 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 6501 (not subdivided); 6504 (not subdivided); 6507(2)(a), (3)(a) and (4)(a); 6508(1); 8402(3)(b), (c) and (d); 8409 (not subdivided); 8411(2)(a) and (b); and 8411(3)

Subject: Professional licensure in mental health counseling.

Purpose: To implement the provisions of art. 163 of the Education Law by establishing education, experience and examination requirements for licensure in the new licensed profession of mental health counseling and standards for registered college programs leading to licensure in this field.

Substance of proposed rule (Full text is not posted on a State website): The State Education Department proposes to add a new section 52.32 and Subpart 79-9 of the Regulations of the Commissioner of Education to establish requirements for the new licensed profession of mental health counseling.

A new section 52.32 is added to establish requirements for college programs leading to licensure in mental health counseling, as follows:

In addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to licensure in mental health counseling, which meets the requirements of section 79-9.1 of this Title, the program shall:

(a) be a master's or doctoral degree program in counseling, which includes at least 45 semester hours, or the equivalent, of study;

(b) contain curricular content that includes but is not limited to each of the following content areas:

(1) human growth and development;

(2) social and cultural foundations of counseling;

(3) counseling theory and practice;

(4) psychopathology;

(5) group dynamics;

(6) lifestyle and career development;

(7) assessment and appraisal of individuals, couples, families and groups;

(8) research and program evaluation;

(9) professional orientation and ethics;

(10) foundations of mental health counseling and consultation;

(11) clinical instruction; and

(c) include a supervised internship or supervised practicum in mental health counseling of at least one-year, defined as at least 600 clock hours for purposes of this section.

A new Subpart 79-9 of the Regulations of the Commissioner of Education is added, to establish requirements that an individual must meet to be licensed as a mental health counselor.

Section 79-9.1 establishes education requirements for licensure. Subdivision (a) defines the term acceptable accrediting agency. Subdivision (b) establishes the education requirement, as follows:

(b) To meet the professional education requirement for licensure as a mental health counselor, the applicant shall present satisfactory evidence of completing:

(1) a master's or doctoral program in counseling registered as leading to licensure in mental health counseling pursuant to section 52.32 of this Title, or a master's or doctoral program in counseling that is accredited by an acceptable accrediting agency, or a master's or doctoral program in counseling that is substantially equivalent to such a registered or accredited program, as determined by the department; or

(2) a program located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of mental health counseling, has been verified in accordance with subdivision (c) of section 59.2 of this Title, and which is determined by the department to be substantially equivalent to a master's or doctoral program in counseling registered by the department as leading to licensure in mental health counseling, pursuant to section 52.32 of this Title, or to a master's or doctoral program in counseling accredited by an acceptable accrediting agency.

Section 79-9.2 establishes the examination requirement for licensure. Subdivision (a) prescribes standards for the examination, subdivision (b) the requirements for admission to the examination, and subdivision (c) the passing score.

Section 79-9.3 establishes the experience requirement for licensure. Subdivisions (a) and (b) establish the general requirements, as follows:

(a) An applicant for licensure as a mental health counselor shall meet the experience requirement for licensure as a mental health counselor by submitting sufficient documentation of having completed a supervised experience of at least 3,000 clock hours providing mental health counseling in a setting acceptable to the department, all in accordance with the requirements of this section.

(b) The supervised experience must be obtained after the applicant completes the program required for licensure as a mental health counselor, as prescribed in section 79-9.1 of this Subpart.

Subdivision (c) establishes the supervision requirements for the experience and subdivision (d) requirements for the setting for the experience.

Section 79-9.4 establishes requirements for a limited permit in mental health counseling, as follows:

(a) An applicant for a limited permit to practice mental health counseling shall:

(1) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(2) meet all requirements for licensure as a mental health counselor, except the examination and/or experience requirements; and

(3) be under the supervision of a supervisor in accordance with the requirements of section 79-9.3 of this Subpart.

(b) The limited permit in mental health counseling shall be issued for specific employment setting(s), acceptable to the department in accordance with the requirements of section 79-9.3 of this Subpart.

(c) The limited permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for an additional 12 months at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements within the first 24 months but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement within the first 24 months, and provided further that the time authorized by such limited permit and subsequent extension shall not exceed 36 months total.

Section 79-9.5 establishes requirements for classifications systems that mental health counselors may use.

Section 79-9.6 establishes special provisions for licensure in mental health counseling. Subdivision (a) establishes an alternative licensure requirement, as follows:

(a) In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a mental health counselor as prescribed in section 8402(3) of the Education Law, may qualify for a license as a mental health counselor through meeting the alternative requirements of this subdivision, provided that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8402(3)(g) of the Education Law;

(2) be of good moral character as determined by the department;

(3) be at least 21 years of age;

(4) have completed a baccalaureate or higher degree program in counseling or in an allied mental health field such as social work, psychology, or marriage and family therapy, that is registered by the department pursuant to Part 52 of this Title, or is an equivalent program as determined by the department, provided that the applicant demonstrates the completion of coursework within such a program that contains curricular content in the study of: human growth and development, counseling theory and practice, and research or program evaluation.

(5) document to the satisfaction of the department of having been engaged in the practice of mental health counseling, as defined in section 8402(1) of the Education Law, on a full-time basis for seven years of the immediately preceding twelve years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of mental health counseling, earned over a 52-week period.

Subdivision (b) establishes alternative requirements for licensure without examination, as follows:

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a mental health counselor, as prescribed in section 8402(3) of the Education Law, except for the examination requirement, may qualify for a license as a mental health counselor through meeting the requirements of this subdivision, provided that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8402(3)(g) of the Education Law;

(2) meet all requirements for the license as a mental health counselor prescribed in section 8402(3) of the Education Law, except the examination requirement; and

(3) either:

(i) document to the satisfaction of the department certification or registration by a national certifying or registering body for mental health counselors, acceptable to the department. To be acceptable to the department, the national certifying or registering body must be recognized nationwide as an organization that certifies or registers mental health counselors throughout the United States based upon a review of their qualifications to practice mental health counseling and must have adequate standards for the review of the applicant's qualifications for practicing mental health counseling, as determined by the department. Such standards must include standards for the review of the applicant's education and experience for practicing mental health counseling and may include an examination requirement. For use under this subdivision, such certification or registration need not be current but shall not have been revoked for misconduct and/or unethical activities. For documentation of the applicant's certification or registration status to be sufficient, the national certifying or registering body must submit documentation verifying the applicant's certification or registration status directly to the department; or

(ii) if there is no national certifying or registering body for mental health counselors acceptable to the department as prescribed in subparagraph (i) of this paragraph, document to the satisfaction of the department of having been engaged in the practice of mental health counseling, as defined in section 8402(1) of the Education Law, on a full-time basis for five years of the immediately preceding eight years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of mental health counseling, earned over a 52-week period.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraphs (b), (c), and (d) of subdivision (3) of section 8402 of the Education Law authorizes the State Education Department to establish implementing standards for the education, experience, and examination requirements that must be met to qualify for a license as a mental health counselor.

Section 8409 of the Education Law, as amended by Chapter 210 of the Laws of 2004, authorizes the State Education Department to establish regulations for the issuance of a limited permit that allows an individual to practice mental health counseling.

Paragraph (a) of subdivision (2) of section 8411 of the Education Law provides that the State Education Department may establish in regulation alternative criteria for licensure in mental health counseling, for applicants who apply by January 1, 2006.

Paragraph (b) of subdivision (2) of section 8411 of the Education Law establishes alternative requirements that permit an applicant to be licensed in mental health counseling without having to pass an examination, for applicants who apply by January 1, 2006.

Subdivision (3) of section 8411 of the Education Law authorizes licensed mental health counselors to use classifications of signs, symptoms, dysfunctions and disorders as approved in the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish standards relating to the education, examination, and experience necessary for licensure as a mental health counselor under Article 163 of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to implement the provisions of Article 163 of the Education Law by establishing education, experience, and examination requirements for licensure in mental health counseling, requirements for limited permits to practice this profession, and standards for registered college programs leading to licensure in this field.

Chapter 676 of the Laws of 2002 added a new Article 163 to the Education Law. Article 163 establishes mental health counseling as one of four new licensed professions in New York State, under the State Board for Mental Health Practitioners. The proposed regulation is needed to implement Article 163 of the Education Law by establishing specific education, experience, and examination requirements that an applicant for licensure must meet.

In addition, in accordance with the requirements of Article 163 of the Education Law, the proposed regulation is needed to set forth standards for registered college programs that lead to licensure in mental health counseling.

As authorized by statute, the proposed regulation is also needed to prescribe substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006, and meet the alternative requirements by that date. This will ease the transition to licensure for individuals already practicing in this field.

4. COSTS:

(a) Costs to State government: The proposed regulation will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 163 of the Education Law for administering this new profession.

(b) Cost to local government: The proposed promulgation establishes requirements for licensure in mental health counseling. The regulation will not impose costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose additional costs on regulated parties over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees, fees for licensing examinations, and fees for limited permits. Article 163 requires applicants for licensure in mental health counseling to be educated at the master's or doctoral degree level. The proposed regulation simply establishes the content of this graduate level coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 163 of the Education Law relating to the licensure of mental health counselors. It does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or record-keeping requirements beyond those imposed by Article 163 of the Education Law. In accordance with Article 163, applicants for licensure will be required to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of programs leading to licensure in mental health counseling will be required to submit to the State Education Department evidence of meeting program registration requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for licensure in psychoanalysis.

10. COMPLIANCE SCHEDULE:

Applicants must comply with the regulation on the stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed regulation concerns requirements that an individual must meet to become licensed in the profession of mental health counseling and that college programs must meet to be registered by the State Education Department as leading to licensure in this field. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to individuals who apply for licensure in mental health counseling and colleges that seek registration of programs leading to licensure in this field located in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed regulation implements Article 163 of the Education Law, which establishes the new licensed profession of mental health counseling. The regulation implements the statute by establishing specific education, experience, and examination requirements that an applicant for licensure must meet, including those located in rural areas of the State.

In addition, in accordance with Article 163 of the Education Law, the regulation sets forth registration standards for college programs that lead to licensure in this field. As authorized by statute, the proposed regulation also prescribes substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006, and meet the alternative requirements by that date.

The proposed regulation does not impose reporting requirements over and above that required by statute. In accordance with statutory requirements, applicants for licensure in mental health counseling will have to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of programs

leading to licensure in this field will be required to submit to the State Education Department evidence of meeting program registration requirements.

The proposed regulation will not impose recordkeeping requirements on regulated parties, and will not require regulated parties to obtain professional services to comply beyond the educational services needed to meet the professional education requirements for licensure.

3. COSTS:

The proposed regulation will not impose additional costs on regulated parties, including those located in rural areas of the State, over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees and fees for limited permits. Article 163 requires applicants for licensure in mental health counseling to be educated at the master's or doctoral degree level. The proposed regulation simply establishes the content of this graduate level coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule establishes professional education, experience, and examination standards required for licensure in mental health counseling, as directed by Article 163 of the Education Law. It also establishes requirements for college programs registered as leading to licensure in this field. The statute makes no exception for individuals or entities located in rural areas of the State. The State Education Department has determined that such requirements should apply to all individuals seeking licensure no matter their geographic location to ensure an adequate standard of competency across the State. Likewise, the Department has determined that registered college programs that lead to licensure should be subject to the same requirements, regardless of their geographic location, to ensure that candidates for licensure are adequately prepared. Because of the nature of the proposed rule, alternative approaches for entities located in rural areas of the State were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing all parties having an interest in mental health counseling. Included in this group was the State Board for Mental Health Practitioners and professional associations representing individuals practicing mental health counseling. These groups have members who live or work in rural areas. In addition, comments were solicited from colleges and universities in the State, some of which are located in rural areas. Each has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

Article 163 of the Education Law establishes mental health counseling as a licensed profession in New York State. The proposed regulation implements the requirements of Article 163 of the Education Law by establishing education, experience, and examination standards for licensure, as required by that statute. It also sets forth standards for registered college programs that lead to licensure in this field, in accordance with statutory requirements.

The proposed regulation implements statutory requirements and directives and will have no impact on jobs or employment opportunities, beyond the impact of Article 163. In addition, the regulation, which relates to licensure qualifications, will have no impact on labor market demand for mental health counselors. It will not affect the number of jobs or employment opportunities in this field. Because it is evident from the nature of this regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Professional Licensure in Marriage and Family Therapy

I.D. No. EDU-34-04-00012-P

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

Proposed action: Addition of section 52.33 and Subpart 79-10 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 6501 (not subdivided); 6504 (not subdivided);

6507(2)(a), (3)(a) and (4)(a); 6508(1); 8403(3)(b), (c) and (d); 8409 (not subdivided); 8411(2)(a) and (b); and 8411(3)

Subject: Professional licensure in marriage and family therapy.

Purpose: To implement the provisions of art. 163 of the Education Law by establishing education, experience, and examination requirements for licensure in the new licensed profession of marriage and family therapy, and standards for registered college programs leading to licensure in this field.

Substance of proposed rule (Full text is not posted on a State website):

The State Education Department proposes to add a new section 52.33 and Subpart 79-10 of the Regulations of the Commissioner of Education to establish requirements for the new licensed profession of marriage and family therapy.

A new section 52.33 is added to establish requirements for college programs leading to licensure in marriage and family therapy, as follows:
52.33 Marriage and family therapy.

In addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to licensure in marriage and family therapy, which meets the requirements of section 79-10.1 of this Title, the program shall:

(a) be a program in marriage and family therapy leading to a master's or doctoral degree, which includes at least 36 semester hours, or the equivalent, of study;

(b) contain curricular content that includes but is not limited to each of the following content areas:

(1) the study of human development, including individual, child and family development, at least three semester hours;

(2) clinical knowledge, including but not limited to psychopathology, at least six semester hours;

(3) theoretical knowledge, including but not limited to marriage and family therapy, at least six semester hours;

(4) family law;

(5) research, at least three semester hours; and

(6) professional ethics, at least three semester hours; and

(c) include a supervised practicum in marriage and family counseling of at least 300 client contact hours.

A new Subpart 79-10 of the Regulations of the Commissioner of Education is added, to establish requirements that an individual must meet to be licensed as a marriage and family therapist.

Section 79.1 establishes education requirements for licensure. Subdivision (a) defines the term acceptable accrediting agency. Subdivision (b) establishes the education requirement, as follows:

(b) To meet the professional education requirement for licensure as a marriage and family therapist, the applicant shall present satisfactory evidence of completing:

(1) a master's or doctoral program in marriage and family therapy registered as leading to licensure in this field, pursuant to section 52.33 of this Title, or a master's or doctoral program in marriage and family therapy that is accredited by an acceptable accrediting agency, or a master's or doctoral program in marriage and family therapy that is substantially equivalent to such a registered or accredited program, as determined by the department; or

(2) a graduate degree program in an allied mental health field acceptable to the department, including but not limited to a graduate degree program in social work, psychology, and mental health counseling, and additional graduate level coursework, if needed, which together are determined by the department to provide the substantial equivalent professional educational preparation as that obtained from a master's or doctoral program in marriage and family therapy registered as leading to licensure in this field, pursuant to section 52.33 of this Title; or

(3) a program located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of marriage and family therapy, has been verified in accordance with subdivision (c) of section 59.2 of this Title, and which is determined by the department to be substantially equivalent to a master's or doctoral program in marriage and family therapy registered by the department as leading to licensure in this field, pursuant to section 52.33 of this Title, or to a master's or doctoral program in marriage and family therapy accredited by an acceptable accrediting agency.

Section 79-10.2 establishes the examination requirement for licensure. Subdivision (a) prescribes standards for the examination, subdivision (b) the requirements for admission to the examination, and subdivision (c) the passing score.

Section 79-9.3 establishes the experience requirement for licensure. Subdivision (a), (b), and (c) establish the general requirement, as follows:

(a) An applicant for licensure as a licensed marriage and family therapist shall meet the supervised experience requirement set forth in this section.

(b) An applicant who has met the education requirement prescribed in section 79-10.1 of this Subpart through completing a master's or doctoral program registered by the department as leading to licensure in this field or an equivalent program in marriage and family therapy shall complete at least 1,500 client contact hours of supervised clinical experience in a setting acceptable to the department. That experience may include supervised client contact clock hours completed as part of the program in marriage and family therapy or after completing such program, provided that such 1,500 client contact hours must be in addition to the supervised practicum of 300 client contact hours which the registered program in marriage and family therapy or its equivalent must contain, in accordance with the requirements of section 52.33 of this Title.

(c) An applicant who has met the education requirement prescribed in section 79-10.1 of this Subpart through completing a graduate degree program in an allied mental health field and additional graduate level coursework, if needed, shall complete at least 1,500 client contact clock hours of supervised clinical experience at a setting acceptable to the department, which all must be completed after completing the graduate degree program in the allied mental health field.

Subdivision (d) establishes supervision requirements for the experience and subdivision (e) requirement for the setting for the experience.

Section 79-10.4 establishes requirements for a limited permit in marriage and family therapy, as follows:

(a) An applicant for a limited permit to practice marriage and family therapy shall:

(1) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(2) meet all requirements for licensure as a marriage and family therapist, except the examination and/or experience requirements; and

(3) be under the supervision of a supervisor in accordance with the requirements of section 79-10.3 of this Subpart.

(b) The limited permit in marriage and family therapy shall be issued for specific employment setting(s), acceptable to the department in accordance with the requirements of section 79-10.3 of this Subpart.

(c) The limited permit in marriage and family therapy shall be valid for a period of not more than 12 months, provided that the limited permit may be extended for an additional 12 months at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements within the first 12 months but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement within the first 12 months, and provided further that the time authorized by such limited permit and subsequent extension shall not exceed 24 months total.

Section 79-10.5 establishes requirements for classification systems that marriage and family therapist may use.

Section 79-10.6 establishes special provisions for licensure in marriage and family therapy. Subdivision (a) establishes an alternative licensure requirement, as follows:

(a) In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a marriage and family therapist as prescribed in section 8403(3) of the Education Law, may qualify for a license as a marriage and family therapist through meeting the alternative requirements of this subdivision, provided that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8403(3)(g) of the Education Law;

(2) be of good moral character as determined by the department;

(3) be at least 21 years of age;

(4) have completed a baccalaureate or higher degree program in marriage and family therapy or in an allied mental health field such as social work, psychology, or mental health counseling, that is registered by the department pursuant to Part 52 of this Title, or is an equivalent program as determined by the department, provided that the applicant demonstrates the completion of coursework within such programs that contains curricular content in the study of: human development, marital and family therapy, and research.

(5) document to the satisfaction of the department of having been engaged in the practice of marriage and family therapy, as defined in section 8403(1) of the Education Law, on a full-time basis for seven years of the immediately preceding twelve years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of marriage and family therapy, earned over a 52-week period.

Subdivision (b) establishes alternative requirements for licensure without examination, as follows:

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a marriage and family therapist as prescribed in section 8403(3) of the Education Law, except for the examination requirement, may qualify for a license as a marriage and family therapist through meeting the requirements of this subdivision, provided that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8403(3)(g) of the Education Law;

(2) meet all requirements for the license as a marriage and family therapist prescribed in section 8403(3) of the Education Law, except the examination requirement; and

(3) either:

(i) document to the satisfaction of the department certification or registration by a national certifying or registering body for marriage and family therapists, acceptable to the department. To be acceptable to the department, the national certifying or registering body must be recognized nationwide as an organization that certifies or registers marriage and family therapists throughout the United States based upon a review of their qualifications to practice marriage and family therapy and must have adequate standards for the review of the applicant's qualifications for practicing marriage and family therapy, as determined by the department. Such standards must include standards for the review of the applicant's education and experience for practicing marriage and family therapy and may include an examination requirement. For use under this subdivision, such certification or registration need not be current but shall not have been revoked for misconduct and/or unethical activities. For documentation of the applicant's certification or registration status to be sufficient, the national certifying or registering body must submit documentation verifying the applicant's certification or registration status directly to the department; or

(ii) if there is no national certifying or registering body for marriage and family therapists acceptable to the department as prescribed in subparagraph (i) of this paragraph, document to the satisfaction of the department of having been engaged in the practice of marriage and family therapy, as defined in section 8403(1) of the Education Law, on a full-time basis for five years of the immediately preceding eight years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of marriage and family therapy, earned over a 52-week period.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraphs (b), (c), and (d) of subdivision (3) of section 8403 of the Education Law authorizes the State Education Department to establish implementing standards for the education, experience, and examination requirements that must be met to qualify for a license as a licensed marriage and family therapist.

Section 8409 of the Education Law, as amended by Chapter 210 of the Laws of 2004, authorizes the State Education Department to establish regulations for the issuance of a limited permit that allows an individual to practice marriage and family therapy.

Paragraph (a) of subdivision (2) of section 8411 of the Education Law provides that the State Education Department may establish in regulation alternative criteria for licensure in marriage and family therapy, for applicants who apply by January 1, 2006.

Paragraph (b) of subdivision (2) of section 8411 of the Education Law establishes alternative requirements that permit an applicant to be licensed without having to pass an examination, for applicants who apply by January 1, 2006.

Subdivision (3) of section 8411 of the Education Law authorizes licensed marriage and family to use classifications of signs, symptoms, dysfunctions and disorders as approved in the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish standards relating to the education, examination, and experience necessary for licensure as a licensed marriage and family therapist under Article 163 of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to implement the provisions of Article 163 of the Education Law by establishing education, experience, and examination requirements for licensure in marriage and family therapy, requirements for limited permits to practice this profession, and standards for registered college programs leading to licensure in this field.

Chapter 676 of the Laws of 2002 added a new Article 163 to the Education Law. Article 163 establishes marriage and family therapy as one of four new licensed professions in New York State, under the State Board for Mental Health Practitioners. The proposed regulation is needed to implement Article 163 of the Education Law by establishing specific education, experience, and examination requirements that an applicant for licensure must meet.

In addition, in accordance with the requirements of Article 163 of the Education Law, the proposed regulation is needed to set forth standards for registered college programs that lead to licensure in marriage and family therapy.

As authorized by statute, the proposed regulation is also needed to prescribe substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006, and meet the alternative requirements by that date. This will ease the transition to licensure for individuals already practicing in this field.

4. COSTS:

(a) Costs to State government: The proposed regulation will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 163 of the Education Law for administering this new profession.

(b) Cost to local government: The proposed promulgation establishes requirements for licensure in marriage and family therapy. The regulation will not impose costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose additional costs on regulated parties over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees, fees for licensing examinations, and fees for limited permits. Article 163 requires applicants for licensure in marriage and family therapy to be educated at the master's or doctoral degree level. The proposed regulation simply establishes the content of this graduate level

coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of article 163 of the Education Law relating to the licensure and practice of the licensed marriage and family therapist. It does not impose any program, service, duty, or responsibly upon local governments.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or record-keeping requirements beyond those imposed by Article 163 of the Education Law. In accordance with Article 163, applicants for licensure will be required to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of programs leading to licensure in this field will be required to submit to the State Education Department evidence of meeting program registration requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for licensure as a marriage and family therapist.

10. COMPLIANCE SCHEDULE:

Applicants must comply with the regulation on the stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed regulation concerns requirements that an individual must meet to become licensed in the profession of marriage and family therapy and that college programs must meet to be registered by the State Education Department as leading to licensure in this field. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to individuals who apply for licensure in marriage and family therapy and colleges that seek registration of programs leading to licensure in this field located in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed regulation implements Article 163 of the Education Law, which establishes the new licensed profession of marriage and family therapy. The regulation implements the statute by establishing specific education, experience, and examination requirements that an applicant for licensure must meet, including those located in rural areas of the State.

In addition, in accordance with Article 163 of the Education Law, the regulation sets forth registration standards for college programs that lead to licensure in this field. As authorized by statute, the proposed regulation also prescribes substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006, and meet the alternative requirements by that date.

The proposed regulation does not impose reporting requirements over and above that required by statute. In accordance with statutory requirements, applicants for licensure in marriage and family therapy will have to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of programs leading to licensure in this field will be required to submit to the State Education Department evidence of meeting program registration requirements.

The proposed regulation will not impose recordkeeping requirements on regulated parties, and will not require regulated parties to obtain profes-

sional services to comply beyond the educational services needed to meet the professional education requirement for licensure.

3. COSTS:

The proposed regulation will not impose additional costs on regulated parties, including those located in rural areas of the State, over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees and fees for limited permits. Article 163 requires applicants for licensure in marriage and family therapy to be educated at the master's or doctoral degree level. The proposed regulation simply establishes the content of this graduate level coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule establishes professional education, experience, and examination standards required for licensure in marriage and family therapy, as directed by Article 163 of the Education Law. It also establishes requirements for college programs registered as leading to licensure in this field. The statute makes no exception for individuals or entities located in rural areas of the State. The State Education Department has determined that such requirements should apply to all individuals seeking licensure no matter their geographic location to ensure an adequate standard of competency across the State. Likewise, the Department has determined that registered college programs that lead to licensure should be subject to the same requirements, regardless of their geographic location, to ensure that candidates for licensure are adequately prepared. Because of the nature of the proposed rule, alternative approaches for entities located in rural areas of the State were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing all parties having an interest in marriage and family therapy. Included in this group was the State Board for Mental Health Practitioners and professional associations representing individuals practicing marriage and family therapy. These groups have members who live or work in rural areas. In addition, comments were solicited from colleges and universities in the State, some of which are located in rural areas. Each has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

Article 163 of the Education Law establishes marriage and family therapy as a licensed profession in New York State. The proposed regulation implements the requirements of Article 163 of the Education Law by establishing education, experience, and examination standards for licensure, as required by that statute. It also sets forth standards for registered college programs that lead to licensure in this field, in accordance with statutory requirements.

The proposed regulation implements statutory requirements and directives and will have no impact on jobs or employment opportunities, beyond the impact of Article 163. In addition, the regulation, which relates to licensure qualifications, will have no impact on labor market demand for marriage and family therapists. It will not affect the number of jobs or employment opportunities in this field. Because it is evident from the nature of this regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Professional Licensure in Creative Arts Therapy

I.D. No. EDU-34-04-00013-P

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

Proposed action: Addition of section 52.34 and Subpart 79-11 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 6501 (not subdivided); 6504 (not subdivided); 6507(2)(a), (3)(a) and (4)(a); 6508(1); 8404(3)(b), (c) and (d); 8409 (not subdivided); 8411(2)(a) and (b); and 8411(3)

Subject: Professional licensure in creative arts therapy.

Purpose: To implement the provisions of art. 163 of the Education Law by establishing education, experience, and examination requirements for

licensure in the new licensed profession of creative arts therapy, and standards for registered college programs leading to licensure in this field.

Substance of proposed rule (Full text is not posted on a State website): The State Education Department proposes to add a new section 52.34 and Subpart 79-11 of the Regulations of the Commissioner of Education to establish requirements for the new licensed profession of creative arts therapy.

A new section 52.34 is added to establish requirements for college programs leading to licensure in creative arts therapy, as follows:

In addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to licensure in creative arts therapy, which meets the requirements of section 79-11.1 of this Title, the program shall:

(a) be a master's or doctoral degree program in creative arts therapy, which includes at least 30 semester hours, or the equivalent, of study;

(b) contain curricular content that includes but is not limited to each of the following content areas:

(1) preparation in one or more of the creative arts therapies, including but not limited to art, music, dance, drama, psychodrama, or poetry therapies, for the practice of creative arts therapy as defined in section 8404(1) of the Education Law;

(2) human growth and development;

(3) theories in creative arts therapy;

(4) group dynamics;

(5) assessment and appraisal of individuals and groups;

(6) research and program evaluation;

(7) professional orientation and ethics;

(8) foundations of creative arts therapy and psychopathology; and

(9) clinical instruction; and

(c) include a supervised internship or supervised practicum in the practice of creative arts therapy of at least 500 clock hours.

A new Subpart 79-9 of the Regulations of the Commissioner of Education is added, to establish requirements that an individual must meet to be licensed as a creative arts therapist.

Section 79-9.1 establishes education requirements for licensure. Subdivision (a) defines the term acceptable accrediting agency. Subdivision (b) establishes the education requirement, as follows:

(b) To meet the professional education requirement for licensure as a creative arts therapist, the applicant shall present satisfactory evidence of completing:

(1) a master's or doctoral program in creative arts therapy registered as leading to licensure in this field pursuant to section 52.34 of this Title, or a master's or doctoral program in creative arts therapy that is accredited by an acceptable accrediting agency, or a master's or doctoral program in creative arts therapy that is substantially equivalent to such a registered or accredited program, as determined by the department; or

(2) a program located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of creative arts therapy, has been verified in accordance with subdivision (c) of section 59.2 of this Title, and which is determined by the department to be substantially equivalent to a master's or doctoral program in creative arts therapy registered by the department as leading to licensure in this field, pursuant to section 52.34 of this Title, or to a master's or doctoral program in creative arts therapy accredited by an acceptable accrediting agency.

Section 79-11.2 establishes the examination requirement for licensure. Subdivision (a) establishes two alternatives: an examination that is offered by an acceptable organization, as determined by the Department, or a scored assessment of case narratives by the State Board for Mental Health Practitioners. Subdivision (b) establishes requirements for admission to the examination, and subdivision (c) the passing score.

Section 79-11.3 establishes the experience requirement for licensure. Subdivisions (a) and (b) establish the general requirements, as follows:

(a) An applicant for licensure as a creative arts therapist shall meet the experience requirement for licensure as a creative arts therapist by submitting sufficient documentation of having completed a supervised experience of at least 1,500 clock hours providing creative arts therapy in a setting acceptable to the department, all in accordance with the requirements of this section.

(b) The supervised experience must be obtained after the applicant completes the program required for licensure as a creative arts therapist, as prescribed in section 79-11.1 of this Subpart.

Subdivision (c) establishes the supervision requirements for the experience and subdivision (d) requirements for the setting for the experience.

Section 79-11.4 establishes requirements for a limited permit in creative arts therapy, as follows:

(a) An applicant for a limited permit to practice creative arts therapy shall:

(1) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(2) meet all requirements for licensure as a creative arts therapist, except the examination and/or experience requirements; and

(3) be under the supervision of a supervisor in accordance with the requirements of section 79-11.3 of this Subpart.

(b) The limited permit in creative arts therapy shall be issued for specific employment setting(s), acceptable to the department in accordance with the requirements of section 79-11.3 of this Subpart.

(c) The limited permit in creative arts therapy shall be valid for a period of not more than 12 months, provided that the limited permit may be extended for an additional 12 months at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements within the first 12 months but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement within the first 12 months, and provided further that the time authorized by such limited permit and subsequent extension shall not exceed 24 months total.

Section 79-11.5 establishes requirements for classifications systems that creative arts therapists may use.

Section 79-11.6 establishes special provisions for licensure in creative arts therapy. Subdivision (a) defines the term acceptable national certifying or registering body as used in this section. Subdivision (b) establishes alternative licensure requirements as follows:

(b) In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a creative arts therapist as prescribed in section 8404(3) of the Education Law, may qualify for a license as a creative arts therapist through meeting the alternative requirements of this subdivision, provided that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8404(3)(g) of the Education Law;

(2) be of good moral character as determined by the department;

(3) be at least 21 years of age;

(4) document to the satisfaction of the department of having been engaged in the practice of creative arts therapy, as defined in section 8404(1) of the Education Law, on a full-time basis for seven years of the immediately preceding twelve years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of creative arts therapy, earned over a 52-week period; and

(5) either:

(i) have completed a baccalaureate or higher degree program in creative arts therapy that is registered by the department pursuant to Part 52 of this Title or is an equivalent program, provided that the applicant demonstrates the completion of coursework within such a program that contains curricular content in the study of: one or more of the arts, including but not limited to music, the fine arts, theater, or literature, for the practice of creative arts therapy; human growth and development; theories in creative arts therapy; and research or program evaluation; or

(ii) document to the satisfaction of the department:

(a) having completed a baccalaureate or higher degree program in a program in any field that is registered by the department pursuant to Part 52 of this Title or is an equivalent program; and

(b) certification or registration by an acceptable national certifying or registering, as defined by subdivision (a) of this section. For use under this subdivision, such certification or registration need not be current but shall not have been revoked for misconduct and/or unethical activities. For documentation of the applicant's certification or registration status to be sufficient, the acceptable national certifying or registering body must submit documentation verifying the applicant's certification or registration status directly to the department.

Subdivision (c) establishes alternative requirements for licensure without examination, as follows:

(c) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a creative arts therapist, as prescribed in section 8404(3) of the Education Law, except for the examination requirement, may qualify for a license as a creative arts therapist through meeting the requirements of this subdivision, provided

that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8404(3)(g) of the Education Law;

(2) meet all requirements for the license as a creative arts therapist prescribed in section 8404(3) of the Education Law, except the examination requirement; and

(3) either:

(i) document to the satisfaction of the department certification or registration by an acceptable national certifying or registering body, as defined by subdivision (a) of this section. For use under this subdivision, such certification or registration need not be current but shall not have been revoked for misconduct and/or unethical activities. For documentation of the applicant's certification or registration status to be sufficient, the acceptable national certifying or registering body must submit documentation verifying the applicant's certification or registration status directly to the department; or

(ii) if there is no acceptable national certifying or registering body for creative arts therapists as defined in subdivision (a) of this section, document to the satisfaction of the department of having been engaged in the practice of creative arts therapy, as defined in section 8404(1) of the Education Law, on a full-time basis for five years of the immediately preceding eight years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of creative arts therapy, earned over a 52-week period.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraphs (b), (c), and (d) of subdivision (3) of section 8404 of the Education Law authorizes the State Education Department to establish implementing standards for the education, experience, and examination requirements that must be met to qualify for a license as a creative arts therapist.

Section 8409 of the Education Law, as amended by Chapter 210 of the Laws of 2004, authorizes the State Education Department to establish regulations for the issuance of a limited permit that allows an individual to practice creative arts therapy.

Paragraph (a) of subdivision (2) of section 8411 of the Education Law provides that the State Education Department may establish in regulation

alternative criteria for licensure in creative arts therapy, for applicants who apply by January 1, 2006.

Paragraph (b) of subdivision (2) of section 8411 of the Education Law establishes alternative requirements that permit an applicant to be licensed in creative arts therapy without having to pass an examination, for applicants who apply by January 1, 2006.

Subdivision (3) of section 8411 of the Education Law authorizes licensed creative arts therapists to use classifications of signs, symptoms, dysfunctions and disorders as approved in the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish standards relating to the education, examination, and experience necessary for licensure as a creative arts therapist under Article 163 of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to implement the provisions of Article 163 of the Education Law by establishing education, experience, and examination requirements for licensure in creative arts therapy, requirements for limited permits to practice this profession, and standards for registered college programs leading to licensure in this field.

Chapter 676 of the Laws of 2002 added a new Article 163 to the Education Law. Article 163 establishes creative arts therapy as one of four new licensed professions in New York State, under the State Board for Mental Health Practitioners. The proposed regulation is needed to implement Article 163 of the Education Law by establishing specific education, experience, and examination requirements that an applicant for licensure must meet.

In addition, in accordance with the requirements of Article 163 of the Education Law, the proposed regulation is needed to set forth standards for registered college programs that lead to licensure in creative arts therapy.

As authorized by statute, the proposed regulation is also needed to prescribe substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006. This will ease the transition to licensure for individuals already practicing in this field.

4. COSTS:

(a) Costs to State government: The proposed regulation will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 163 of the Education Law for administering this new profession.

(b) Cost to local government: The proposed promulgation establishes requirements for licensure in creative arts therapy. The regulation will not impose costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose additional costs on regulated parties over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees, and fees for limited permits. Article 163 requires applicants for licensure in creative arts therapy to be educated at the master's or doctoral degree level. The proposed regulation simply establishes the content of this graduate level coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 163 of the Education Law relating to the licensure of creative arts therapists. It does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or record-keeping requirements beyond those imposed by Article 163 of the Education Law. In accordance with Article 163, applicants for licensure will be required to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of programs leading to licensure in creative arts therapy will be required to submit to the State Education Department evidence of meeting program registration requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for licensure as a creative arts therapist.

10. COMPLIANCE SCHEDULE:

Applicants must comply with the regulation on the stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed regulation concerns requirements that an individual must meet to become licensed in the profession of creative arts therapy and that college programs must meet to be registered by the State Education Department as leading to licensure in this field. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to individuals who apply for licensure in creative arts therapy and colleges that seek registration of programs leading to licensure in this field located in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed regulation implements Article 163 of the Education Law, which establishes the new licensed profession of creative arts therapy. The regulation implements the statute by establishing specific education, experience, and examination requirements that an applicant for licensure must meet, including those located in rural areas of the State.

In addition, in accordance with Article 163 of the Education Law, the regulation sets forth registration standards for college programs that lead to licensure in this field. As authorized by statute, the proposed regulation also prescribes substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006, and meet the alternative requirements by that date.

The proposed regulation does not impose reporting requirements over and above that required by statute. In accordance with statutory requirements, applicants for licensure in creative arts therapy will have to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of programs leading to licensure in this field will be required to submit to the State Education Department evidence of meeting program registration requirements.

The proposed regulation will not impose recordkeeping requirements on regulated parties, and will not require regulated parties to obtain professional services to comply beyond the educational services needed to meet the professional education requirements for licensure.

3. COSTS:

The proposed regulation will not impose additional costs on regulated parties, including those located in rural areas of the State, over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees and fees for limited permits. Article 163 requires applicants for licensure in creative arts therapy to be educated at the master's or doctoral degree level. The proposed regulation simply establishes the content of this graduate level coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule establishes professional education, experience, and examination standards required for licensure in creative arts therapy, as directed by Article 163 of the Education Law. It also establishes requirements for college programs registered as leading to licensure in this field. The statute makes no exception for individuals or entities located in rural areas of the State. The State Education Department has determined that such requirements should apply to all individuals seeking licensure no matter their geographic location to ensure an adequate standard of competency across the State. Likewise, the Department has determined that registered college programs that lead to licensure should be subject to the same requirements, regardless of their geographic location, to ensure that candidates for licensure are adequately prepared. Because of the nature of the proposed rule, alternative approaches for entities located in rural areas of the State were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing all parties having an interest in creative arts therapy. Included in this group was the State Board for Mental Health Practitioners and professional associations representing individuals practicing creative arts therapy. These groups have members who live or work in rural areas. In addition, comments were solicited from colleges and universities in the State, some of which are located in rural areas. Each has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

Article 163 of the Education Law establishes creative arts therapy as a licensed profession in New York State. The proposed regulation implements the requirements of Article 163 of the Education Law by establishing education, experience, and examination standards for licensure, as required by that statute. It also sets forth standards for registered college programs that lead to licensure in this field, in accordance with statutory requirements.

The proposed regulation implements statutory requirements and directives and will have no impact on jobs or employment opportunities, beyond the impact of Article 163. In addition, the regulation, which relates to licensure qualifications, will have no impact on labor market demand for creative arts therapists. It will not affect the number of jobs or employment opportunities in this field. Because it is evident from the nature of this regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Professional Licensure in Psychoanalysis

I.D. No. EDU-34-04-00014-P

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

Proposed action: Addition of section 52.35 and Subpart 79-12 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 6501 (not subdivided); 6504 (not subdivided); 6507(2)(a), (3)(a) and (4)(a); 6508(1); 8405(3)(b), (c) and (d); 8409 (not subdivided); 8411(2)(a) and (b); and 8411(3)

Subject: Professional licensure in psychoanalysis.

Purpose: To implement the provisions of art. 163 of the Education Law by establishing education, experience, and examination requirements for licensure in the new licensed profession of psychoanalysis, and standards for registered college programs leading to licensure in this field.

Substance of proposed rule (Full text is not posted on a State website): The State Education Department proposes to add a new section 52.35 and Subpart 79-12 of the Regulations of the Commissioner of Education to establish requirements for the new licensed profession of psychoanalysis.

A new section 52.35 is added to establish requirements for professional education programs leading to licensure in psychoanalysis, as follows:

In addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to licensure in psychoanalysis, which meets the requirements of section 79-12.1 of this Title, the program shall meet the requirements of this section.

(a) The program shall be offered by a psychoanalytic institute chartered by the Board of Regents, or an institution authorized by its charter or by authorization of the Board of Regents to confer degrees in New York State. The program shall lead to a certificate of completion, which shall be conferred upon students who successfully complete the program.

(b) In order to be admitted into the program, the program shall require the student to have completed a master's or higher degree program in any field registered by the department pursuant to this Part, or a substantially equivalent program.

(c) The course of study shall include coursework substantially equivalent to coursework required in a master's degree program in a health or mental health field of study. The course of study shall include a total of at least 1,350 clock hours of study, distributed as set forth in this subdivision in the following four categories: coursework, personal psychoanalysis, supervised analysis, and clinical experience.

(1) Coursework. The program shall include at least 45 clock hours of classroom instruction in each of the following areas, totaling at least 405 clock hours of classroom instruction:

- (i) personality development;
 - (ii) psychoanalytic theory of psychopathology;
 - (iii) psychoanalytic theory of psychodiagnosis;
 - (iv) sociocultural influence on growth and psychopathology;
 - (v) practice technique (including dreams and symbolic processes);
 - (vi) analysis of resistance, transference, and countertransference;
 - (vii) case seminars on clinical practice;
 - (viii) practice in psychopathology and psychodiagnosis; and
 - (ix) professional ethics and psychoanalytic research methodology;
- (2) Personal psychoanalysis. The program shall require the student to complete at least 300 clock hours of personal psychoanalysis.

(3) Supervised analysis. The program shall include at least 150 clock hours of supervised analysis of the student's psychoanalytic cases. The supervised analysis shall include:

- (i) 50 clock hours of individual supervision with one supervisor working on one case; and
- (ii) at least 100 clock hours of individual supervision with another supervisor working on one or more additional cases.

(4) Clinical experience. The program shall require the student to complete at least 300 clock hours of supervised clinical experience in the practice of psychoanalysis, as defined in section 8405(1) of the Education Law. The clinical experience shall meet the requirements set forth in section 79-12.3 of this Title. In addition, if the setting for the clinical experience is not within the institution offering the program itself, a written contract or agreement shall be executed between the institution and clinical facility which is designated to cooperate in providing the clinical experience, which shall set forth the responsibilities of each party, and shall be signed by the responsible officer of each party.

A new Subpart 79-9 of the Regulations of the Commissioner of Education is added, to establish requirements that an individual must meet to be licensed as a psychoanalyst.

Section 79-9.1 establishes education requirements for licensure. Subdivision (a) defines the term acceptable accrediting agency. Subdivision (b) establishes the education requirement, as follows:

(b) To meet the professional education requirement for licensure as a psychoanalyst, the applicant shall present satisfactory evidence of:

- (1) having received a master's or higher degree through completing a program in any field that is registered by the department pursuant to this Part, or the substantial equivalent; and
- (2) either:

(i) completing a program in psychoanalysis that is registered as leading to licensure in this field pursuant to section 52.35 of this Title, or a program in psychoanalysis that is accredited by an acceptable accrediting agency, or a program in psychoanalysis that is substantially equivalent to such a registered or accredited program, as determined by the department; or

(ii) completing a program that is located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of psychoanalysis, has been verified in accordance with subdivision (c) of section 59.2 of this Title, and which is determined by the department to be substantially equivalent to a program in psychoanalysis registered by the department as leading to licensure in this field, pursuant to section 52.35 of this Title, or to a program in psychoanalysis accredited by an acceptable accrediting agency.

Section 79-12.2 establishes the examination requirement for licensure. Subdivision (a) establishes the requirement, which is a scored assessment of case narratives by the State Board for Mental Health Practitioners. Subdivision (b) establishes requirements for admission to the examination, and subdivision (c) the passing score.

Section 79-12.3 establishes the experience requirement for licensure. Subdivision (a) and (b) establish the general requirements, as follows:

(a) An applicant for licensure as a psychoanalyst shall meet the experience requirement for licensure as a psychoanalyst by submitting sufficient documentation of having completed a supervised experience of at least 1,500 clock hours providing psychoanalysis in a setting acceptable to the department, all in accordance with the requirements of this section.

(b) All or part of the supervised experience may be obtained within the education program required for licensure as a psychoanalyst, as prescribed in section 79-12.1 of this Subpart.

Subdivision (c) establishes the supervision requirements for the experience and subdivision (d) requirements for the setting for the experience.

Section 79-12.4 establishes requirements for a limited permit in psychoanalysis, as follows:

- (a) An applicant for a limited permit to psychoanalysis shall:

(1) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(2) meet all requirements for licensure as a psychoanalyst, except the examination and/or experience requirements; and

(3) be under the supervision of a supervisor in accordance with the requirements of section 79-12.3 of this Subpart.

(b) The limited permit in psychoanalysis shall be issued for specific employment setting(s), acceptable to the department in accordance with the requirements of section 79-12.3 of this Subpart.

(c) The limited permit in psychoanalysis shall be valid for a period of not more than 12 months, provided that the limited permit may be extended for an additional 12 months at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements within the first 12 months but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement within the first 12 months, and provided further that the time authorized by such limited permit and subsequent extension shall not exceed 24 months total.

Section 79-12.5 establishes requirements for classifications systems that psychoanalysts may use.

Section 79-12.6 establishes special provisions for licensure in psychoanalysis. Subdivision (a) establishes alternative licensure requirements, as follows:

(a) In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a psychoanalyst as prescribed in section 8405(3) of the Education Law, may qualify for a license as a psychoanalysis through meeting the alternative requirements of this subdivision, provided that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8405(3)(g) of the Education Law;

(2) be of good moral character as determined by the department;

(3) be at least 21 years of age;

(4) have completed a baccalaureate or higher degree program in any field that is registered by the department pursuant to Part 52 of this Title, or is an equivalent program as determined by the department; and

(5) document to the satisfaction of the department of having completed coursework at a psychoanalytic institute chartered by the Board of Regents or an institution authorized by its charter or by authorization of the Board of Regents to confer degrees in New York State, or equivalent coursework, of 45 clock hours of classroom instruction in each of the following areas:

(i) personality development;

(ii) psychoanalytic theory;

(iii) practice techniques, including dreams and symbolic processes;

(iv) analysis of resistance, transference, and countertransference;

(v) psychoanalytic research methodology;

(6) document to the satisfaction of the department of having completed at least 150 clock hours of personal psychoanalysis; and

(7) document to the satisfaction of the department of having been engaged in the practice of psychoanalysis, as defined in section 8405(1) of the Education Law, on a full-time basis for seven years of the immediately preceding twelve years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of psychoanalysis, earned over a 52-week period.

Subdivision (b) establishes alternative requirements for licensure without examination, as follows:

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a psychoanalyst, as prescribed in section 8405(3) of the Education Law, except for the examination requirement, may qualify for a license as a psychoanalyst through meeting the requirements of this subdivision, provided that the applicant meets these requirements on or before January 1, 2006. The applicant shall:

(1) file an application for licensure by January 1, 2006 and pay the fee for the initial license and the fee for the first registration period, as prescribed in section 8405(3)(g) of the Education Law;

(2) meet all requirements for the license as a psychoanalyst prescribed in section 8405(3) of the Education Law, except the examination requirement; and

(3) either:

(i) document to the satisfaction of the department certification or registration by a national certifying or registering body for psychoanalysts,

acceptable to the department. To be acceptable to the department, the national certifying or registering body must be recognized nationwide as an organization that certifies or registers psychoanalysts throughout the United States based upon a review of their qualifications to practice psychoanalysis and must have adequate standards for the review of the applicant's qualifications for practicing psychoanalysis, as determined by the department. Such standards must include standards for the review of the applicant's education and experience for practicing psychoanalysis and may include an examination requirement. For use under this subdivision, such certification or registration need not be current but shall not have been revoked for misconduct and/or unethical activities. For documentation of the applicant's certification or registration status to be sufficient, the national certifying or registering body must submit documentation verifying the applicant's certification or registration status directly to the department; or

(ii) if there is no national certifying or registering body for psychoanalysts acceptable to the department as prescribed in subparagraph (i) of this paragraph, document to the satisfaction of the department of having been engaged in the practice of psychoanalysis, as defined in section 8405(1) of the Education Law, on a full-time basis for five years of the immediately preceding eight years. For purposes of this subparagraph, practice on a full-time basis shall mean 960 clock hours in the practice of psychoanalysis, earned over a 52-week period.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraphs (b), (c), and (d) of subdivision (3) of section 8405 of the Education Law authorizes the State Education Department to establish implementing standards for the education, experience, and examination requirements that must be met to qualify for a license as a psychoanalyst.

Section 8409 of the Education Law, as amended by Chapter 210 of the Laws of 2004, authorizes the State Education Department to establish regulations for the issuance of a limited permit that allows an individual to practice psychoanalysis.

Paragraph (a) of subdivision (2) of section 8411 of the Education Law provides that the State Education Department may establish in regulation alternative criteria for licensure in psychoanalysis, for applicants who apply by January 1, 2006.

Paragraph (b) of subdivision (2) of section 8411 of the Education Law establishes alternative requirements that permit an applicant to be licensed

in psychoanalysis without having to pass an examination, for applicants who apply by January 1, 2006.

Subdivision (3) of section 8411 of the Education Law authorizes licensed psychoanalysts to use classifications of signs, symptoms, dysfunctions and disorders as approved in the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish standards relating to the education, examination, and experience necessary for licensure as a psychoanalyst under Article 163 of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to implement the provisions of Article 163 of the Education Law by establishing education, experience, and examination requirements for licensure in psychoanalysis, requirements for limited permits to practice this profession, and standards for registered college programs leading to licensure in this field.

Chapter 676 of the Laws of 2002 added a new Article 163 to the Education Law. Article 163 establishes psychoanalysis as one of four new licensed professions in New York State, under the State Board for Mental Health Practitioners. The proposed regulation is needed to implement Article 163 of the Education Law by establishing specific education, experience, and examination requirements that an applicant for licensure must meet.

In addition, in accordance with the requirements of Article 163 of the Education Law, the proposed regulation is needed to set forth standards for educational programs that lead to licensure in psychoanalysis.

As authorized by statute, the proposed regulation is also needed to prescribe substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006. This will ease the transition to licensure for individuals already practicing in this field.

4. COSTS:

(a) Costs to State government: The proposed regulation will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 163 of the Education Law for administering this new profession.

(b) Cost to local government: The proposed promulgation establishes requirements for licensure in psychoanalysis. The regulation will not impose costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose additional costs on regulated parties over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees and fees for limited permits. Article 163 requires applicants for licensure in psychoanalysis to meet prescribed educational requirements. The proposed regulation simply establishes the content of this coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 163 of the Education Law relating to the licensure of psychoanalysts. It does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or record-keeping requirements beyond those imposed by Article 163 of the Education Law. In accordance with Article 163, applicants for licensure will be required to submit to the State Education Department evidence of meeting licensure requirements. Institutions seeking registration of programs leading to licensure in psychoanalysis will be required to submit to the State Education Department evidence of meeting program registration requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for licensure as a psychoanalyst.

10. COMPLIANCE SCHEDULE:

Applicants must comply with the regulation on the stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed regulation concerns requirements that an individual must meet to become licensed in the profession of psychoanalysis and that programs at psychoanalytic institutes chartered by the Board of Regents and colleges must meet to be registered by the State Education Department as leading to licensure in this field. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to individuals who apply for licensure in psychoanalysis and psychoanalytic institutes chartered by the Board of Regents and colleges that seek registration of programs leading to licensure in this field located in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed regulation implements Article 163 of the Education Law, which establishes the new licensed profession of psychoanalysis. The regulation implements the statute by establishing specific education, experience, and examination requirements that an applicant for licensure must meet, including those located in rural areas of the State.

In addition, in accordance with Article 163 of the Education Law, the regulation sets forth registration standards for college programs that lead to licensure in this field. As authorized by statute, the proposed regulation also prescribes substantially equivalent alternative licensure requirements for applicants who apply for licensure by January 1, 2006, and meet the alternative requirements by that date.

The proposed regulation does not impose reporting requirements over and above that required by statute. In accordance with statutory requirements, applicants for licensure in psychoanalysis will have to submit to the State Education Department evidence of meeting licensure requirements. Psychoanalytic institutions and colleges seeking registration of programs leading to licensure in this field will be required to submit to the State Education Department evidence of meeting program registration requirements.

The proposed regulation will not impose recordkeeping requirements on regulated parties, and will not require regulated parties to obtain professional services to comply beyond the educational services needed to meet the professional education requirements for licensure.

3. COSTS:

The proposed regulation will not impose additional costs on regulated parties, including those located in rural areas of the State, over and above those imposed by Article 163 of the Education Law. Article 163 establishes licensure and registration fees and fees for limited permits. Article 163 requires applicants for licensure in psychoanalysis to obtain prescribed coursework that is substantially equivalent to coursework required for a master's degree in a health or mental health field of study. The proposed regulation simply establishes the content of this coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule establishes professional education, experience, and examination standards required for licensure in psychoanalysis, as directed by Article 163 of the Education Law. It also establishes requirements for college programs registered as leading to licensure in this field. The statute makes no exception for individuals or entities located in rural areas of the State. The State Education Department has determined that such requirements should apply to all individuals seeking licensure no matter their geographic location to ensure an adequate standard of competency across the State. Likewise, the Department has determined that registered college programs that lead to licensure should be subject to the same requirements, regardless of their geographic location, to ensure that candidates for licensure are adequately prepared. Because of the nature of the proposed rule, alternative approaches for entities located in rural areas of the State were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing all parties having an interest in psychoanalysis. Included in this group was the State Board for Mental Health Practitioners and professional associations representing individuals practicing psychoanalysis. These groups have members who live or work in rural areas. In addition, comments were solicited from colleges and universities in the State, some of which are located in rural areas. Each has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

Article 163 of the Education Law establishes psychoanalysis as a licensed profession in New York State. The proposed regulation implements the requirements of Article 163 of the Education Law by establishing education, experience, and examination standards for licensure, as required by that statute. It also sets forth standards for registered programs that lead to licensure in this field, in accordance with statutory requirements.

The proposed regulation implements statutory requirements and directives and will have no impact on jobs or employment opportunities, beyond the impact of Article 163. In addition, the regulation, which relates to licensure qualifications, will have no impact on labor market demand for psychoanalysts. It will not affect the number of jobs or employment opportunities in this field. Because it is evident from the nature of this regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

(b) Camping.

(1) Camping must be at designated sites only.

(2) Camping must be limited to five consecutive nights except by permit during the northern zone big game hunting season.

(3) Camping is prohibited from 11:00 a.m. Tuesday until 11:00 a.m. Thursday except by permit at Otter Creek State Forest during the northern zone big game hunting season.

(4) Camping must be limited to six persons or to a single family group of the same household at each site.

(c) Day users must park at designated parking areas only.

(d) Fires are prohibited excepted for the purposes of warmth, cooking or smudge. Fires must be located in fire rings at the designated camping and day use sites.

(e) It is illegal to possess alcoholic beverages in glass containers or in containers with a capacity greater than seven gallons.

(f) Quiet must be observed between 10 p.m. and 7 a.m.

(g) Other general provisions of Part 190 relating to State Forests also apply to the Otter Creek State Forest and Sand Bay State Forests except wherein such provisions are inconsistent, then the provisions of this section apply.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 190.30.

Text of rule and any required statements and analyses may be obtained from: Thomas Wolfe, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4254, (518) 402-9428, e-mail: tbwolf@gw.dec.state.ny.us

Additional matter required by statute: A negative declaration has been prepared in compliance with art. 8 of the Environmental Conservation Law.

Revised Job Impact Statement

A revised JIS is not attached because the change made to the last published rule did not necessitate revision to the previously published JIS since the change was not substantive. It involved adding a section heading to the regulation.

Assessment of Public Comment

One comment was received. It was requested that a section heading be added to the proposed regulation. The section heading was inadvertently left out. It was added to the final regulation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Managed Harvest of Beaver and River Otter

I.D. No. ENV-34-04-00007-P

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

Proposed action: Amendment of 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 2004-2005 license year.

Text of proposed rule: Amend Subdivision 6.1(a) to read as follows:

(a) *Open seasons.* No person shall trap beaver or otter except during the open trapping seasons corresponding to the listed wildlife management units, or parts of units. Refer to section 4.1 of this Title for a description of wildlife management units.

Paragraphs 6.1(a)(1) and (2) are REPEALED and new paragraphs 6.1(a)(1) and (2) are adopted to read as follows:

(1) *Beaver.*

Wildlife management units

1A, 1C, 2A
3R, 3S
4C, 4L, 4M, 5N, 5P
5A, 5G, 5J
5F, 5H, 6J, 6N
5C, 6A, 6C, 6F, 6H
6G, 6K

Trapping season dates

Closed
November 25 to December 31
November 25 to December 12
October 30 to March 27
October 30 to March 13
October 30 to April 15
November 13 to March 13

Department of Environmental Conservation

NOTICE OF ADOPTION

Otter Creek and Sand Bay State Forests

I.D. No. ENV-22-04-00002-A

Filing No. 889

Filing date: Aug. 10, 2004

Effective date: Aug. 25, 2004

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

Action taken: Repeal of sections 190.30 and 190.32 and addition of new section 190.30 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301 and 9-0105

Subject: Otter Creek and Sand Bay State Forests.

Purpose: To provide consistent management of both State forests and limit camping to five consecutive nights except by permit on Otter Creek State Forest during the northern zone big game hunting season.

Text of final rule: Sections 190.30 and 190.32 of Part 190 of 6 NYCRR are repealed and a new Section 190.30 is added to Part 190 of 6 NYCRR to read as follows:

Section 190.30 Otter Creek State Forest (Lewis Reforestation Area 34) and Sand Bay State Forest (Lewis Reforestation Area 42).

Notwithstanding other provisions of law, the following provisions apply to Otter Creek State Forest and Sand Bay State Forest:

(a) Description.

(1) For the purposes of this section, Otter Creek State Forest means all those State lands lying and situated in the Town of Greig, Lewis County and being parts of Lots 56, 57, 78 and all of Lots 58, 59 and 60 as acquired from the Central New York Power Corporation under a deed on December 9, 1949; and all of Lot 41 as acquired from Wellington G. Snyder, Ivan Fenton and Ada Palmer under a deed recorded on July 1, 1959.

(2) For the purpose of this section, Sand Bay State Forest means all those State lands lying and situated in the Town of Diana, Lewis County, and being parts of lots 919 and 920 of Great Lot 4, as acquired from the United States of America through the Administrator of General Services by deed on August 19, 1964.

The following provisions apply to both Otter Creek State Forest and Sand Bay State Forests unless otherwise indicated:

3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, November 25 to March 15
 3P, 4A, 4B, 4F, 4G, 4J, 4K, 4H, 4N,
 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4X, 4Y,
 4Z, 5K, 5R, 6P, 6R, 6S, 7A, 7F, 7H,
 7J, 7M, 7R, 7S
 8A, 8C, 8F, 8G, 8H, 8J, 8K, 8M, 8N, December 18 to January 2
 8P, 8R, 8S, 9A, 9C, 9F, 9G, 9H
 8T, 8W, 8X, 8Y January 22 to February 6
 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, December 18 to March 13
 9X, 9Y

(2) Otter.

<i>Wildlife management units</i>	<i>Trapping season dates</i>
3R, 3S	November 25 to December 31
3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4B, 4J, 4K, 4S, 4T, 4U, 4Y, 4Z	November 25 to March 15
4C, 4L, 4M, 5N, 5P	November 25 to December 12
5A, 5G, 5J	October 30 to March 27
5F, 5H, 6J, 6N	October 30 to March 13
5C, 6A, 6C, 6F, 6H	October 30 to April 15
6G, 6K	November 13 to March 13
1A, 1C, 2A, 3A, 4A, 4F, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 5K, 5R, 6P, 6R, 6S, 7A, 7F, 7H, 7J, 7M, 7R, 7S, 8A, 8C, 8F, 8G, 8H, 8J, 8K, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9A, 9C, 9F, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, 9Y	Closed.

Subdivisions 6.1(b) and (c) remain unchanged.

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

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

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

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 significant departure from established and accepted practices as described in the FPIS and is therefore classified as a "type II" action under DEC's SEQR regulations (6 NYCRR § 618.2[d][5]).

Regulatory Impact Statement

1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law directs the Department of Environmental Conservation to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Sections 11-1101 and 11-1103 authorize the Department to provide for the managed harvest of beaver and river otter through the establishment of open trapping seasons.

2. Legislative Objectives

The legislative objective behind the statutory provisions listed above is to establish, or authorize the Department to establish by regulation, certain basic wildlife management tools, including the setting of open seasons, and restrictions on methods of take and possession. These tools are used by the Department to maintain desirable wildlife species in ecological balance, while observing sound management practices.

3. Needs and Benefits

Beaver and otter season changes are made to facilitate desirable harvest levels. The Department annually estimates the beaver harvest needed to meet beaver population objectives for each wildlife management unit (WMU). The population objectives are based on: (1) the benefits derived from wetland habitat created by beaver, and (2) an assessment of public tolerance for beaver activities. The remaining criteria for season setting include considerations of fur harvesters' preferences, pelt value, recreational opportunity, and trapping conditions within each WMU. The specified opening and closing dates established for the 2004-2005 seasons address those considerations.

The proposed seasons will maintain beaver population levels at or close to desirable levels. In establishing dates for the 2004-2005 trapping season, the Department consolidated opening and closing dates whenever possible, especially in contiguous wildlife management units. The consolidation of seasons will enhance both compliance with and enforcement of beaver and otter trapping regulations.

The 2004-2005 beaver seasons are nearly identical to the 2003-2004 seasons in central and western New York, the Lake Plains, Finger Lakes, and in northern New York. (Minor calendar date adjustments have been made in season dates to adopt weekend opening/closing date conventions.) An additional week of beaver trapping is proposed for wildlife management units in southwest New York to conform with a mid-March closing date in other parts of the state. (Uniform closing dates are proposed whenever practical as an aid in the Department's law enforcement activities.)

Because beaver populations are expected to exceed the management objective in the fall of 2004, the trapping season is proposed to be about one month longer in four areas of the state: Hudson Valley, Southern Taconic Highlands (parts of Columbia and Dutchess County), Neversink-Mongaup Hills (parts of Sullivan and Orange Counties), and in the eastern Catskill region.

In the Northern Taconic Highlands (parts of Rensselaer and Washington Counties), the beaver population is expected to be below the management objective in the fall of 2004. Therefore, the Department proposes shortening the beaver trapping season by two months in those WMUs (the season would open on November 25th but close on December 12, instead of February 15th).

Beaver damage problems continue to be significant in New York. The Department receives approximately 2,000 public complaints of beaver damage per year. Beaver primarily damage farms and roadways, but residences also are affected. Annual trapping seasons, as proposed by this rule-making, are essential to manage these problems and maintain public tolerance of beaver.

Otter occur in similar habitats as beaver. Where otter numbers are adequate to sustain harvest, their seasons are set concurrent with the beaver season because they may be taken in a trap set for beaver. Concurrent season dates also facilitate law enforcement activities. The areas open for otter trapping include all of northern New York, and parts of eastern New York, including the Hudson River Valley, the Taconics, and the southern portion of the Department's Region 3.

4. Costs

Adoption of regulations that establish methods of taking, possessing, transporting, and disposing of furbearing animals do not result in increased expenditures by state or local governments, or the general public. Normal expenses of the management program and the enforcement of trapping regulations are not affected. The Legislature establishes fees for trapping licenses by statute.

5. Local Government Mandates

This rulemaking does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed rules do not impose additional reporting requirements upon the regulated public (trappers).

7. Duplication

There are no other local, state or federal regulations concerning the taking, possession, transporting, or disposal of furbearing animals. The Department of Environmental Conservation is the only governmental entity with authority to regulate the managed harvest of furbearing animals in New York.

8. Alternatives

An alternative to making the proposed changes is to leave the regulations intact. However, this would make it more difficult for the Department to appropriately manage beaver and river otter populations.

9. Federal Standards

There are no federal government standards for the managed harvest of furbearing animals in New York. The Convention on International Trade in Endangered Species of Wild Fauna and Flora requires every state allowing the export of river otter products to certify annually that harvest of river otter will not be detrimental to their continued survival in that state.

10. Compliance Schedule

Trappers will be expected to comply with the new rules as soon as they take effect.

Regulatory Flexibility Analysis

This proposed rulemaking will revise regulations concerning beaver and river otter trapping seasons. The Department of Environmental Con-

servation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on small businesses or local governments. The proposed regulations do not apply directly to local governments. Few, if any, persons actually trap as a means of employment; therefore the regulations do not directly apply to small businesses. Even if a trapper does pursue trapping as a means of income, the proposed revisions are intended to ensure that the beaver and otter populations remain healthy while offering trappers an opportunity to engage in their chosen activity. The proposed regulations are not expected to significantly change the number of participants or the frequency of participation in the regulated activities.

The Department has also determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with trapping are administered by the Department.

Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

This proposed rulemaking will revise regulations concerning beaver and river otter trapping seasons. The Department of Environmental Conservation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on rural areas. The proposed revisions are not expected to significantly change the number of participants or the frequency of participation in the regulated activities.

The Department has also determined that this rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with trapping are administered by the Department.

Therefore, the Department has concluded that a rural area flexibility analysis is not required.

Job Impact Statement

This proposed rulemaking will revise regulations concerning beaver and river otter trapping regulations for the 2004-05 trapping season. The Department of Environmental Conservation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually trap as a means of employment. Trappers will not suffer any substantial adverse impact as a result of this proposed rulemaking because it is not expected to significantly change the number of participants or the frequency of participation in the regulated activities. For this reason, the Department anticipates that this rulemaking will actually have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

Environmental Facilities Corporation

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Access to Public Records Law

I.D. No. EFC-11-04-00026-C

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

The notice of proposed rule making, I.D. No. EFC-11-04-00026-P was published in the *State Register* on March 17, 2004.

Subject: Access to Public Records Law.

Purpose: To amend and repeal outdated information and to make the EFC regulations more consistent with the Freedom of Information Law (FOIL).

Substance of rule: The proposed rules establish new procedures for the New York State Environmental Facilities Corporation (the "corporation") in connection with responding to requests for access to public records under N.Y.C.R.R. Part 2601. The current regulations are outdated because they, *inter alia*, do not designate the correct designated records access officer and list written records access forms which are not used by the corporation. A summary of these express terms is as follows:

1) Proposed new section 2601.1 designates the Director of Corporate Communications at the corporation's records access officer.

2) Proposed new section 2601.2 eliminates Room 538 from the location of the records access officer.

3) Section 2601.3 concerning requests by news media for employment records is repealed.

4) Section 2601.4 concerns requests for other public records and eliminates Room 538 as the locations for requests for access and review of public records.

5) Section 2601.5 eliminates Room 538 from the inspection and copying location.

6) Section 2601.7 concerning forms is repealed.

7) Section 2601.8 concerns procedures for denial of access to records by the corporation.

8) Section 2601.9 concerns descriptions of records to be provided by the requesting party.

9) Section 2601.10 concerns acknowledgement of a receipt of a request for records by the corporation.

10) Section 2601.11 concerns the corporation's failure to respond to a request for records.

11) Section 2601.12 concerns the timing and content for appealing the corporation's denial of access to records.

12) Section 2601.13 concerns the transmittal of appeals to the Committee of Open Government and informing it of its decision with regard to appeals.

13) Section 2601.14 concerns where the person requesting record should file their appeal.

14) Section 2601.15 concerns subject matter files of the corporation.

The corporation has determined that this is a consensus rule making under SAPA Section 202(1)(b)(i) and, therefore, no person is likely to object to the rule as written.

Changes to rule: No changes.

Expiration date: March 17, 2005.

Text of proposed rule and changes, if any, may be obtained from: Jeffrey M. Lanigan, Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997, (518) 402-6924, e-mail: lanigan@nysefc.org

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

Department of Health

EMERGENCY RULE MAKING

Environmental Laboratory Standards (Bioterrorism)

I.D. No. HLT-21-04-00012-E

Filing No. 887

Filing date: Aug. 9, 2004

Effective date: Aug. 9, 2004

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

Action taken: Addition of section 55-2.13 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 502

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 Health finds that immediate adoption of this rule is necessary to preserve the public health, safety and general welfare, and that compliance

with State Administrative Procedure Act (SAPA) Section 202(1) for this rule making would be contrary to the public interest. These regulations add a new section to existing Subpart 55-2, which, under the authority of Public Health Law Section 502, implements standards for examination of environmental samples containing or potentially containing agents that pose significant public health or national security risks, and for certification of laboratories performing such examinations. The proposed emergency amendment must be adopted immediately to ensure timely and reliable environmental testing for biological and chemical so-called "critical agents," including such recognized deadly agents of bioterrorism as anthrax.

Numerous unregulated firms have risen to the challenge of testing samples for agents of bioterrorism from environments such as public office buildings and private residences. These firms bring to the marketplace a broad range of analytical experience, capacity and expertise, and use various testing methods for ruling out the presence of infectious organisms such as anthrax. However, market forces alone cannot ensure the quality and reliability of critical agent testing. Therefore, emergency rules for laboratory certification must be promulgated without delay in this critically urgent emergent area of public health protection. These proposed regulations will protect the public from unqualified providers of environmental testing services for critical agents by promulgating minimum standards for: laboratory director and testing personnel qualifications; use of approved methods for sample collection and decontamination; recordkeeping systems to track the location of isolated agents; chain-of-custody protocols to ensure the admissibility of test results as evidence in legal proceedings; test result reporting procedures; client reports content; and sample and/or isolate referral protocols.

Reliable and early identification, enhanced by this emergency filing, is crucial to appropriate public health response to biological or chemical terrorism, and/or other such incidents posing a significant public health threat. To that end, the Department of Health has established standards for a new area of certification, environmental critical agent testing, to improve New York State's preparedness for, and rapid response, to adverse public health events, including terrorist-instigated disease outbreaks. The new certification will permit the Department and the public to quickly identify and engage laboratories to test environmental samples for microorganisms and chemical agents posing a public health or security risk, in the event of terrorist-initiated environmental contamination. Furthermore, certification in critical agent testing will provide indispensable regulatory oversight to shield the public from unproven or incorrectly applied test methods that could generate compromised or unreliable results in emergency health threat situations. Department oversight afforded by this emergency filing will also help reduce use of ineffective and unproven safety procedures that could fail to confine a dangerous agent or, in the worst case, even promote its further dissemination to threaten an even larger population.

Rule filing on a non-emergency basis, including the delay incurred from a public comment period, is unacceptable, as it would permit individuals and laboratories to test for critical agents without any assurance that testing is being performed in a safe and reliable manner.

Subject: Environmental laboratory standards.

Purpose: To establish minimum requisites for laboratories testing critical agents.

Text of emergency rule: Subpart 55-2 is amended by reserving new Section 55-2.12 for future use and adding new Section 55-2.13 as follows:

Section 55-2.12 (reserved)

Section 55-2.13 *Requirements for laboratories engaged in testing for critical agents in environmental samples.*

(a) *For purposes of this Subpart, critical agent shall mean an organism, chemical element or chemical compound, which is recognized as posing a risk to national security and/or requiring special action to protect the public health because the agent: can be disseminated (e.g., in air, water or food) or transmitted person-to-person with ease; causes moderate to high mortality and/or morbidity; and can have a significant public health impact. The term organism includes, but is not limited to, a virus, bacterium, or product of an organism. Critical agents shall include critical biological and chemical agents specified by the federal Centers for Disease Control and Prevention (CDC) in published documents, and other such agents as the Commissioner of Health has determined meet the above criteria.*

(b)(1) *Prior to performing testing for any critical agent in an environmental sample, a laboratory shall submit a request to the department, and receive an initial or revised certificate of approval that includes the specialty of critical agent testing. The certificate of approval shall also list the specific critical agent(s) included in the approval, the approved*

method(s), and the types of samples (e.g., surface swipes, powder, fluid and bulk material) the laboratory may accept for testing. No laboratory shall examine an environmental sample for a critical biological or chemical agent without certification of approval specific to each critical agent for which testing is conducted.

(2) *The department may withhold or limit its approval if the department is not satisfied that the laboratory has in place adequate policies, procedures, facilities, equipment, instrumentation and trained personnel to ensure that collection, labeling, accessioning, preparation, analysis, result reporting, storage, transportation, shipping, and disposition of all environmental samples, derivatives and related materials shall be performed in a manner that: ensures consistently correct performance of the approved methods; ensures the protection of the health, safety and welfare of the laboratory's employees and the public; and is consistent with the requirements of this Subpart, and all other applicable laws, rules and regulations. The department shall also consider a laboratory's biosafety level facilities and safety practices in its determination to approve the laboratory for critical agent testing in environmental samples.*

(c) *In addition to application and attestation requirements found elsewhere in this Subpart, a laboratory seeking approval to perform critical agent testing in environmental samples shall submit:*

(1) *a standard operating procedure manual documenting laboratory policies, procedures, facilities, equipment, supplies, instrumentation and personnel for critical agent testing, which are designed to ensure that collection, labeling, accessioning, preparation, analysis, result reporting, storage, transportation, shipping, and disposition of all environmental samples, derivatives and related materials shall be performed in a manner that ensures consistently correct performance of the approved methods; ensures the protection of the health, safety and welfare of the laboratory's employees and the public; and is consistent with the requirements of this Subpart, and all other applicable laws, rules and regulations; and*

(2) *an attestation signed by the owner(s) and director(s) that the laboratory will accept only the type(s) of samples (e.g., surface swipes, powder, fluid and bulk material) specified on the laboratory's certificate of approval, and that the owner(s) and director(s) will take whatever action is necessary to ensure that such samples are collected, labeled, accessioned, prepared, analyzed, stored, transported, shipped and disposed of, and all results are reported in a manner consistent with the approved method and with all other documentation submitted to the department.*

(d) *In addition to the preceding requirements of this Subpart, a laboratory engaged in critical agent testing in environmental samples, through its owner(s) and director(s), shall:*

(1) *establish, maintain, review periodically, and implement written policies and procedures which are designed to ensure that collection, labeling, accessioning, preparation, analysis, result reporting, storage, transportation, shipping and disposition of samples shall be performed in a manner that ensures consistently correct performance of the approved methods, ensures the protection of the health, safety and welfare of laboratory personnel, sample collectors and the public to the extent possible, and is consistent with all applicable laws, rules and regulations, as well as recognized standards of practice designed to minimize the risks associated with potential exposure to similar hazardous substances or critical agents. Such policies and procedures shall include specific procedures for containment, secured storage, decontamination, and/or disposal or destruction of the sample(s), derivatives, and related collection materials, supplies and/or equipment, as necessary and/or appropriate for the relevant suspected critical agent;*

(2) *have written policies and procedures in place to implement a chain-of-custody protocol whenever required by a law enforcement agency. Such policies and procedures shall be developed in consultation with law enforcement officials or other persons with appropriate experience and training in chain-of-custody issues, and shall at a minimum require an intact continuous record of the physical possession, storage, and disposition of the sample and any derivatives, including the signatures of all persons who access the sample and derivatives, the date of such access and other pertinent information;*

(3)(i) *ensure that all laboratory employees engaged in collecting and/or transporting environmental samples receive sufficient training in hazardous material handling techniques to ensure they will perform their responsibilities in a safe and reliable manner. Such training shall include, but not be limited to, training in sample collection, packaging, decontamination, transportation, and chain-of-custody policies and procedures established by the laboratory. The laboratory shall maintain documentation of such training for a minimum of three (3) years and take such other*

action as is necessary to ensure ongoing compliance with such policies and procedures;

(ii) develop and implement sample acceptance criteria designed to protect the health, safety and welfare of laboratory personnel, sample collectors, and the public to the extent feasible. Such criteria shall be consistent with approved methods for sample collection, handling, packaging and decontamination, and shall minimally define conditions under which a sample shall be rejected, and conditions under which a sample shall be tested and results reported with limitations. The laboratory shall make its sample acceptance criteria available to clients;

(4) issue reports of test results in a format and of a content required by the approved method, and necessary for interpretation of the test results, including, but not limited to, unambiguous identification of the tested environmental sample, including collection location, source and sample type, and limitations of the method. The department may restrict a laboratory's ability to report information concerning a test result whenever confirmatory or supplemental testing is required by the approved method;

(5) report laboratory findings to the department within twenty-four (24) hours via telephone, facsimile and/or electronic transmission, using a number or e-mail address designated by the department, whenever the findings indicate that an environmental sample contains an organism, or component, or a chemical, any of which exhibits characteristics or properties consistent with those of a critical agent. Whenever the department determines that supplemental testing is necessary to confirm the results of a test, and/or further identify the characteristics of a critical agent for public health protection, law enforcement or research purposes, the laboratory shall submit all or part of the sample or its derivative(s) to the department or its designee, as directed by the department; and

(6) establish and implement a critical agent inventory and tracking system that accounts for all environmental samples and their derivatives suspected or confirmed to contain critical agents. Unless required to document chain of custody pursuant to paragraph (2) above or required by this paragraph, a laboratory may discontinue inventory and tracking of samples and derivatives, provided laboratory findings have established the absence of a critical agent. Inventory and tracking documentation shall include the identity of all individuals who access such materials and the date of access, as well as specific information regarding transfer, disposal or other disposition of the materials. Samples and their derivatives, access records, chain of custody records and records of the analyses shall be maintained in a secure manner until the statute of limitations for bringing any related criminal or civil action has expired, and the sample and its derivatives are no longer needed for evidence in any pending legal matter or by law enforcement officials. Access records, chain of custody records and records of the analyses of confirmed positive samples, shall be maintained for ten (10) years, or as required above if longer.

(e) For critical biological agents, an environmental laboratory's proficiency testing performance shall be evaluated based on the known presence or absence of the critical agent, or, as applicable, its product or component. Satisfactory performance shall be a result correctly indicating the presence or absence of the critical agent, or, as applicable, its product or component. Unsatisfactory performance shall be a result incorrectly indicating the presence or absence of the critical agent, or, as applicable, its product or component.

(f) Personnel requirements for environmental sample testing for critical biological agents that are microbiologic organisms shall be as follows:

(1) notwithstanding the requirements of section 55-2.10 of this Subpart, the environmental laboratory shall employ, as director, one of the following:

(i) a person who holds or meets the qualifications for a New York State clinical laboratory director certificate of qualification in the applicable subspecialty of microbiology (such as bacteriology), pursuant to Part 19 of this Title;

(ii) a person with an earned doctoral degree or master's degree in the chemical, environmental, physical or biological sciences or engineering, with at least sixteen (16) college semester credit hours in the biological sciences including at least one (1) course having microbiology as a major component, and at least one year of experience in analysis of representative analytes for which the laboratory is approved or seeking approval; or

(iii) a person with a bachelor's degree in the chemical, environmental, physical or biological sciences or engineering, with at least sixteen (16) college semester credit hours in the biological sciences including at least one (1) course having microbiology as a major component, and at

least two years of experience in analysis of representative analytes for which the laboratory is approved or seeking approval; and

(iv) with respect to environmental laboratories that limit their critical biological agent testing to toxin analysis, any of the following personnel qualifications may be substituted for qualifications set forth in subparagraphs (i) through (iii) above, as follows: a New York State clinical laboratory director certificate of qualification in toxicology may be substituted for the certification in microbiology requirement specified in subparagraph (i) above; and coursework consisting of a minimum of sixteen (16) college semester credit hours in the biological and/or chemical sciences including at least (1) one course in biochemistry may be substituted for the coursework requirements, but not the educational degree requirements, specified in subparagraphs (ii) and (iii) above; and

(2) sample preparation, analysis and related responsibilities shall be performed by an analyst who shall have an associate's degree or equivalent, with at least twelve (12) college semester credit hours in the biological sciences, and at least one year of experience in analysis of representative analytes; provided, however, that a person with at least three (3) years experience in the analysis of representative analytes immediately preceding the effective date of this section shall be deemed to have met the requisite qualifications for performing critical agent analysis in the laboratory in which such experience has been obtained. Analysts with critical biological agent testing responsibilities that are limited to toxin sample preparation, analysis and related responsibilities may meet the semester credit hour qualifications set forth in this paragraph by completing a minimum of twelve (12) college semester credit hours in the biological and/or chemical sciences.

(g) This section shall not apply to bacteriologic testing for total and fecal coliform bacteria (i.e., the common form of *Escherichia coli*) in potable and non-potable water.

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-21-04-00012-P, Issue of May 26, 2004. The emergency rule will expire October 7, 2004.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law Section 502 authorizes the Commissioner of Health to issue certificates of approval to environmental laboratories, and prescribe the requirements for granting such approvals. The Commissioner is also empowered to adopt and amend regulations for implementing the provisions and intent of Section 502, and to prescribe the educational and technical qualifications of environmental laboratory director(s).

Legislative Objectives:

Section 502 of the Public Health Law requires all laboratories performing environmental analysis on samples collected in New York State to hold certificates of approval on such analyses as issued by the Commissioner of Health. The Commissioner is authorized to establish standards for approved laboratories and technical and educational qualifications for laboratory directors to ensure that tests conducted for public health or personal health protection, or the protection of the environment or natural resources are performed in a reliable manner.

Needs and Benefits:

Accurate and reliable identification of critical agents in environmental samples is crucial to appropriate public health response to potential biological or chemical terrorism events, and/or other such incidents posing a significant public health threat. Therefore, the Department proposes the addition of a new Section 55-2.13 for the specialty of "critical agents testing" which sets forth minimum standards for: laboratory director and testing personnel qualifications; use of approved methods for environmental sample collection and decontamination; recordkeeping systems to track the location of confirmed positive samples and isolated agents; sample chain-of-custody protocols; test result reporting procedures, including appropriate notification of the Department; client result reports content; sample and/or derivative referral protocols; and proficiency testing.

The proposal's definition of "critical agents" is largely based on the federal Centers for Disease Control and Prevention (CDC)'s criteria for biological and chemical agents of significant public health or national security risk. However, the rule not only encompasses agents categorized by the CDC as critical agents, but also agents that the Commissioner of

Health has determined may require special action to protect the public health because they are easily disseminated, could cause high to moderate morbidity and/or mortality and can have a significant public health impact. The proposal's consistency with the federal criteria will promote communication among responsible agencies and enhance coordinated response at all levels, while permitting the Commissioner to react swiftly to local conditions and preparedness needs.

Due to the increased complexity and special issues presented by critical agent testing, this regulation establishes new requirements in addition to expanding several minimum standards now in place for environmental laboratories. However, the decision to engage in critical agent testing is strictly voluntary, and a laboratory needs to comply with the new and expanded requisites only if it applies for the specialty.

The educational requirements for technical directors in microbiology have been expanded beyond those required for sewage and water treatment plant operation to include post-doctoral, master's and/or bachelor's degree credentials. Qualifications for technical directors involved in critical biological agent testing of toxins have been added, as existing Subpart 55-2.10 does not provide specific or appropriate alternative qualifications in this area. The proposed amendment recognizes the expertise resident in clinical laboratories, and would allow clinical laboratory directors certified in clinical microbiology to oversee environmental critical agent testing for microbiological organisms and toxins (e.g., ricin), and clinical laboratory directors certified in either microbiology or toxicology to oversee environmental critical agent testing for toxins, provided the facility is dually certified as an environmental laboratory with an approved specialty of "critical agent testing" pursuant to Subpart 55-2. Minimum qualifications for analysts performing critical agent testing for microbiological agents and/or toxins in environmental samples are also set forth at the level of an associate's degree. The Department believes this degree or its equivalent is a necessary requisite because of the higher level of knowledge, expertise and experience required to handle critical agents safely, and follow the attendant complex testing, reporting and security protocols. The setting of minimum educational and experience qualifications for critical agent analysts is consistent with the Department's approach to certifying environmental laboratories in the Contract Laboratory Protocol (CLP) tier. CLP laboratories must demonstrate capability to adhere to stringent testing protocols and to issue reports of a content and organization able to withstand a high level of scrutiny by scientific and legal authorities. The analyst qualifications set forth in this proposal are also consistent with those for clinical testing personnel performing high complexity testing specified in the federal Clinical Laboratory Improvement Amendment of 1988 (CLIA). To preclude displacement of any individuals currently employed due to the new minimum qualifications, the proposed rule contains a grandfather clause allowing analysts with three years' experience conducting similar analyses to qualify for critical agent testing within his or her current employment setting.

In addition to establishing personnel qualifications for environmental laboratory directors and testing personnel, the proposed amendment protects the public and ensures high quality environmental testing for biological and chemical critical agents by requiring laboratories to: use approved methods for sample collection, handling and decontamination; limit access to samples and sample derivatives, such as isolated organisms; and develop and maintain recordkeeping systems to track the location of samples and isolated agents. The proposed regulation also requires laboratory employees to be trained in hazardous materials handling, sample collection, packaging, decontamination, transport, disposal and chain-of-custody protocols. Furthermore, the regulation requires environmental laboratory director(s) to develop sample acceptability criteria to protect the health, safety and welfare of laboratory personnel, sample collectors and the public, and to make such criteria available to clients upon request. Such precautionary measures to be taken at the pre- and post-analytic stages are designed to reduce, to the extent feasible, submission of samples that may pose a danger to transporters and to recipient laboratory personnel.

The proposed regulation requires laboratories to employ facilities and practices for bio-safety and chemical safety as appropriate for the critical agent(s) tested, to protect the public health, safety and welfare and prevent the use of ineffective procedures that could fail to confine dangerous agents or even promote their further dissemination. Additionally, the rule effectively restricts the often complex and potentially dangerous procedures for confirmatory testing and further characterization of an agent to appropriately equipped sites.

The rule also provides for restricting the reporting of analytical results should the Department determine that limitation on report distribution, language or content is necessary to preclude dissemination of potentially

misleading information, particularly for unconfirmed or preliminary results. Furthermore, the regulation requires laboratories to notify the Department of any analytical finding indicating the presence of a critical agent. This requirement will promote clear communication lines of test results for various agents, and permit the Department to make determinations regarding the need for supplemental or confirmatory testing, as well as assess the public health threat and need for further governmental intervention.

The sensitive nature of critical agent testing requires environmental laboratories to establish procedures to keep track of environmental samples and their derivatives following testing and characterization, ensure continued proper handling of samples and any derived agents, and limit inappropriate access by laboratory personnel and the public. The proposed amendment establishes requirements for a tracking and inventory control system to record and identify the exact location and disposition of environmental samples and derivatives that test positive for a critical agent. The required retention period of at least ten years for access records and analysis records is consistent with the ten-year requirement for drinking water analysis records currently in place. Samples and their derivatives, access records and records of the analyses which are needed for potential civil or criminal actions must be retained in a secure manner until the statute of limitations for bringing a civil or criminal proceeding has expired and such items are no longer needed as evidence in any pending legal matter. However, it is anticipated that in most instances where such retention is required, the Department or a law enforcement agency will assume responsibility for the sample and any derivatives. The rule's enhanced recordkeeping requirements will also ensure the availability of records pertaining to positive samples until no longer needed for evidence in pending legal matters or by law enforcement officials, and provide grounds for admissibility of test results by establishing a chain-of-custody documentation requirement for testing initiated by law enforcement officials.

Laboratories applying for approval in the specialty of critical agent testing will be required to submit their policies and procedures to the Department for review and approval to ensure adherence to approved methods. The amendment also details criteria for scoring of proficiency testing results for environmental bacteriologic analytes, and excludes from the proposed requirements microbiological methods for detecting and monitoring for the common form of *E. coli* in potable and nonpotable waters, for which the Department already offers certification.

Costs:

Costs to Private Regulated Parties:

The costs of compliance will vary significantly, primarily by a laboratory's existing biosafety level (e.g. BSL-2 or BSL-3) and whether it meets U.S. Centers for Disease Control and Prevention (CDC) safety and security requisites for handling the particular critical agent(s) and specimen type(s) it proposes to test. A laboratory already meeting CDC's safety and security standards is expected to incur no new costs. On the other hand, a facility minimally equipped for handling infectious agents — because it limits testing to basic microbiology testing to monitor drinking water, for instance - may accrue extensive renovation and/or construction costs.

Since the regulation's initial filing, thirty facilities requested application information for certification in anthrax testing. Six laboratories have been granted certification in anthrax testing; two of the six applicants required minor modifications to existing facilities to comply with the proposed requisites for microbiologic testing. No additional modifications would be necessary by laboratories granted certification in anthrax testing in order to qualify them for certification in critical agent testing for toxins, as toxin testing requires less stringent biosafety facilities than those required for anthrax analyses.

Facilities which do not comply with these requirements currently may incur the following compliance costs: costs for purchase and installation of a state-of-the-art biological safety cabinet; costs for establishing negative air pressure conditions and adequate air filtration with space renovation or new construction; and costs for security systems, such as installation of card-key devices, and/or locks on entrances to storage and work areas. The Department expects that commercial laboratories voluntarily incurring costs by electing to establish critical agent testing capacity will be able to offset such costs with income from fee-for-service and contractual charges imposed on clients.

According to manufacturers' estimates, costs for purchase and installation of a biological safety cabinet to meet minimal BSL-2 standards range from \$6,275 to \$11,365. Upgrading existing standard microbiology workspace to BSL-3 would require extensive modifications to usable space and air handling and filtration systems, and would be expected to result in costs comparable to new construction. According to vendors of modular con-

struction, who gave estimates to public health officials in NYS and other states, costs for a 600-square foot BSL-3 building range from \$240,000 to \$500,000. Given the Department's experience thus far, it is unlikely that any commercial entity will choose to develop new BSL-3 capacity. Since a BSL-2 facility is sufficient for testing of critical biological agents that are toxins, any costs associated with establishing a BSL-3 facility would not be applicable to BSL-2 environmental laboratories applying for certification in toxins alone.

Relatively minor expenditures would be necessary for supplies related to sample collection, including personal protection gear, and secure storage of samples with presumptive or confirmed critical agent findings. Laboratory supply catalogues indicate that the two plastic zipper-lock bags per sample would cost less than \$1.00; a box of 100 disposable gloves costs approximately \$6.00; and a lockable refrigerator-freezer costs \$500. Costs to equip one individual sample collector or analyst with requisite personal protective equipment are estimated at a minimum of \$10 for one set of disposable outerwear comprised of gown, shoe covers and gloves, to a maximum of \$500 for a rechargeable self-contained breathing apparatus.

Costs related to security systems vary greatly, depending on the sophistication of the system (*i.e.*, electronic or manual), and costs of maintenance and service contracts. According to estimates given by two manufacturers of card-key systems, one portal with card-key entry would cost \$5,000. One manufacturer of video surveillance equipment estimated that a laboratory installing a sixteen-camera system would incur costs of \$15,000. It is not possible to estimate operating and maintenance of security systems, since service contracts would vary according to the size of the system. Since no express requirements are in place for security equipment, a laboratory may control access to certain areas with stringent administrative controls, including sign-in logs and identification badges, at lower costs than a mechanical or electronic system.

Clinical laboratories seeking certification as environmental laboratories, as well as previously unregulated commercial concerns offering environmental testing (*e.g.*, as part of remediation following confirmed incidents), will need to pay approval fees equivalent to first-year Department Environmental Laboratory Approval Program (ELAP) fees, estimated at \$550. Clinical laboratories and previously unregulated facilities may also incur compliance costs similar to those for existing environmental laboratories described above. Based on a written survey of clinical laboratories currently licensed in the category of microbiology pursuant to Public Health Law Article 5, Title V, the Department estimates that 73 percent of these laboratories have existing capability for critical agent testing and would not need to expend significant resources for biosafety facilities unless they need to purchase personal protective equipment and related items to comply with the more stringent safety practices for critical agents testing.

Most clinical laboratories interested in testing environmental samples for biological critical agents already employ laboratory directors and testing personnel who qualify under the proposed educational and experiential criteria. The majority of environmental laboratories certified to perform microbiology testing limit that testing to low biosafety level work (*e.g.*, potable water testing), and generally do not employ personnel meeting the proposed requirements. While these sites would not incur additional personnel costs for analysts because of the proposal's grandfathering provision, requirements for a technical director would entail some added costs. According to a survey published in 2001 by the American Council of Independent Laboratories, the mean hiring rate for scientists with a bachelor's degree and one to three years' experience is \$38,900. A person with these credentials would meet the proposal's minimum requirements for a technical director of a laboratory performing anthrax testing on environmental samples. Since the regulation was first filed, the Department has found that none of the environmental laboratories currently limiting their services to monitoring of sewage and water treatment facilities are interested in performing critical agent testing. The majority of environmental laboratories certified to perform chemical testing (*i.e.*, for environmental contaminants) already employ personnel meeting the proposed requirements for toxin testing.

Laboratories applying for approval under these regulations will incur costs of approximately \$3.00 to \$20.00 to copy to the Department all policies and procedures relevant to critical agent testing. On occasion, a laboratory may incur costs for shipping presumptively positive samples to the Wadsworth Center or another designated facility for further testing. The cost of shipping an isolate of a microbiologic critical agent (*e.g.*, a culture tube) by common carrier is estimated at between \$25 and \$50, depending on the need for keeping the agent's temperature constant with ice packs, for example. As an alternative, law enforcement officials, labo-

ratory employees or couriers may be used for transporting samples at an anticipated maximum cost of \$350, assuming an 800-mile round trip and a \$25 hourly personnel wage.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

New York State, with the exception of the Department as stated below, would incur costs to the same extent as private regulated parties should any State-operated environmental laboratories, such as those operated by the Department of Environmental Conservation, take on critical agent testing.

Costs to the Department:

The Department will incur costs for development and implementation of a proficiency-testing program for one or more analytes in the critical agent specialty, and for travel to conduct onsite assessments of applicable laboratory facilities. Since existing staff will coordinate the initial development and implementation, as well as periodic mailings, of any proficiency testing designed to challenge laboratories engaged in critical agent testing, the Department anticipates no new costs for personnel salaries and overhead. Costs of one proficiency-testing event challenging 25 laboratories using surrogate material for the analyte are in the range of \$75-\$1200 for materials (depending on the organism, toxin and source); \$325 for mailing containers; \$250 for postage; and approximately \$100 for related paperwork. However, costs related to proficiency testing, as well as travel expenses for on-site assessments, would be recovered through approval fees charged to the laboratories.

Costs to Local Government:

Local government would incur no new costs, except that local government-operated facilities providing regulated services under this proposal would incur the costs described for private regulated parties.

Paperwork:

The only new paperwork requirements imposed by this regulation are: (1) development and submission of relevant policies and procedures; (2) submission of a request for approval to perform critical agent testing; (3) development of chain-of-custody policies and procedures; (4) development of a tracking system for specimens; and (5) reporting of presumptively positive results to the Department.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government; or school, fire or other special district, unless a county, city, town or village government; or school, fire or other special district operates an environmental laboratory, and, therefore, is subject to these regulations to the same extent as a private regulated party.

Duplication:

These rules do not duplicate any other law, rule or regulation, except that some terminology found in federal critical agent rules promulgated by the CDC has been used in this regulation to facilitate response coordination for domestic preparedness. Federal standards and recommendations for (bio) safety, sample collection, testing algorithms and reporting serve as the underpinnings of this rule, but are not duplicated therein.

This proposal is not duplicative of, but will harmonize with, anticipated Department of Environmental Conservation rules to address the treatment, handling and disposal of waste resulting from critical agent incidents and response to such incidents.

Alternative Approaches:

The alternative to adopting the proposed amendments is to apply the Department's existing standards to critical agents testing. However, because of the special issues raised by critical agent testing the Department has determined that the alternative of applying existing minimal requirements to this area is totally unacceptable.

Federal Standards:

Since there is no federal certification program in place for environmental laboratories, these regulations do not duplicate any federal standards. To the extent that the CDC, the U.S. Environmental Protection Agency, or the federal Department of Transportation have promulgated standards affecting environmental laboratory testing for evaluation of adverse public health events, these regulations are consistent with, and complement, such standards.

Compliance Schedule:

Regulated parties which are adequately staffed and equipped to perform critical agent testing in a safe and reliable manner should be able to comply with all aspects these regulations as of their effective date, upon publication of a Notice of Emergency Adoption in the New York *State Register*, except for obtaining the approval of the Department. The Department is prepared to approve laboratories for critical agent testing for select analytes, such as anthrax and the toxin ricin, on an expedited basis. Thus, it is expected that laboratories that are fully prepared to undertake such

testing may be approved within days of publication of this regulation. Laboratories that are not ready and able to meet the requirements of this regulation should not be engaged in such testing.

Regulatory Flexibility Analysis

Effect of Rule:

The Department's Environmental Laboratory Approval Program (ELAP) currently certifies 779 laboratories. Of these, 227 are located out-of-state and do not qualify as small businesses. Of the remaining 552 laboratories, 275 are governmental laboratories, and 277 are commercial entities, of which 170 are estimated to be small businesses. For the most part, governmental laboratories, which are primarily drinking water and sewage treatment plant laboratories operated by counties, municipalities and townships, are not expected to apply for the environmental testing specialty of critical agents, for which this amendment sets standards.

Of the approximately 900 facilities holding a New York State clinical laboratory permit, 135 qualify as small businesses, and 50 are owned and operated by local governments.

Compliance Requirements:

This proposed rule establishes minimum standards necessary to protect the public and laboratory employees from the health and safety risks inherent in critical agent testing. Due to the increased complexity and special issues presented by critical agent testing, this regulation establishes new requirements in addition to expanding several minimum standards now in place for environmental laboratories. However, the decision to engage in critical agent testing is strictly voluntary, and small businesses and local governments need to comply with the new and expanded requirements only if they operate environmental laboratories that apply for the specialty.

Proposed Section 55-2.13 sets forth minimum standards for: laboratory director and testing personnel qualifications; use of approved methods for sample collection and decontamination; recordkeeping systems to track the location of confirmed positive samples and isolated agents; sample chain-of-custody protocols; test result reporting procedures, including appropriate notification of the Department; client result reports content; sample and/or derivative referral protocols; and proficiency testing.

This regulation's requirement that laboratories retain records of sample tracking and access for ten years is consistent with the ten-year retention requirement for drinking water analysis records already in place. The Department has contacted numerous laboratories representing various types of ELAP-approved facilities, including commercial, industrial and government laboratories, and has determined that many of these laboratories, particularly those with electronic recordkeeping systems, are already retaining records for periods well in excess of five years.

Laboratories applying for approval in the specialty of critical agent testing will be required to submit their policies and procedures to the Department for review and approval to ensure adherence to approved methods and the requirements of this new section. Since such information, often in the format of manuals, is a universal component of all laboratories' operation, this should not be a burdensome requirement to regulated parties.

Professional Services:

No need for additional professional services is anticipated.

Compliance Costs:

It is not expected that the cost of compliance for small businesses and local governments will be different than for other regulated parties. With the possible exception of environmental testing conducted for public health purposes by county- or city-operated laboratories, the Department expects that costs could be offset by income from per-test or per-site charges imposed by a laboratory on its clients. The costs of compliance will vary significantly, primarily by a laboratory's existing biosafety level (*e.g.*, BSL-2 or BSL-3) and whether it meets U.S. Centers for Disease Control and Prevention (CDC) safety and security requisites for handling the particular critical agent(s) and specimen type(s) it proposes to test. A laboratory already meeting CDC's safety and security standards is expected to incur no new costs. On the other hand, a small business or government-operated facility minimally equipped for handling infectious agents — because it limits testing to basic chemistry and microbiology testing to monitor drinking water, for instance — may accrue extensive renovation and/or construction costs in the unlikely event it wished to take on critical agent testing.

Since the regulation's initial filing, thirty facilities requested application information for certification in anthrax testing. Six laboratories have been granted certification in anthrax testing; of those six, two are operated by local governments, and one is a small business. The two government-operated laboratories required only minor modifications to existing facili-

ties to comply with the proposed requisites for microbiologic testing; two additional government-operated laboratories are currently undergoing modifications in order to qualify for certification for anthrax testing. The costs of on-going modifications at the two applicant facilities are being funded through a National Centers for Disease Control and Prevention (CDC) public health preparedness grant to New York State. No additional modifications would be necessary by facilities already certified for anthrax testing in order that they qualify for certification in critical agent testing for toxins.

Facilities which do not comply with these requirements currently may incur the following compliance costs: costs for purchase and installation of a state-of-the-art biological safety cabinet; costs for establishing negative air pressure conditions and adequate air filtration with space renovation or new construction; and costs for security systems, such as installation of card-key devices, and/or locks on entrances to storage and work areas.

According to manufacturers' estimates, costs for purchase and installation of a biological safety cabinet to meet minimal BSL-2 standards range from \$6,275 to \$11,365. Upgrading existing standard microbiology work-space to BSL-3 would require extensive modifications to usable space and air handling and filtration systems, and would be expected to result in costs comparable to new construction. According to vendors of modular construction, who gave estimates to public health officials in NYS and other states, costs for a 600-square foot BSL-3 building range from \$240,000 to \$500,000. Given the Department's experience thus far, it is unlikely that any commercial entity will choose to develop new BSL-3 capacity.

Relatively minor expenditures would be necessary for supplies related to sample collection, including personal protection gear, and secure storage of samples with presumptive or confirmed critical agent findings. Laboratory supply catalogues indicate that the two plastic zipper-lock bags per sample would cost less than \$1.00; a box of 100 disposable gloves costs approximately \$6.00; and a lockable refrigerator-freezer costs \$500. Costs to equip one individual sample collector or analyst with requisite personal protective equipment are estimated at a minimum of \$10 for one set of disposable outerwear comprised of gown, shoe covers and gloves, to a maximum of \$500 for a rechargeable self-contained breathing apparatus.

Costs related to security systems vary greatly, depending on the sophistication of the system (*i.e.*, electronic or manual), and costs of maintenance and service contracts. According to estimates given by two manufacturers of card-key systems, one portal with card-key entry would cost \$5,000. One manufacturer of video surveillance equipment estimated that a laboratory installing a sixteen-camera system would incur costs of \$15,000. It is not possible to estimate operating and maintenance of security systems, since service contracts would vary according to the size of the system. Since no express requirements are in place for security equipment, a laboratory may control access to certain areas with stringent administrative controls, including sign-in logs and identification badges, at lower costs than a mechanical or electronic system.

Clinical laboratories seeking certification as environmental laboratories, as well as previously unregulated commercial concerns offering environmental testing (*e.g.*, as part of remediation following confirmed incidents), will need to pay approval fees equivalent to first-year Department Environmental Laboratory Approval Program (ELAP) fees, estimated at \$550. Clinical laboratories and previously unregulated facilities may also incur compliance costs similar to those for existing environmental laboratories described above. Based on a written survey of clinical laboratories currently licensed in the category of microbiology pursuant to Public Health Law Article 5, Title V, the Department estimates that 73 percent of these laboratories have existing capability for critical agent testing and would not need to expend significant resources for biosafety facilities unless they need to purchase personal protective equipment and related items to comply with the more stringent safety practices for critical agents testing.

Most clinical laboratories interested in testing environmental samples for biological critical agents already employ laboratory directors and testing personnel who qualify under the proposed educational and experiential criteria. The majority of environmental laboratories certified to perform microbiology testing limit that testing to low biosafety level work (*e.g.*, potable water testing), and generally do not employ personnel meeting the proposed requirements. While these sites would not incur additional personnel costs for analysts because of the proposal's grandfathering provision, requirements for a technical director would entail some added costs. According to a survey published in 2001 by the American Council of Independent Laboratories, the mean hiring rate for scientists with a bachelor's degree and one to three years' experience is \$38,900. A person with these credentials would meet the proposal's minimum requirements for a

technical director of a laboratory performing anthrax testing on environmental samples. Since the regulation was first filed, the Department has found that none of the environmental laboratories currently limiting their services to monitoring of sewage and water treatment facilities are interested in performing critical agent testing. The majority of environmental laboratories certified to perform chemical testing (*i.e.*, for environmental contaminants) already employ personnel meeting the proposed requirements for toxin testing.

Laboratories applying for approval under these regulations will incur costs of approximately \$3.00 to \$20.00 to copy to the Department all policies and procedures relevant to critical agent testing. On occasion, a laboratory may incur costs for shipping presumptively positive samples to the Wadsworth Center or another designated facility for further testing. The cost of shipping an isolate of a microbiologic agent (*e.g.*, a culture tube) by common carrier is estimated at between \$25 and \$50, depending on the need for keeping the agent's temperature constant with ice packs, for example. As an alternative, law enforcement officials, laboratory employees or couriers may be used for transporting samples at an anticipated maximum cost of \$350, assuming an 800-mile round trip and a \$25 hourly personnel wage.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to small businesses and local governments that are not already presented by undertaking these activities in a safe and reliable manner. Appropriate equipment and supplies to perform critical agent testing in a safe and reliable manner are currently available should a laboratory choose to begin testing in this specialty. The regulation does not require any laboratory, regardless of ownership type, to undertake testing for critical agents.

Minimizing Adverse Impact:

This regulation imposes requirements only on those laboratories which choose to undertake critical agent testing. Standards have been established at the absolute minimum necessary for safe and reliable testing. The department did not consider different compliance requirements or exceptions for small businesses or local governments because of the importance of this type of testing to public health, safety and welfare.

Small Business and Local Government Participation:

In the development of these regulations, the Department had informal discussions with environmental and clinical laboratories concerning their interest in and capacity to perform critical agent testing. Some of these discussions occurred with small businesses and local governments. The Department believes that the urgent need for public health and safety oversight in the area of critical agent testing obviates the need for extensive solicitation of regulated party input at this time.

Rural Area Flexibility Analysis

Effect of Rule:

The Department's Environmental Laboratory Approval Program (ELAP) currently certifies 779 environmental laboratories. Of these, 227 are located out-of-state and are not considered to be in rural areas. Of the remaining 552 laboratories, 374 are located in rural areas. Of these 374 rural facilities, 198 currently hold certifications in bacteriology, including 56 laboratories operated by counties, municipalities and townships, local governments that only conduct procedures to monitor water treatment. For the most part, environmental laboratories affiliated with drinking water or sewage treatment are not expected to apply for the environmental testing specialty of critical agents, for which this amendment sets standards.

Of the approximately 900 facilities holding a New York State clinical laboratory permit, only 118 are located in areas designated as rural. Of these, only 85 currently hold permits in bacteriology general or virology general and would be possible candidates for testing microbiological critical agents. Of the 118 clinical laboratories designated rural, fewer than 50 currently hold permits in toxicology. The vast majority of these restricts on-site toxicological analysis to screening for drugs of abuse in the emergency room setting, and would not likely be candidates for testing for critical biological agents that are toxins.

Compliance Requirements:

This proposed rule establishes minimum standards necessary to protect the public and laboratory employees from the health and safety risks inherent in critical agent testing. Due to the increased complexity and special issues presented by critical agent testing, this regulation establishes new requirements in addition to expanding several minimum standards now in place for environmental laboratories. However, the decision to engage in critical agent testing is strictly voluntary, and a laboratory needs to comply with the new and expanded requisites only if it applies for the specialty.

Proposed Section 55-2.13 sets forth minimum standards for: laboratory director and testing personnel qualifications; use of approved methods for sample collection and decontamination; recordkeeping systems to track the location of confirmed positive samples and isolated agents; sample chain-of-custody protocols; test result reporting procedures, including appropriate notification of the Department; client result reports content; sample and/or derivative referral protocols; and proficiency testing.

This regulation's requirement that laboratories retain records of sample tracking and access for ten years is consistent with the ten-year retention requirement for drinking water analysis records already in place. The Department has contacted numerous laboratories representing various types of ELAP-approved facilities, including commercial, industrial and government laboratories, and has determined that many of these laboratories, particularly those with electronic recordkeeping systems, are already retaining records for periods well in excess of five years.

Laboratories applying for approval in the specialty of critical agent testing will be required to submit their policies and procedures to the Department for review and approval to ensure adherence to approved methods and the requirements of this new section. Since such information, often in the format of manuals, is a universal component of all laboratories' operation, this should not be a burdensome requirement to regulated parties.

Professional Services:

No need for additional professional services is anticipated.

Compliance Costs:

It is not expected that the cost of compliance for applicant laboratories located in rural areas will be different than for other regulated parties. With the possible exception of environmental testing for public health purposes by county- or city-operated laboratories, the Department expects that costs could be offset by income from per-test or per-site charges imposed by a rural laboratory on its clients. The costs of compliance will vary significantly, primarily by a laboratory's existing biosafety level (*e.g.* BSL-2 or BSL-3) and whether it meets U.S. Centers for Disease Control and Prevention (CDC) safety and security requisites for handling the particular critical agent(s) and specimen type(s) it proposes to test. A laboratory already meeting CDC's safety and security standards is expected to incur no new costs. On the other hand, any facility minimally equipped for handling infectious agents — because it limits testing to basic chemistry and microbiology testing to monitor drinking water, for instance — may accrue extensive renovation and/or construction costs in the unlikely event it wished to take on critical agent testing.

Since the regulation's initial filing, thirty facilities requested application information for certification in anthrax testing. None of the six laboratories that have been granted certification in anthrax testing are located in a county having townships with population densities of 150 persons or less per square mile. The Department expects few, if any, environmental laboratories located in rural areas to apply for certification in toxin testing, even though it requires less stringent (*i.e.*, BSL-2) biosafety facilities than those required for microbiological critical agent testing.

Facilities which do not comply with these requirements currently may incur the following compliance costs: costs for purchase and installation of a state-of-the-art biological safety cabinet; costs for establishing negative air pressure conditions and adequate air filtration with space renovation or new construction; and costs for security systems, such as installation of card-key devices, and/or locks on entrances to storage and work areas.

According to manufacturers' estimates, costs for purchase and installation of a biological safety cabinet to meet minimal BSL-2 standards range from \$6,275 to \$11,365. Upgrading existing standard microbiology work-space to BSL-3 would require extensive modifications to usable space and air handling and filtration systems, and would be expected to result in costs comparable to new construction. According to vendors of modular construction, who gave estimates to public health officials in NYS and other states, costs for a 600-square foot BSL-3 building range from \$240,000 to \$500,000. Given the Department's experience thus far, it is unlikely that any commercial entity will choose to develop new BSL-3 capacity.

Relatively minor expenditures would be necessary for supplies related to sample collection, including personal protection gear, and secure storage of samples with presumptive or confirmed critical agent findings. Laboratory supply catalogues indicate that the two plastic zipper-lock bags per sample would cost less than \$1.00; a box of 100 disposable gloves costs approximately \$6.00; and a lockable refrigerator-freezer costs \$500. Costs to equip one individual sample collector or analyst with requisite personal protective equipment are estimated at a minimum of \$10 for one set of disposable outerwear comprised of gown, shoe covers and gloves, to a maximum of \$500 for a rechargeable self-contained breathing apparatus.

Costs related to security systems vary greatly, depending on the sophistication of the system (*i.e.*, electronic or manual), and costs of maintenance and service contracts. According to estimates given by two manufacturers of card-key systems, one portal with card-key entry would cost \$5,000. One manufacturer of video surveillance equipment estimated that a laboratory installing a sixteen-camera system would incur costs of \$15,000. It is not possible to estimate operating and maintenance of security systems, since service contracts would vary according to the size of the system. Since no express requirements are in place for security equipment, a laboratory may control access to certain areas with stringent administrative controls, including sign-in logs and identification badges, at lower costs than a mechanical or electronic system.

Clinical laboratories seeking certification as environmental laboratories, as well as previously unregulated commercial concerns offering environmental testing (*e.g.*, for anthrax on surfaces), will need to pay approval fees equivalent to first-year Department Environmental Laboratory Approval Program (ELAP) fees, estimated at \$550. Clinical laboratories and previously unregulated facilities may also incur compliance costs similar to those for existing environmental laboratories described above. Based on a written survey of clinical laboratories currently licensed in the category of microbiology pursuant to Public Health Law Article 5, Title V, the Department estimates that 73 percent of these laboratories have existing capability for critical agent testing and would not need to expend significant resources for biosafety facilities unless they need to purchase personal protective equipment and related items to comply with the more stringent safety practices for critical agents testing. Clinical laboratories that conduct toxicology analyses and environmental laboratories that conduct chemical testing (*e.g.*, for environmental contaminants) already have in place adequate biosafety facilities for toxin testing and would not need to expend significant resources to meet this amendment's requisites.

Most clinical laboratories interested in testing environmental samples for biological critical agents already employ laboratory directors and testing personnel who qualify under the proposed educational and experiential criteria. The majority of environmental laboratories certified to perform microbiology testing limit that testing to low biosafety level work (*e.g.*, potable water testing), and generally do not employ personnel meeting the proposed requirements. While these sites would not incur additional personnel costs for analysts because of the proposal's grandfathering provision, requirements for a technical director would entail some added costs. According to a survey published in 2001 by the American Council of Independent Laboratories, the mean hiring rate for scientists with a bachelor's degree and one to three years' experience is \$38,900. A person with these credentials would meet the proposal's minimum requirements for a technical director of a laboratory performing anthrax testing on environmental samples. Since the regulation was first filed, the Department has found that none of the environmental laboratories currently limiting their services to monitoring of sewage and water treatment facilities are interested in performing critical agent testing. The majority of environmental laboratories certified to perform chemical testing (*e.g.*, for environmental contaminants) already employ personnel meeting the proposed requirements for toxin testing.

Rural laboratories applying for approval under these regulations will incur costs of approximately \$3.00 to \$20.00 to copy to the Department all policies and procedures relevant to critical agent testing. On occasion, a laboratory may incur costs for shipping presumptively positive samples to the Wadsworth Center or another designated facility for further testing. The cost of shipping an isolate of a microbiologic agent (*e.g.*, a culture tube) by common carrier is estimated at between \$25 and \$50, depending on the need for keeping the agent's temperature constant with ice packs, for example. As an alternative, law enforcement officials, laboratory employees or couriers may be used for transporting samples at an anticipated maximum cost of \$350, assuming an 800-mile round trip and a \$25 hourly personnel wage.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to facilities located in rural areas that are not already presented by undertaking these activities in a safe and reliable manner. Appropriate equipment and supplies to perform critical agent testing in a safe and reliable manner are currently available should a laboratory choose to begin testing in this specialty. The regulation does not require any laboratory, regardless of location, to undertake testing for critical agents.

Minimizing Adverse Impact:

This regulation only imposes requirements on laboratories choosing to undertake critical agent testing. Standards have been established at the absolute minimum necessary for safe and reliable testing. The department

did not consider different compliance requirements or exceptions for facilities located in rural areas because of the importance of this type of testing to public health, safety and welfare.

Participation by Parties in Rural Areas:

In the development of these regulations, the Department had informal discussions with environmental and clinical laboratories concerning their interest in and capacity to perform critical agent testing. Few, if any, rural laboratories chose to participate in these discussions. The Department believes that the urgent need for public health and safety oversight in the area of critical agent testing obviates the need for extensive solicitation of regulated party input at this time.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. The revision proposes minimum standards for a recently recognized specialty of environmental laboratory testing, *i.e.*, critical agent testing. No requirement is imposed that a laboratory be certified in this specialty, and the Department expects that, of the small number of laboratories anticipated to seek certification in critical agent testing, few, if any, will need to take on additional capacity in the form of hiring new personnel. Therefore, this proposed amendment has no implications for job opportunities.

Assessment of Public Comment

A Notice of Proposed Rulemaking for an amendment to 10 NYCRR Subpart 55-2, including the complete text of the proposed rule, was published in the *State Register* on May 26, 2004 for a 45-day comment period. Prior to its publication, copies of the proposed amendment were distributed to: environmental laboratories holding New York State (NYS) certificates of approval in areas relevant to critical agent testing; clinical laboratories holding a NYS permit in clinical disciplines pertinent to critical agent testing (*i.e.*, microbiology and toxicology); and other affected parties, including local health departments. One letter of formal comment was received in response. No substantive revisions to the published regulations are needed as a result of the comments. As noted in this assessment, a few editorial changes will be made.

The commentor suggested that the proposed regulation would be clearer if it included "critical agents" in the list of "certificates of approval" in Section 55-2.2. The Department disagrees and notes Section 55-2.2 does not include a list of certificates of approval, but rather a listing of the four categories of approval - the matrices in which environmental analysis is conducted. "Critical agents" is not an environmental matrix, but rather a specialty of environmental testing that includes various biological and chemical analytes, such as anthrax and toxins respectively. This designation as a specialty recognizes that a critical agent could conceivably be found in any of the matrices identified in Section 55-2.2. Therefore, the Department declines to make the recommended change in the proposed regulation.

The commentor suggested that the proposed regulation's definitions would be better located in Section 55-2.1 and that the proposed regulation's personnel requirements would be better located in Section 55-2.10. The Department declines to make such a change. In addition to this proposed regulatory amendment to add new Section 55-2.13, the Department, in a separate effort, is proposing to make comprehensive amendments to Sections 55-2.1 to 2.12. The integration of the two proposals envisioned by the commentor, although desirable, would have been unnecessarily complex, and would have resulted in delays at a time when emergency promulgation of this proposal was urgently needed for homeland security and protection of the public health. The Department will consider whether some provisions of Section 55-2.13 are better placed in other sections at such time as Subpart 55-2 is updated in the future.

The commentor indicated that the proposed regulation does not provide regulated parties with guidance on analytical methods and procedures to be used for critical agent testing. The Department disagrees that specific technical requirements for critical agents testing methods should be provided in regulation. Department scientific experts have determined that it is not feasible to establish suitable technical standards universally applicable to all organisms and non-living matter (*e.g.*, chemicals, toxins) that are or could be designated as critical agents by the federal Centers for Disease Control and Prevention (CDC) in this rapidly changing field. The Department believes that a more flexible approach is warranted. The Department's assessment process for pre-analytical and analytical methods includes an evaluation of each applicant's procedures for sample collection and analysis by a team of scientific experts who consider both the specific agent of interest and CDC's published recommendations for that agent's handling and identification. Moreover, the Department oversees New

York's Laboratory Response Network (LRN) for terrorism events and maintains the capability to communicate technical updates immediately to Level A laboratories, which are laboratories approved to conduct analyses for ruling out the presence of an agent such as anthrax or a toxin in environmental samples. Due to the need for flexibility for establishing appropriate analytical standards on a timely basis, the Department believes no change to the regulation is necessary in this regard.

The commentator claimed that the proposed regulation lacks criteria that the Department should employ to evaluate applications for approval to perform critical agent testing and also evaluate an approved laboratory's ongoing critical agents testing activities. The Department disagrees. Proposed Paragraph 55-2.13(b)(2), and proposed Subdivisions 55-2.13(c) and (d) provide detailed descriptions of criteria for obtaining approval to perform critical agent testing and to perform such testing on an ongoing basis. Moreover, the introductory sentence to Subdivision 55-2.13(c) makes clear that additional requirements located elsewhere in Subpart 55-2 may apply: "in addition to application and attestation requirements found elsewhere in this Subpart." The Department finds that the proposed amendment's standards are easily located, and, therefore, no change has been made to address application and performance requisites.

The commentator recommended that the proposed regulation include more specific requirements for containment, storage, decontamination, safety and disposal of critical agent samples. The Department has determined that it is not desirable to provide more specific requirements in regulation relating to containment, storage, decontamination safety and disposal of critical agent samples, because compliance requirements for each of these laboratory activities vary considerably for each critical agent or grouping of critical agents (*i.e.*, biological (such as an infectious bacteria) *vs.* chemical (such as a toxic gas)). It is likely that appropriate procedures for handling and disposal of certain materials that may contain critical agents will change over time as State and federal authorities gain more experience with critical agent samples. Hence, no change will be made to the proposal to address this suggestion.

The commentator claimed that the definition, "approved method" that is set forth in the separate proposal to amend Sections 55-2.1—2.12 does not cover critical agents because it does not expressly reference the CDC. The commentator also suggests that the proposed amendment to Section 55-2.13 should make specific reference to the information regarding testing for critical biological agents posted on the CDC Website. The Department believes that the definition of "approved method" clearly applies to critical agents. The definition, "approved method," in relevant part, states that an "approved method means an analytical method . . . of proven reliability which has been approved by the Environmental Protection Agency or a New York State regulatory program in environmental or public health protection, for the specific purpose for which the method is to be used." Consistent with this definition, the Department determines whether analytical methods for critical agent testing should be approved based on reliable sources of scientific information, including the CDC. Unlike the Environmental Protection Agency, the CDC has no authority to regulate how environmental laboratories engaged in critical agent testing. The Department believes it is not practical to provide sources for information, such as Website addresses, in regulation because the rapid changing nature of the information would make it difficult for regulated parties to understand their responsibilities. Therefore, the proposed amendment has not been revised to include reference to the CDC or its Website.

The commentator claims that the proposed rule's numbering of Sections 55-2.12 and 2.13 are confusing when read in light of a separate proposed amendments to Sections 55-2.1 through 55-2.12. The commentator should note that Section 55-2.13 was initially promulgated as an emergency rule and was already in effect when the concurrent amendment revising Sections 55-2.1-2.12 was published. Hence, Section 55-2.12 reserved by this proposal will be superceded by amendments to Sections 55-2.1-2.12 (when promulgated). The Department expects that this proposed amendment's Section 55-2.13 will be appropriately integrated with the 12 sections of the other proposed amendment once both are adopted as permanent regulations.

The commentator claims that the proposed regulations' use of a variety of terms when referring to critical agents makes the regulations unclear. The Department believes that terms central to regulated parties' understanding of the rule, such as the definitions for "critical agent" and "organism," are clearly defined, and will make no changes to those definitions. Each use of the words "critical" and "agent" in the proposal's express terms was reviewed, and the need for its associated descriptor, such as the lay term "biological," was re-evaluated. The Department has determined that references to "critical biological agent" and "critical chemical agent,"

are well understood by the scientific community and even used by the CDC in its publications. As a result of its review, the Department found the last sentence of Paragraph 55-2.13(b)(1) to contain a typographical error which has now been corrected, specifically that the lay terms "biological" and "chemical" precede, rather than coming between the words "critical" and "agents." The commentator also questioned the appropriateness of the phrase in Paragraph 55-2.13(d)(5) "organism or its product or component" because, as the commentator correctly notes, the term "organism" includes "product of an organism." The phrase "product or" will be removed from the first sentence of Subparagraph (5) to reduce potential confusion, without change to meaning or intent of the provision. However, the word "component" must be retained in Subparagraph (5) to clarify that detection of a constituent or part of a target organism, such as its nuclear material (*i.e.*, DNA or RNA), signals that the organism is or was present, and, for purposes of the proposed rule's reporting provision, is the same as detection of the organism, complete and intact.

The commentator also asked whether fungi and parasites were deliberately omitted from the definition of the term "organism" in Subdivision 55-2.13(a). This provision states, in relevant part, that "[t]he term organism includes, but is not limited to, a virus, bacterium, or product of an organism." Although there is no explicit reference to the terms "fungi or parasites" in the definition of "organism," the Department finds that the definition is sufficiently broad to include fungi and parasites. Explicit reference to "fungi and parasites" is not necessary.

The commentator stated that it was unclear in the published rule whether an acceptable on-site assessment and successful completion of proficiency testing are required prior to approval for critical agent testing. The commentator also appeared to seek confirmation that proposed Section 55-2.4, when adopted, would govern interim approval to perform critical agent testing. The commentator is correct that proposed Section 55-2.4, when adopted, will be controlling. In accordance with Section 55-2.4, the Department has authority to determine whether an on-site assessment and/or proficiency testing is required in order to gain approval for critical agent testing. In the case of critical agent testing, due to the significant negative impact of inadequate biosafety facilities and resulting substandard analyses that could generate unreliable results, the Department now requires all applicants for approval in critical agent testing to: submit operating procedures and methods for prior approval; undergo a rigorous on-site assessment by a team of scientists with a variety of expertise; and correct all deficiencies to the satisfaction of the Department, prior to certification for critical agent testing. The flexibility afforded by the amendment as proposed allows the Department to react to each unique situation in this fast-changing area of regulatory oversight. The Department expects few applications and is prepared to work very closely with each applicant.

The commentator claimed that the following provision in Paragraph 55-2.13(b)(2) does not provide regulated parties with guidance on biosafety requirements necessary to perform critical agent testing: "The department shall also consider a laboratory's (bio)safety level facilities and practices in its determination to approve the laboratory for critical agent testing in environmental samples." The commentator then proposed that the regulation should require laboratories to perform testing using an "appropriate level of biosafety protection," and include specific references to standards of safety protection. The Department declines to include guidance specific to biosafety levels in regulation. Department scientific experts have determined that it is not feasible to establish biosafety facilities standards that would apply to all organisms and non-living matter (*e.g.*, chemicals, toxins) that are currently or could be designated as critical agents by the NYS Commissioner of Health or the CDC. The Department currently provides each applicant and each certified laboratory with safety information unique for each critical agent, which the laboratory will be or is authorized by the Department to test. At present, the Department conducts an independent assessment of the biosafety facilities and practices of each applicant laboratory, considering both the specific critical agent of interest and CDC's published recommendations for that agent's handling. The Department believes that introducing specifics into the regulation would reduce flexibility, and could diminish the Department's ability to require use of the most advanced biosafety technologies as necessary to protect the public in the case of a bioterrorism incident. The Department agrees with the commentator that the parenthetical "(bio)safety" in Paragraph 55-2.13(b)(2) is confusing and will remove the parentheses; the word "safety" will also be inserted before "practices" in order to retain the provision's relevance to both biological safety facilities (*i.e.*, biosafety facilities) and general safety practices.

The commentator suggested it is unnecessary to provide personnel qualifications specific to critical agent testing in proposed Section 55-2.13 since

they appear to be the same as those in the other proposal to amend Sections 55-2.1 — 2.12. The personnel qualifications in both regulatory amendment proposals are the same, with one important exception. Proposed Section 55-2.13 specifically recognizes as qualified to direct a laboratory engaged in critical agent testing a person holding a clinical laboratory director certificate of qualification, for instance, in microbiology for anthrax testing. Again, it is also noteworthy that this proposed regulatory amendment was promulgated as an emergency rule at the same time that proposed Sections 55-2.1 — 2.12 were undergoing major revision, making it impossible to integrate the personnel provisions without incurring unacceptable delays in rule adoption. The Department has decided not to revise further either amendment at this time only to provide for better integration of provisions that are clear as written.

The commentor opined that clinical laboratory directors with certification in any specialty of microbiology, rather than an “applicable subspecialty,” should qualify to direct an environmental laboratory engaged in testing for critical biological agents. The Department does not agree, and believes directors’ areas of scientific concentration should be matched to the technical expertise required for a specific type of critical agent whenever possible. The term “applicable” allows the Department to consider, on a case-by-case basis, whether the coursework and experience qualifying a person for clinical laboratory director certification in a particular subspecialty of microbiology would provide appropriate educational background and cross-training for testing of any given critical biological agent, including toxins.

The commentor also felt that the amendment should recognize clinical laboratory certificates of qualification in categories other than toxicology as qualifying directors for toxin analysis. The Department notes that the proposed rule also accepts certification in any category of microbiology as qualifying directors for toxin analysis. Since toxins are critical biological agents, the Department believes certification in either of these areas would ensure that the director has the background necessary to oversee toxin testing. The Department has considered all other categories of certification and found them to be either not pertinent to toxin analysis, too restrictive (*i.e.*, method-oriented, such as direct molecular detection techniques), or overly broad (*e.g.*, chemistry). The Department declines to recognize additional clinical certification as qualifying at this time.

The commentor suggested that personnel requirements for directors of laboratories testing for critical biological agents were insufficient. The commentor observed that, in clinical laboratories performing testing similar to critical agent testing, persons holding a bachelor’s or master’s degree would not qualify as (even) laboratory supervisors as permitted by these proposed regulations. The Department believes it irrelevant to compare this amendment’s director qualifications to clinical laboratory director educational requisites, since clinical laboratories and environmental laboratories perform tests for very different purposes. Furthermore, the commentor’s comparison is inherently faulty because it focuses solely on the type of degree and ignores course content as well as practical laboratory experience. The Department’s scientific experts have found totally adequate the proposed rule’s provisions to qualify environmental laboratory directors testing for the one critical biological agent, a microbiological organism, for which technical standards have been promulgated (*i.e.*, *Bacillus anthracis* (anthrax)). Unlike testing for clinical specimens, which are typically submitted “for cause,” *i.e.*, known or suspected to harbor one or more infectious organisms, environmental testing is typically conducted to rule out the presence of the agent. The proposed regulation would require that the certified environmental laboratory report any presumptive positive finding to the Department. Confirmatory testing or further characterization of the detected agent would be at the Department’s direction. It is noteworthy that procedures for presumptive identification/detection of anthrax are technically simple methods, and include plating a sample on commercially prepared microbiological media, incubating it for a specified time, and examining the plate for bacterial growth. For all the above reasons, the Department declines to raise the degree level required to direct an environmental laboratory pursuant to this rule.

The commentor suggested it would be helpful to specify personnel requirements for critical chemical agents in regulation. As previously noted by the commentor, Section 55-2.10 personnel requirements applicable to laboratories engaged in inorganic analyses would be controlling unless otherwise specified, and would apply to analysis of environmental samples for chemical critical agents. The Department declines to establish new personnel requirements specific to critical chemical agent testing at this time.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medicaid Enteral Nutrition Reimbursement Methodology

I.D. No. HLT-34-04-00005-P

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

Proposed action: Amendment of section 505.5 of Title 18 NYCRR.

Statutory authority: L. 1997, ch. 433

Subject: Medicaid enteral nutrition reimbursement methodology.

Purpose: To decrease Medicaid reimbursement for enteral nutrition.

Text of proposed rule: A new paragraph (10) of Section 505.5(a) is added:

Acquisition price means that price determined and periodically adjusted by the State Health Department, which it deems a prudent Medicaid provider would pay for a reasonable quantity of generically equivalent enteral products.

Paragraph (8) of Section 505.5(d) is amended:

(8) Payment for enteral therapy must not exceed the lower of:

- (i) [the acquisition cost to the provider plus 50 percent; or] *the acquisition price plus thirty percent for generically equivalent products as shown in the fee schedule for durable medical equipment, medical surgical supplies, prosthetic and orthotic appliances and orthopedic footwear; or*
- (ii) the usual and customary charge to the general public.

Text of proposed 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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained in Section 1-a, Chapter 433 of the Laws of 1997, which directs the Department to implement Medicaid cost savings in part by reimbursing for enteral nutrition at acquisition price plus 30 percent. Section 236 of Chapter 474 of the Laws of 1996 transfers responsibility for the supervision of the administration of the Medical Assistance program from the Department of Social Services to the Department of Health.

Legislative Objective:

The legislative objective of this authority is cost savings in the area of Medicaid expenditures for enteral nutrition.

Needs and Benefits:

Medicaid intends to pay for enteral formulas for individuals who cannot obtain necessary nutrients through food due to medical conditions. The enteral formula is ordered by a qualified prescriber and dispensed by a pharmacy or durable medical equipment provider for administration via tube or mouth.

Since 1997, total yearly Medicaid expenditures for enteral nutrition have risen from less than \$11 million per year to nearly \$90 million using the current 50% markup payment methodology.

Medicaid pays for enteral products via generic product codes established by the national Healthcare Common Procedure Coding System (HCPCS). This system groups generically equivalent enteral products under the same billing code. Currently, there are seven distinct enteral formula codes listed in HCPCS. The majority of enteral formula is dispensed using the HCPCS code that represents nationally advertised brand name formulas. Lower cost store brand or generic formulas are generically equivalent to the brand name formulas.

The current payment methodology encourages the dispensing of more expensive enteral products since those products generate the highest return for the dispenser. By setting reimbursement based on prudent purchasing of generically equivalent enteral formulas, the regulation will help reduce Medicaid costs while continuing to meet the medical needs of the individual recipients.

Chapter 433, Section 1-a of the Laws of 1997 specifically directs Medicaid enteral nutrition reimbursement at acquisition price plus thirty percent as a cost savings program. The Department determined that the most cost effective methodology would be one defining acquisition price as that price determined and periodically adjusted by the Department,

which it deems a prudent Medicaid provider would pay for a reasonable quantity of generically equivalent enteral products.

COSTS:

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

This amendment will not increase costs to the regulated parties. It will reduce revenues to the extent dispensers have not used prudent purchasing or dispensing practices.

Costs to State and Local Government:

This amendment will not increase costs to the State or local governments. Savings to the Medicaid Program will be achieved by changing the current methodology since the acquisition price will represent what a prudent provider would pay for a reasonable quantity of generically equivalent enteral products, not the high end products that provide greater mark-up. The Department has reviewed current acquisition prices for the most commonly prescribed enteral formulas and estimates that implementation of the amendment will result in a fee reduction of 18-20% on these formulas. The result is a total \$16.2 million savings, based on total annual expenditures of \$90 million.

Costs to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost or responsibility on any county, city, town, village, school district, fire district or other special district.

Paperwork:

This amendment will not impose any additional paperwork for dispensers of enteral formula.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The Department considered the following cost saving alternatives and determined that they were not feasible:

- Limit Medicaid coverage of enteral formulas to individuals dependent on tube feeding.

This alternative was not selected because individuals may medically require oral enteral nutrition when medical conditions preclude the absorption of all necessary nutrients through food.

- Reimburse enteral products using Average Wholesale Price (AWP) and brand-specific Universal Product Codes (UPC) or National Drug Codes (NDC).

This alternative was not selected because it would not result in cost savings, but rather cost increases. Prescribers and dispensers would be encouraged to order and supply the most expensive brand name products. The Department found that AWP is not a consistently reliable measure of the actual price a dispenser pays for enteral formulas. Also, the Health Insurance Portability and Accountability Act of 1996 names the HCPCS coding system as the code set for enteral formula.

- Direct competitive procurement.

The Legislature directed the Department to implement this approach in 1996 but it was met with opposition from manufacturers of enteral formula. Section 230 of the Laws of 1996 was amended in 1997, directing the acquisition price plus 30 percent pricing methodology.

- Implement a "list price less" methodology.

This methodology was proposed for regulation for durable medical equipment in 1994, was released for public comment, and was met with opposition from the Attorney General's Office and Department of Social Services Office of Quality Assurance and Audit because auditing would be difficult. The proposed regulation was withdrawn.

Federal Standards:

This rule does not result in reimbursement by Medicaid at a higher level than established federal reimbursement for enteral products.

Compliance Schedule:

The proposed amendment will become effective on the first day of the month following Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This amendment affects 2800 pharmacies and 190 durable medical equipment providers enrolled in the Medicaid program who actively bill Medicaid for enteral formula. The amendment will reduce Medicaid reimbursement for enteral formulas to these businesses, some of which are small. The Department is anticipating an \$8 million reduction in enteral expenditures in SFY 2003/2004 and \$16 million in SFY 2004/2005. The fifty-eight local social services districts share in the costs of services

provided to eligible recipients who receive Medicaid through their districts.

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 amendment.

Compliance Costs:

There are no direct costs of compliance with this amendment. However, affected providers will realize reduced Medicaid reimbursement for enteral formulas. Local social service districts will experience decreased costs in their share of medical expenses for enteral formula as a result of overall decreases in expenditures for enteral formula.

Economic and Technological Feasibility:

The acquisition price plus 30 percent methodology that is based on what a prudent Medicaid provider would pay for a reasonable quantity of generically equivalent enteral products is economically feasible for providers. Nearly 75% of enteral formula is provided by pharmacies, most of which are large retail chains that have access to their own store brand formulas and substantial discounts on national brand formulas. Specialized formulas for metabolic disorders or targeted supplementation will continue to be priced manually by the Department, but now at the price paid by the provider plus 30 percent. Local social services districts will benefit economically from the proposed amendment so compliance should be economically feasible for them. Since the amendment will not change the way providers bill for services or affect the way the local districts contribute their local share of Medicaid expenses for enteral formula, there should be no concern about technological difficulties associated with compliance with the proposed regulation.

Minimizing Adverse Impact:

Legislation requires the implementation of a methodology that will affect providers by reducing Medicaid reimbursement for enteral formula. The acquisition price plus 30 percent methodology that is based on what a prudent Medicaid provider would pay for a reasonable quantity of generically equivalent enteral products should minimize adverse impacts on businesses.

Small Business and Local Government Participation:

Section 1-a, Chapter 433 of the Laws of 1997 directs the Department to implement a cost savings program for enteral nutrition. In order to be competitive in the market, small vendors already belong to purchasing groups for drugs, supplies, enteral formula and equipment and are able to take advantage of prudent purchasing opportunities and discounts. Local government officials have consistently urged the Department to implement Medicaid cost savings programs. The Department also meets on a regular basis with provider groups such as the Pharmaceutical Society of the State of New York (PSSNY) and the New York Medical Equipment Providers (NYMEP) to discuss reimbursement issues. PSSNY indicates that it opposes the regulation, citing a potential negative impact on recipient access if fees are reduced, stating that pharmacies would be at risk of closing, and that enteral formula expenditures and recipient fraud will decrease as a result of a recent change in the prior authorization process for these formulas. NYMEP states that a 20% cut in reimbursement will not cover delivery and administrative costs and thus will decrease access, that the recent prior authorization changes have resulted in decreased expenditures but not decreased recipient need, and requested that DOH recalculate the potential decrease in fees proposed in the regulation. DOH expects that if the regulation is adopted, it will meet with the industry to discuss the representative products to be used in the acquisition price calculation as it did in 1999 with adoption of the durable medical equipment pricing regulation change.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule will apply to pharmacies and durable medical equipment providers in New York State. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional services are needed in a rural area to comply with the proposed rule.

COSTS:

There are no direct costs associated with compliance. However, affected providers will realize reduced Medicaid reimbursement for enteral formula.

Minimizing Adverse Impact:

The Department considered the approaches in Section 202-bb(2)(b) of the State Administrative Procedure Act and found them to be inappropriate given the legislative objective.

Rural Area Participation:

The Department meets on a regular basis with provider groups such as the Pharmaceutical Society of the State of New York (PSSNY) and the New York Medical Equipment Providers (NYMEP), both of whom represent some rural providers, to discuss reimbursement issues. PSSNY indicates that it opposes the regulation, citing a potential negative impact on recipient access if fees are reduced, stating that pharmacies would be at risk of closing, and that enteral formula expenditures and recipient fraud will decrease as a result of a recent change in the prior authorization process for these formulas. NYMEP states that a 20% cut in reimbursement will not cover delivery and administrative costs and thus will decrease access, that the recent prior authorization changes have resulted in decreased expenditures but not decreased recipient need, and requested that DOH recalculate the potential decrease in fees proposed in the regulation. DOH expects that if the regulation is adopted, it will meet with the industry to discuss the representative products to be used in the acquisition price calculation as it did in 1999 with adoption of the durable medical equipment pricing regulation change.

Job Impact Statement

Nature of Impact:

This rule will result in decreased Medicaid reimbursement to pharmacies and durable medical equipment providers. This decreased revenue will not likely have an adverse impact on jobs and employment opportunities within these businesses.

Categories and Numbers Affected:

This rule, which decreases Medicaid revenue, will not likely affect employment opportunities within approximately 2,800 pharmacies and 190 medical equipment vendors who provide enteral formula to Medicaid recipients. The dispensing of enteral formula requires store clerk level staff, not licensed professionals.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program to provide enteral formula.

Minimizing Adverse Impact:

The Department is required by legislation to decrease Medicaid expenditures for enteral formula. The Department considered other Medicaid cost savings alternatives and determined that this rule would be the most flexible in allowing pharmacies and durable medical equipment providers to be prudent purchasers of generically equivalent products. This will offset the decreased Medicaid revenue to providers.

Self-Employment Opportunities:

The rule is expected to have minimal impact on self-employment opportunities since the majority of providers that will be affected by the rule are not small businesses or sole proprietorships.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-18-04-00010-P, Issue of May 5, 2004.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

**NOTICE OF CONTINUATION
NO HEARING(S) SCHEDULED**

Attendance Rules for Teachers

I.D. No. OMH-14-04-00004-C

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

The notice of proposed rule making, I.D. No. OMH-14-04-00004-P was published in the *State Register* on April 7, 2004.

Subject: Attendance rules for teachers.

Purpose: To conform overtime eligibility rules to labor management agreements.

Substance of rule: These amendments revise Parts 250 and 251 of Title 14 NYCRR to reflect that teachers, in titles assigned to grade 22 and below, employed by the Office of Mental Health, are eligible for overtime and that the title Education Director I, G-22 is no longer in the Management Confidential unit. (Part 250 relates to titles in the teacher series in the Professional, Scientific and Technical (PS&T) bargaining unit and Part 251 relates to titles in the teacher series in the Management Confidential unit.) The title Education Director I, G-22, will be moved from § 251.6 to § 250.6 reflecting its correct bargaining unit. The remaining Management Confidential title in Part 251, Education Director II, G-24, continues to be ineligible for overtime.

Changes to rule: No changes.

Expiration date: April 7, 2005.

Text of proposed rule and changes, if any, 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

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

Office of Mental Health

NOTICE OF ADOPTION

Residential Treatment Facilities for Children and Youth

I.D. No. OMH-18-04-00010-A

Filing No. 886

Filing date: Aug. 9, 2004

Effective date: Aug. 25, 2004

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

Action taken: Amendment of section 584.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

Subject: Operation of residential treatment facilities for children and youth.

Purpose: To continue the temporary increase in the capacity of certain RTF's to serve the needs of emotionally disturbed children and youth.

**Office of Mental Retardation
and Developmental Disabilities**

NOTICE OF ADOPTION

Health Care Decisions Act for Persons with Mental Retardation

I.D. No. MRD-24-04-00011-A

Filing No. 890

Filing date: Aug. 10, 2004

Effective date: Aug. 25, 2004

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

Action taken: Amendment of section 633.10 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07 and 13.09; and Surrogate's Court Procedure Act, section 1750-b

Subject: Health Care Decisions Act for Persons with Mental Retardation.

Purpose: To establish specific processes which are made subject to regulations of the commissioner of OMRDD.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. MRD-24-04-00011-EP, Issue of June 16, 2004.

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

Text of 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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Assessment of Public Comment

The agency received no public comment.

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

Definition of Developmental Disability

I.D. No. MRD-34-04-00008-P

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

Proposed action: This is a consensus rule making to amend sections 624.20, 633.99, 635-99.1, 671.99, 676.12, 679.99, 680.13, 681.99, 686.99, 687.99 and 690.99 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 1.03(22), 13.07, 13.09 and 16.00

Subject: Definition of "developmental disability."

Purpose: To change the definition of "developmental disability."

Text of proposed rule: Part 624 Reportable Incidents, Serious Reportable Incidents and Abuse in Facilities Operated or Certified by OMRDD

§ 624.20(t) Glossary

[(t)] [Disability, developmental. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [Is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(t) *Disability, developmental. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 633 Protection of Individuals Receiving Services in Facilities Operated and/or Certified by OMRDD

§ 633.99(ao) Glossary

[(ao)] [Developmental disability. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(ao) *Developmental disability. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 635 General Quality Control and Administrative Requirements Applicable to Programs, Services or Facilities Funded or Certified by the Office of Mental Retardation and Developmental Disabilities

§ 635-99.1(ae) Glossary

[(ae)] [Developmental disability. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(ae) *Developmental disability. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 671 HCBS Waiver Community Residential Habilitation Services for Persons with Developmental Disabilities

§ 671.99(j) Glossary

[(j)] [Disability, developmental. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(j) *Disability, developmental. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) constitutes a substantial handicap to such person's ability to function normally in society.

Part 676 Diagnostic and Research Clinics

§ 676.12(o) Glossary

[(o)] [Developmental disability. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(o) *Developmental disability. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 679 Clinic Treatment Facilities

§ 679.99(j) Glossary

[(j)] [Disability, developmental. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(j) *Disability, developmental. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 680 Speciality Hospitals

§ 680.13(p) Glossary

[(p)] [Developmental disability. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(p) *Developmental disability. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 681 Intermediate Care Facilities for Persons Who Are Developmentally Disabled

§ 681.99(h) Glossary

[(h)] [Developmental disability. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in subparagraph (1) or (2) of this paragraph;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(h) *Developmental disability. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 686 Operation of Community Residences

§ 686.99(o) Glossary

[(o)] [Developmental disability. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(o) *Developmental disability. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) has continued or can be expected to continue indefinitely; and
 (4) constitutes a substantial handicap to such person's ability to function normally in society.

Part 687 Family Care Homes for the Developmentally Disabled
 § 687.99(e) Glossary

[(e)] [Developmental disability. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(e) *Developmental disability. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

Part 690 Day Treatment Services to Persons with Developmental Disabilities

§ 690.99(p) Glossary

[(p)] [Disability, developmental. A disability of a person which:]

[(1)] [is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment or autism;]

[(2)] [is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;]

[(3)] [is attributable to dyslexia resulting from a disability described in paragraph (1) or (2) of this subdivision;]

[(4)] [originates before such person attains age 22;]

[(5)] [has continued or can be expected to continue indefinitely; and]

[(6)] [constitutes a substantial handicap to such person's ability to function normally in society.]

(p) *Disability, developmental. A disability of a person which:*

(1) (i) *is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;*

(ii) *is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or*

(iii) *is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;*

(2) *originates before such person attains age twenty-two;*

(3) *has continued or can be expected to continue indefinitely; and*

(4) *constitutes a substantial handicap to such person's ability to function normally in society.*

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.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with

respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Consensus Rule Making Determination

Chapter 255 of the Laws of 2002 changed the definition of "developmental disability" by adding the disorder, familial dysautonomia. The primary purpose of the proposed rule making is to make that change in each Part or Subpart of Title 14 in which the term "developmental disability" or "disability, developmental" is defined. At the same time OMRDD has made revisions to make all the definitions uniform and more consistent with the wording of the NYS Mental Hygiene Law (subdivision 22 of § 1.03). Thus, OMRDD has determined due to the nature and purpose of the amendments that no person is likely to object to the rule as written.

Job Impact Statement

A JIS for these amendments was not submitted because it is apparent from the nature and purpose of the amendments that they will not have an impact on jobs and/or employment opportunities. This finding is based on the fact that the proposed rule making only revises the definition of "developmental disability" in 14 NYCRR. These proposed revisions will not have any effect on jobs or employment opportunities in New York State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Obsolete Service Fee and Rate Schedules

I.D. No. MRD-34-04-00009-P

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

Proposed action: This is a consensus rule making to repeal section 62.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 1.03(22), 13.07, 13.09, 16.00 and 43.01

Subject: Obsolete service fee and rate schedules.

Purpose: To delete the schedules.

Text of proposed rule: Part 62 FEES FOR SERVICE - OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

§ 62.1 Schedule of fees and rates for services by office facilities.

Delete the entire section, except for the title of the section, and replace with the following:

(a) *Reserved.*

§ 62.2 Charges for use of space on State-owned or leased property by non-state government entities.

This section remains as is, with no change.

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.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Consensus Rule Making Determination

The purpose of the proposed rule making is to delete obsolete fee and rate schedules for OMRDD services. The schedule, depending on the individual program, is out of date by at least 21 years. Thus, OMRDD has determined due to the nature and purpose of the amendments that no person is likely to object to the rule as written.

Job Impact Statement

A JIS for this amendment was not submitted because it is apparent from the nature and purpose of the amendment that it will not have an impact on jobs and/or employment opportunities. This finding is based on the fact that the proposed rule making is the deletion of obsolete service fee and rate schedules. The proposed revision will not have any effect on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Use of Utility Generated Funds by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery of New York, et al.

I.D. No. PSC-03-03-00008-A

Filing date: Aug. 4, 2004

Effective date: Aug. 4, 2004

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

Action taken: The commission, on May 21, 2003, adopted an order in Case 02-G-1644 allowing The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Deliver Long Island to use revenues to make investments in natural gas vehicle infrastructure.

Statutory authority: Public Service Law, sections 66 and 107

Subject: Use of utility generated funds.

Purpose: To allow use of revenues for investments in natural gas vehicle infrastructure.

Substance of final rule: The Commission approved the joint petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to use a maximum of \$13.5 million in public service revenues for investment in infrastructure and equipment related to natural gas vehicles, subject to terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-G-1644SA1)

NOTICE OF ADOPTION

Real Estate Tax Reconciliation by United Water New Rochelle Inc.

I.D. No. PSC-37-03-00017-A

Filing date: Aug. 5, 2004

Effective date: Aug. 5, 2004

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

Action taken: The commission, on July 8, 2004, adopted an order in Case 03-W-1162 allowing United Water New Rochelle Inc.'s (UWNR) to retain \$38,791 in property tax overcollections and defer \$801,358 plus interest for future ratepayer benefit.

Statutory authority: Public Service Law, section 113(2)

Subject: Reconciliation of property taxes.

Purpose: To permit UWNR to retain \$38,791 of the \$840,149 in property tax overcollections.

Substance of final rule: The Commission authorized United Water New Rochelle Inc. to retain \$38,791 of the \$840,149 in property tax overcollections for the rate year ended June 30, 2003 and defer the remaining \$801,358 plus interest for future ratepayer benefit while the Department of Public Service investigates the alleged over-refund.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-W-1162SA1)

NOTICE OF ADOPTION

Pole Attachments

I.D. No. PSC-10-04-00021-A

Filing date: Aug. 6, 2004

Effective date: Aug. 6, 2004

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

Action taken: The commission, on June 2, 2004, adopted the policy statement on pole attachments.

Statutory authority: Public Service Law, sections 94(2) and 66(1)

Subject: Pole attachment procedures.

Purpose: To set forth proposed resolution for unresolved pole attachment issues.

Substance of final rule: The Commission adopted the Policy Statement on Pole Attachments to resolve major issues of disagreement regarding attachment/occupancy practices; access to poles, ducts and conduits; make-ready costs; use of outside contractors and cost control and limitations on particular attachments.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-M-0432SA2)

NOTICE OF ADOPTION

Residential Distributed Generation Rates

I.D. No. PSC-11-04-00036-A

Filing date: Aug. 4, 2004

Effective date: Aug. 4, 2004

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

Action taken: The commission, on July 8, 2004, adopted an order in Case 02-M-0515 directing gas utilities to file tariffs establishing firm rates for natural gas service to commercial and industrial customers using distributed generation equipment.

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

Subject: Gas rates for distribution generation technologies.

Purpose: To comply with the commission's April 24, 2003 order establishing firm rates for natural gas service to commercial and industrial customers using distributed generation equipment.

Substance of final rule: The Commission directed local gas distribution companies to file tariffs establishing gas service to residential customers with distributed generation equipment, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-M-0515SA14)

NOTICE OF ADOPTION

Major Rate Plan by Rochester Gas and Electric Corporation

I.D. No. PSC-23-04-00002-A

Filing date: Aug. 5, 2004

Effective date: Aug. 5, 2004

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

Action taken: The commission, on July 28, 2004, adopted as a permanent rule an order in Case 02-E-0198 approving five-year rate plans for Rochester Gas and Electric Corporation's (RG&E) electric and gas service.

Statutory authority: Public Service Law, sections 5, 64, 65, 66, 66-e, 66-i, 106, 113, 119-a and 119-b

Subject: Major rate plan.

Purpose: To make permanent the commission's May 20, 2004 order establishing electric and gas rate plans for RG&E.

Substance of final rule: The Commission adopted as a permanent rule provisions of Joint Proposals for Rochester Gas and Electric Corporation's 5-year electric and gas rate plans.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-E-0198SA6)

NOTICE OF ADOPTION

Major Rate Plan by Rochester Gas and Electric Corporation

I.D. No. PSC-23-04-00003-A

Filing date: Aug. 5, 2004

Effective date: Aug. 5, 2004

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

Action taken: The commission, on July 28, 2004, adopted as a permanent rule an order in Case 03-E-0765 approving five-year rate plans for Rochester Gas and Electric Corporation's (RG&E) electric and gas service.

Statutory authority: Public Service Law, sections 5, 64, 65, 66, 66-e, 66-i, 106, 113, 119-a and 119-b

Subject: Major rate plan.

Purpose: To make permanent the commission's May 20, 2004 order establishing electric and gas rate plans for RG&E.

Substance of final rule: The Commission adopted as a permanent rule provisions of Joint Proposals for Rochester Gas and Electric Corporation's 5-year electric and gas rate plan.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-0765SA1)

NOTICE OF ADOPTION

Major Rate Plan by Rochester Gas and Electric Corporation

I.D. No. PSC-23-04-00004-A

Filing date: Aug. 5, 2004

Effective date: Aug. 5, 2004

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

Action taken: The commission, on July 28, 2004, adopted as a permanent rule an order in Case 03-G-0766 approving joint proposals for Rochester Gas and Electric Corporation's (RG&E) five-year rate plans for electric and gas service.

Statutory authority: Public Service Law, sections 5, 64, 65, 66, 66-e, 66-i, 106, 113, 119-a and 119-b

Subject: Major rate plan.

Purpose: To make permanent the commission's May 20, 2004 order establishing electric and gas rate plans for RG&E.

Substance of final rule: The Commission adopted as a permanent rule provisions of Joint Proposals for Rochester Gas and Electric Corporation's 5-year electric and gas rate plans.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-G-0766SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Austin Computer Enterprises, Inc.

I.D. No. PSC-34-04-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Austin Computer Enterprises, Inc. to revise the interconnection agreement effective on April 4, 2004.

Statutory authority: Public Service Law, section 94(2)

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Austin Computer Enterprises, Inc. in April 2004. The companies subsequently have jointly filed amendments to clarify the provisions regarding reciprocal compensation rates. The Commission is considering these changes.

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.

(00-C-0489SA2)

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

Verizon New York Inc.'s Billing Practices by A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, et al.

I.D. No. PSC-34-04-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a complaint filed by A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, BridgeCom International Inc., Broadview Networks Inc., BullsEye Telecom, Inc., Choice One Communications of New York Inc., Covad Communications Company and Z-Tel Communications Inc. (petitioners) against Verizon New York Inc. regarding billing practices.

Statutory authority: Public Service Law, section 94(2)

Subject: Complaint regarding Verizon New York Inc.'s billing practices.

Purpose: To review the complaint.

Substance of proposed rule: The Commission is considering whether to approve or reject in whole or in part, a complaint filed by A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, BridgeCom International Inc., Broadview Networks Inc., BullsEye Telecom, Inc., Choice One Communications of New York Inc., Covad Communications Company and Z-Tel Communications Inc. (Petitioners) against Verizon New York Inc. regarding billing practices.

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

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

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

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

(04-C-0882SA1)

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

Interconnection Agreement between Port Byron Telephone Company and Time Warner Telecom-NY, L.P.

I.D. No. PSC-34-04-00017-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 Port Byron Telephone Company and Time Warner Telecom-NY, L.P. for approval of a mutual traffic exchange agreement executed on Nov. 29, 2001.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Port Byron Telephone Company and Time Warner Telecom-NY, L.P. have reached a negotiated agreement whereby Port Byron Telephone Company and Time Warner Telecom-NY, L.P. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

(04-C-0939SA1)

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

Transfer of Property between New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation

I.D. No. PSC-34-04-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of New York State Electric & Gas Corporation to transfer its East Springfield substation site, equipment and improvements thereof, to Niagara Mohawk Power Corporation.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To determine whether to approve or reject the transfer of property.

Substance of proposed rule: The Commission is considering the petition of New York State Electric and Gas Corporation (NYSEG) for permission to transfer its East Springfield Substation, equipment, and improvements thereto, located in the Town of Springfield, Otsego County, New York to Niagara Mohawk Power Corporation. The total original cost is less than \$100,000, and therefore, NYSEG may proceed with the sale 90 days after the July 30, 2004 Section 70 filing, unless the Commission determines within such 90 days that the public interest requires its review and written consent.

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

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

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

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

(04-E-0950SA1)

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

Submetering of Electricity by Carousel Park Preservation, LP

I.D. No. PSC-34-04-00019-P

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

Proposed action: The Public Service Commission is considering a request filed by Carousel Park Preservation, LP to submeter electricity at Carousel Park Apartments, 100 Oliver St., Tonawanda, NY.

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

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

Purpose: To permit electric submetering at Carousel Park Apartments, 100 Oliver St., Tonawanda, NY.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private or government entities according to established guidelines. The Owner at Carousel Park Apartments, 100 Oliver Street, Tonawanda, New York, Carousel Park Preservation, LP, has submitted a proposal to master meter and submeter this existing residential complex that is undergoing renova-

tion. The total electric building usage for this complex will be master metered and each residential unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems 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 Carousel Park Apartments, 100 Oliver Street, Tonawanda, 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. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-E-0953SA1)

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

Allocation of Gas Cost Savings by New York State Electric & Gas Corporation

I.D. No. PSC-34-04-00020-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 the proper allocation of gas cost savings between New York State Electric & Gas Corporation's (NYSEG) customers and shareholders. The commission is also considering accounting and ratemaking matters related to the company's actions in achieving such savings, including, but not limited to, the allocation of outsourcing costs.

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

Subject: Allocation of gas cost savings between NYSEG's customers and shareholders and related accounting and ratemaking matters.

Purpose: To consider whether NYSEG has justified its proposal allocation of gas cost savings or whether a different allocation is warranted, and whether NYSEG's proposal accounting and rate treatment associated with achieving the gas costs savings is just and reasonable.

Substance of proposed rule: New York State Electric & Gas Corporation (NYSEG) is operating pursuant to a gas rate plan that provides it certain level of incentives for gas cost savings. The Public Service Commission is considering the manner in which NYSEG has calculated the gross costs savings and allocated those savings between its customers and shareholders. The Commission is also considering whether NYSEG's customers should be required to bear outsourcing costs for gas cost savings activities conducted by company personnel and other related accounting issues. The Commission may accept, reject, or modify NYSEG's calculations and allocations. It may also require the company to return or otherwise credit to its customers certain savings it booked to its shareholders and make other accounting and ratemaking adjustments associated with the operation of the gas costs savings provisions of the company's gas rate plan.

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

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

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

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

(01-G-1668SA6)

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

Gas Supply Charge Revenues by Rochester Gas and Electric Corporation

I.D. No. PSC-34-04-00021-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 Rochester Gas and Electric Corporation (the company) to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service—P.S.C. No. 16.

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

Subject: Gas supply charge revenues.

Purpose: To implement a tariff provision that provides for the pass-back of gas supply credits received by the company that exceed \$7.5 million in any month.

Substance of proposed rule: Rochester Gas and Electric Corporation proposes to implement a tariff provision which provides for the pass-back of gas supply credits exceeding \$7.5 million in any month.

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. Brillling, 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-0766SA3)

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

Gas Cost Adjustment Calculation by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan)

I.D. No. PSC-34-04-00022-P

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

Proposed action: The Public Service Commission is considering a proposal by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) to use new procedures for estimating and prorating gas consumption, and is considering whether to grant a waiver of the regulations governing calculation of the gas cost adjustment.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Method of changes for calculation of bills designed and intended to improve the accuracy of bills for residential, multi-family, and commercial and industrial classifications.

Purpose: To approve changes to the methods of calculating bills for residential, multi-family, and certain commercial and industrial customer classifications.

Substance of proposed rule: The Public Service Commission is considering a proposal by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) to use new procedures for estimating and prorating gas consumption, and is considering whether to grant a waiver of the regulations governing calculation of the gas cost adjustment.

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-0642SA1)

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

Schedule for Gas Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-34-04-00023-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: Service Classification Nos. 4—interruptible gas service; and 12—temperature-controlled service—non-residential.

Purpose: To revise the calculation of the penalty charged assessed for unauthorized use and implement a procedure outlining the course of action to be taken whenever a customer fails twice, during a winter period, to switch to their alternative fuel as directed by the company.

Substance of proposed rule: KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island proposes to revise its S.C. No. 4—Interruptible Gas Service and S.C. No. 12—Temperature-Controlled Service - Non-Residential by 1) making a change in the calculation of the penalty charge assessed for unauthorized use and 2) implementing a procedure outlining the course of action to be taken whenever a customer fails twice during a winter period to switch to their alternative fuel as directed by the company. The company is making this filing to ensure operational compliance by all customers electing service under a dual fuel tariff.

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

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

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

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

(04-G-0944SA1)

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

Schedule for Gas Service by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-34-04-00024-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 NY 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: Service Classification Nos. 5A—on-system large volume sales service; 6C—temperature-controlled service—commercial/industrial; 6G—temperature-controlled service—Governmental; and 6M—temperature-controlled service—multi-family.

Purpose: To revise the calculation of the penalty charged assessed for unauthorized use and implement a procedure outlining the course of action to be taken whenever a customer fails twice, during a winter period, to switch to their alternative fuel as directed by the company.

Substance of proposed rule: The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY proposes to revise its S.C. No. 5A—On-System Large Volume Sales Service, S.C. No. 6C—Temperature-Controlled Service—Commercial/Industrial, S.C. No. 6G—Temperature-Controlled Service—Governmental and S.C. No. 6M—Temperature-Controlled Service—Multi-Family by 1) making a change in the calculation of the penalty charge assessed for unauthorized use and 2) implementing a procedure outlining the course of action to be taken whenever a customer fails twice during a winter period to switch to their alternative fuel as directed by the company. The company is making this filing to ensure operational compliance by all customers electing service under a dual fuel tariff.

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

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

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

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

(04-G-0945SA1)

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

Sublease of Real Property by The Brooklyn Union Company d/b/a KeySpan Energy Delivery New York (KeySpan), et al.

I.D. No. PSC-34-04-00025-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) and Allstate Insurance Co. (Allstate) for: (1) approved under section 70 of the Public Service Law of a sublease of a portion of a leased KeySpan building to Allstate; (2) approval of the proposed accounting and rate treatment for the transaction; and (3) related relief.

Statutory authority: Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8)-(12) and 70

Subject: Consideration of the sublease of real property, the accounting and rate treatment for the transaction, and related matters.

Purpose: To consider the proposed sublease of a portion of a building, the proposed accounting and rate treatment (associated with the transaction), and related matters.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, the sublease of the entire 19th floor leased by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) at One Metrotech Center, Brooklyn, New York to Allstate Insurance Co. (Allstate). Under this sublease, Allstate proposes to use these premises for general and executive office space. By this petition, the parties seek approval of this sublease to permit Allstate to occupy the premises. The Commission is also considering KeySpan's proposed accounting and rate treatment for the transaction, including its proposal to use the revenues generated from this transaction to defray operation and maintenance expenses, and other related issues.

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

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

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

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

(04-G-0949SA1)

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

Calculation of Franchise Fees by Cablevision Southern Westchester, Inc.

I.D. No. PSC-34-04-00026-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 Cablevision of Southern Westchester, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To allow Cablevision of Southern Westchester, Inc. and the Village of Dobbs Ferry to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross revenues.

Substance of proposed rule: The Public Service Commission is considering whether or approve or reject, in whole or in part, a petition by Cablevision of Southern Westchester, Inc. for a waiver of Section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Dobbs Ferry (Westchester County).

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

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

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

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

(04-V-0903SA1)

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

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc.

I.D. No. PSC-34-04-00027-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 Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To allow Cablevision of Wappingers Falls, Inc. and the Village of Monroe to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross revenues.

Substance of proposed rule: The Public Service Commission is considering whether or approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of Section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Monroe (Orange County).

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

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

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

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

(04-V-0916SA1)

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

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc.

I.D. No. PSC-34-04-00028-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 Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

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

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To allow Cablevision of Wappingers Falls, Inc. and the Village of Plattekill to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross revenues.

Substance of proposed rule: The Public Service Commission is considering whether or approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of Section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Plattekill (Ulster County).

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

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

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

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

(04-V-0923SA1)

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

Excess Property Tax Refunds by United Water New Rochelle Inc.

I.D. No. PSC-34-04-00029-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of United Water New Rochelle Inc. for recovery of excess property tax refunds paid to customers.

Statutory authority: Public Service Law, sections 89-b and 89-c

Subject: Excess property tax refunds.

Purpose: To recover excess property tax refunds paid to customers.

Substance of proposed rule: The Commission is considering the petition of United Water New Rochelle Inc. for treatment of excess property tax refund. The company states that certain 2002 balances were netted to produce \$753,272 to be refunded to customers through a credit on bills for the months of February, March, and April 2003. With interest, the total refund is \$767,456. The company claims that its contractor for billing services mistakenly continued to apply the credit after April 30, 2003 until August 28, 2003. As a result, the company credited customers a total of \$1,605,924.51 or \$838,469 in excess of that intended.

To correct this error, the company proposes that the excess credit of \$838,469 be applied to its second and third year property tax reconciliations. The Commission may approve, modify, or reject, in whole or in part the request of United Water New Rochelle Inc.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0001SA02)

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

Capital Reserve Fee (Statement No. 1) by Emerald Green Lake Louise Marie Water Company, Inc.

I.D. No. PSC-34-04-00030-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, Emerald Green Lake Louise Marie Water Company, Inc.'s request to establish a capital reserve fee (statement no.1) to P.S.C. No. 1, which was suspended to Nov. 28, 2004 by commission order dated July 29, 2004.

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

Subject: Capital reserve fee (statement no. 1).

Purpose: To approve the establishment of a capital reserve fee (statement no. 1) of \$4,000 for each new home which comes on line after Aug. 1, 2004.

Substance of proposed rule: On March 26, 2004 Emerald Green Lake Louise Marie Water Company, Inc. (Emerald Green or the company) filed Capital Reserve Fee (CRF) to be effective on August 1, 2004. On July 29, 2004, the Commission suspended the company's filing to and including November 28, 2004 to allow staff more time to review it. Emerald Green proposes to implement the CRF as a method of collecting funds from new customers attaching to the system. Each new home which comes on line after August 1, 2004 would be charged \$4,000 to be used for improvements resulting from the added demand of new customers. Emerald Green is located in two real estate developments known as Lake Louise Marie and Emerald Green in Rock Hill, Town of Thompson, Sullivan County. Emerald Green has 663 customers, and anticipates significant customer growth in the next ten years because of an increase in construction activity in the area. Emerald Green's tariff and amendments are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us)—located under the Commission's Documents—Tariffs. The Commission may approve or reject, in whole or in part, or modify Emerald Green's request.

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0349SA2)

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

Flat Rate Residential Service by Emerald Green Lake Louise Marie Water Company, Inc.

I.D. No. PSC-34-04-00031-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 instituted a proceeding to set the appropriate level of rates for flat rate residential service provided by Emerald Green Lake Louise Marie Water Company, Inc.

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

Subject: Reasonableness of the temporary rates and charges contained in original leaf no. 12.

Purpose: To set appropriate level of permanent rates as per commission order dated July 29, 2004.

Substance of proposed rule: On July 29, 2004, the Commission instituted a proceeding to examine the reasonableness of the rates contained on Original Leaf No. 12 to P.S.C. No. 1—Water filed by Emerald Green Lake Louise Marie Water Company Inc. (Emerald Green or the company) and directed that these rates be put into effect on a temporary basis, subject to refund under Sections 89-c(10), 89-j, 113 and 114 of the Public Service Law. Original Leaf No. 12 sets forth an annual flat rate for water service. Staff will perform an investigation and make a recommendation to the Commission as to the proper level of permanent rates. Emerald Green is located in two real estate developments known as Lake Louise Marie and Emerald Green in Rock Hill, Town of Thompson, Sullivan County. Emerald Green has 663 customers. Emerald Green's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us)—located under the Commission Documents—Tariffs. The Commission may approve or reject, in whole or in part, or modify Staff's recommendation as to the appropriate level of permanent rates for Emerald Green.

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0349SA3)

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

Water Rates and Charges by Arbor Hills Waterworks, Inc.

I.D. No. PSC-34-04-00032-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, tariff revisions filed by Arbor Hills Waterworks, Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 3—Water, to become effective Feb. 1, 2005.

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

Subject: Water rates and charges.

Purpose: To increase Arbor Hills Waterworks, Inc.'s annual revenues by about \$63,773 or 95.42 percent, revise the terms of its escrow account and increase the restoration of water service charges.

Substance of proposed rule: On July 30, 2004, Arbor Hills Waterworks, Inc., (Arbor Hills or the company) filed to become effective February 1, 2005, Second Revised Leaf No. 12, Escrow Statement No. 2 and First Revised Leaf No. 10, to its electronic tariff schedule, P.S.C. No. 3 - Water. Arbor Hills is requesting to increase its annual revenues by \$63,773 or 95.42% and to increase the funding of its existing escrow account (which began funding on January 1, 2004) for extraordinary repairs from \$24.88 to \$50.00 per customer, per quarter, as well as raise the maximum quarterly replenishment of this account from \$24.88 to \$100.00 without Commission approval. The company is also requesting to change its fees for restoration of service to \$150.00 during normal business hours and \$200.00 for all other times including weekends and holidays. The company provides metered water service to 67 customers in the Arbor Hills development in Westchester County. The average customer's metered

annual bill would increase from \$997 to \$1,949 (exclusive of any escrow payments). The service charge, with no water allowance, would increase from \$100 to \$294 per quarter. The usage rate for all water would increase from \$4.25 to \$5.50 per thousand gallons. Arbor Hill's tariff, along with its proposed changes (Second Revised Leaf No. 12, Escrow Statement No. 2 and First Revised Leaf No. 10), is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the file room - Tariffs). The Commission may approve or reject, in whole or in part, or modify, Arbor Hill's request.

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

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

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

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

(04-W-0935SA1)

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

Water Rates and Charges by Boniville Water Company, Inc.

I.D. No. PSC-34-04-00033-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, or modify, tariff revisions filed by Boniville Water Company, Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 4—Water, to become effective Feb. 1, 2005.

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

Subject: Water rates and charges.

Purpose: To increase Boniville Water Company, Inc.'s annual revenues by about \$49,159 or 124.45 percent, revise the terms of its escrow account and increase the restoration of water service charges.

Substance of proposed rule: On July 30, 2004, Boniville Water Company, Inc., (Boniville or the company) filed to become effective February 1, 2005, Second Revised Leaf No. 12, Escrow Account Statement No. 2 and First Revised Leaf No. 10 to its electronic tariff schedule, P.S.C. No. 4 - Water. Boniville is requesting to increase its annual revenues by \$49,159 or 124.45% and to raise the maximum per customer quarterly replenishment of its existing escrow account for extraordinary repairs, emergency maintenance and major improvements from \$24.88 to \$100.00 (without Commission approval). The company is also requesting to change its fees for restoration of service to \$150.00 during normal business hours and \$200.00 for all other times including weekends and holidays. The company provides metered water service to 99 customers in the Boniville development in Putnam County. The average customer's metered annual bill would increase from \$394 to \$895 (exclusive of any escrow payments). The minimum charge, for a customer with a 5/8 inch meter, for the first 9,000 gallons per quarter would increase from \$53.00 to \$165.00 per quarter. The charge for water used in excess of the minimum quarterly allowance would increase from \$4.25 to \$5.50 per thousand gallons. Boniville's tariff, along with its proposed changes (Second Revised Leaf No. 12, Escrow Account Statement No. 2 and First Revised Leaf No. 10), is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the file room - Tariffs). The Commission may approve or reject, in whole or in part, or modify, Boniville's request.

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

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

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

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

(04-W-0936SA1)

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

Water Rates and Charges by Knolls Water Co., Inc.

I.D. No. PSC-34-04-00034-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, or modify, tariff provisions filed by Knolls Water Co., Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 3—Water, to become effective Feb. 1, 2005.

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

Subject: Water rates and charges.

Purpose: To increase Knolls Water Co., Inc.'s annual revenues by about \$39,702 or 71.8 percent and increase the restoration of water service charges.

Substance of proposed rule: On July 30, 2004, Knolls Water Co., Inc. (Knolls or the company) filed to become effective February 1, 2005, Second Revised Leaf No. 12 and Second Revised Leaf No. 10 to its electronic tariff schedule, P.S.C. No. 3 - Water. Knolls is requesting to increase its annual revenues by \$39,702 or 71.8% and to increase its fee for restoration of service to \$150 during normal business hours and \$200 for all other times including weekends and holidays. The annual base rate bill will increase from \$700 to \$1,200. Knolls' tariff, along with its proposed changes (Second Revised Leaf No. 12 and Second Revised Leaf No. 10) is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the file room-Tariffs). The Commission may approve, modify or reject, in whole or in part, or modify Knolls' request.

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

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

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

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

(04-W-0937SA1)

Racing and Wagering Board

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

Voluntary Exclusion from Certain Pari-Mutuel Wagering Venues

I.D. No. RWB-34-04-00003-EP

Filing No. 884

Filing date: Aug. 5, 2004

Effective date: Aug. 5, 2004

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

Action taken: Amendment of Parts 4044, 4123, 4237 and 5212 of Title 9 NYCRR.

Statutory authority: L. 2002, ch. 434, which amends Racing, Pari-Mutuel Wagering and Breeding Law, section 108, effective Feb. 16, 2003.

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

Specific reasons underlying the finding of necessity: This rule implements regulatory provisions of L. 2002, ch. 434, which became effective on February 16, 2003. An emergency adoption is necessary because the board has determined that emergency adoption is necessary for the preservation of the general welfare and that standard rule making procedures would be contrary to the public interest.

Subject: Voluntary exclusion from certain pari-mutuel wagering venues.

Purpose: To establish a procedure whereby persons may voluntarily exclude themselves from entering the premises thoroughbred and harness racetracks, simulcast theaters and off-track betting simulcast facilities. The operators of such tracks or facilities would not be liable to any self-excluded person as a result of such person's gambling activity while on the list of self-excluded persons. The rule would also implement a procedure so that a person with a telephone wagering account may voluntarily place limits on the amounts of his or her potential wagers on a daily or weekly basis. All of the aforementioned exclusions and limitations would remain effective until seven days after the individual removes the voluntary order or limitation.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.racing.state.ny.us): Creates a new Part 4044 of 9E NYCRR, the provisions of which shall apply to all pari-mutuel wagering activities related the thoroughbred horse racing.

4044.1 Requires owners of horse racetracks and off-track telephone betting operations to establish a voluntary self-exclusion system and an account wagering limit system, respectively, and establishes a seven-day waiting period prior to the removal of an individual's name from the voluntary self-exclusion list or account wagering limit.

4044.2 Requires owners of horse racetracks to create a list of self-excluded persons and publish procedures on voluntary self-exclusion; describes all necessary information to be included in applications for voluntary self-exclusion and the procedure for employees of horse racetracks to accept the applications; requires owners of horse racetracks to submit to the Racing & Wagering Board plans for implementing the voluntary self-exclusion plans within 30 days of the effective date of the rule; prescribes distribution lists and confidentiality requirement in each plan; prohibits the use of the voluntary self-exclusion list for advertising and marketing purposes; establishes procedures for an individual seeking to remove his or her name from the voluntary self-exclusion list; recites the statutory protection against liability for employees of horse racetracks regarding the voluntary self-exclusion program.

4044.3 Allows holders of telephone betting accounts to voluntarily place limits on the amounts wagered over a daily or weekly period; requires entities that operate telephone betting operations to establish procedures for implementing such limits; establishes a seven-day waiting period prior to the removal of such limits by the individual, requires each racing association or corporation which maintains a telephone betting system to submit to the Racing & Wagering Board plans for implementing the voluntary account limit plans within 30 days of the effective date of the rule.

Creates a new Part 4123 of 9E NYCRR, the provisions of which shall apply to all pari-mutuel wagering activities related to harness racing.

4123.1 Requires owners of harness tracks and off-track telephone betting operations to establish a voluntary self-exclusion system and an account wagering limit system, respectively, and establishes a seven-day waiting period prior to the removal of an individual's name from the voluntary self-exclusion list or account wagering limit.

4123.2 Requires owners of harness tracks to create a list of self-excluded persons and publish procedures on voluntary self-exclusion; describes all necessary information to be included in applications for voluntary self-exclusion and the procedure for employees of harness tracks to accept the applications; requires owners of harness tracks to submit to the Racing & Wagering Board plans for implementing the voluntary self-exclusion plans within 30 days of the effective date of the rule; prescribes distribution lists and confidentiality requirement in each plan; prohibits the use of the voluntary self-exclusion list for advertising and marketing purposes; establishes procedures for an individual seeking to remove his or her name from the voluntary self-exclusion list; recites the statutory protection against liability for employees of harness tracks regarding the voluntary self-exclusion program.

4123.3 Allows holders of telephone betting accounts to voluntarily place limits on the amounts wagered over a daily or weekly period; requires entities that operate telephone betting operations to establish procedures for implementing such limits; establishes a seven-day waiting period prior to the removal of such limits by the individual, requires each racing association or corporation which maintains a telephone betting system to submit to the Racing & Wagering Board plans for implementing the voluntary account limit plans within 30 days of the effective date of the rule.

Creates a new Part 4237 of 9E NYCRR, the provisions of which shall apply to all pari-mutuel wagering activities related to quarter horse racing.

4237.1 Requires owners of quarter horse racetracks and off-track telephone betting operations to establish a voluntary self-exclusion system and an account wagering limit system, respectively, and establishes a seven-day waiting period prior to the removal of an individual's name from the voluntary self-exclusion list or account wagering limit.

4237.2 Requires owners of quarter horse racetracks to create a list of self-excluded persons and publish procedures on voluntary self-exclusion; describes all necessary information to be included in applications for voluntary self-exclusion and the procedure for employees of quarter horse racetracks to accept the applications; requires owners of quarter horse racetracks to submit to the Racing & Wagering Board plans for implementing the voluntary self-exclusion plans within 30 days of the effective date of the rule; prescribes distribution lists and confidentiality requirement in each plan; prohibits the use of the voluntary self-exclusion list for advertising and marketing purposes; establishes procedures for an individual seeking to remove his or her name from the voluntary self-exclusion list; recites the statutory protection against liability for employees of quarter horse racetracks regarding the voluntary self-exclusion program.

4237.3 Allows holders of telephone betting accounts to voluntarily place limits on the amounts wagered over a daily or weekly period; requires entities that operate telephone betting operations to establish procedures for implementing such limits; establishes a seven-day waiting period prior to the removal of such limits by the individual, requires each racing association or corporation which maintains a telephone betting system to submit to the Racing & Wagering Board plans for implementing the voluntary account limit plans within 30 days of the effective date of the rule.

Creates a new Part 5212 of 9E NYCRR, the provisions of which shall apply to all off-track pari-mutuel wagering activities conducted at off-track pari-mutuel wagering facilities.

5212.1 Requires owners of off-track pari-mutuel wagering facilities to establish a voluntary self-exclusion system and an account wagering limit system, and establishes a seven-day waiting period prior to the removal of an individual's name from the voluntary self-exclusion list or account wagering limit.

5212.2 Requires owners of off-track pari-mutuel wagering facilities to create a list of self-excluded persons and publish procedures on voluntary self-exclusion; describes all necessary information to be included in applications for voluntary self-exclusion and the procedure for employees of off-track pari-mutuel wagering facilities to accept the applications; requires owners of off-track pari-mutuel wagering facilities to submit to the Racing & Wagering Board plans for implementing the voluntary self-exclusion plans within 30 days of the effective date of the rule; prescribes distribution lists and confidentiality requirement in each plan; prohibits the use of the voluntary self-exclusion list for advertising and marketing purposes; establishes procedures for an individual seeking to remove his or her name from the voluntary self-exclusion list; recites the statutory protection against liability for employees of off-track pari-mutuel wagering facilities regarding the voluntary self-exclusion program.

5212.3 Allows holders of telephone betting accounts to voluntarily place limits on the amounts wagered over a daily or weekly period; requires entities that operate telephone betting operations to establish procedures for implementing such limits; establishes a seven-day waiting period prior to the removal of such limits by the individual, requires each corporation or association that owns an off-track pari-mutuel wagering facility to submit to the Racing & Wagering Board plans for implementing the voluntary account limit plans within 30 days of the effective date of the rule.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 2, 2004.

Text of rule and any required statements and analyses may be obtained from: Mark A. Stuart, Racing and Wagering Board, One Water-

vliet Ave. Ext., Albany, NY 12206, (518) 453-8460, e-mail: info@racing.state.ny.us

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

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

Regulatory Impact Statement

Statutory authority and legislative objectives: Section 101 of the Racing, Pari-Mutuel Wagering and Breeding Law and Chapter 434 of the Laws of 2002, which amends Section 108 of the Racing, Pari-Mutuel Wagering and Breeding Law. The legislative objectives of such authority is to grant rulemaking authority to the Racing & Wagering Board, as the statewide agency responsible for regulating pari-mutuel activities within the State of New York, to ensure that voluntary self-exclusion rules are adopted that give force and effect to this statute. Specifically, the Legislature mandates through express language that the Board adopt and enforce specific procedures and standards for voluntary self-exclusion based upon the Board's expertise in the administration of pari-mutuel wagering activities.

Needs and benefits: The need for this rule is to give force and effect to Chapter 434 of the Laws of 2002 and adoption would comply with the statutory mandate contained in the such chapter. The benefit of the rule will be to provide guidelines and standards to associations and corporations that offer pari-mutuel wagering and telephone betting accounts so that they may adopt an effective voluntary self-exclusion system. The rule will also benefits individuals who seek to establish deliberate and purposeful limits on their pari-mutuel wagering activities based upon their own circumstances and needs.

Costs: The rule will impose no new costs for state or local governments. The rule will impose minimal costs upon regulated parties in order to cover the costs of paper for applications, removable labels or tear-offs with information for compulsive gamblers, and software modifications for telephone betting account computers. The production of the self-exclusion application, affidavit and release form can be accomplished on a personal computer or existing computer system and reproduced using common copier paper, which costs approximately \$12 per package of 500 sheets of 8.5" x 11" paper. The tear off labels would also be reproducible by the regulated parties and could include a tear-off message printed on a brightly colored slip of paper stapled to the application. The individual seeking self-exclusion would be responsible for providing a photograph of himself or herself. Associations or corporations that offer telephone betting accounts could modify their computer software programs with existing IT personnel and services. The rule will not impose any new costs on the Racing & Wagering Board for the implementation and continued administration of the rule.

Paperwork: Regulated parties will be required to file with the Racing & Wagering Board within 30 days after the effective date of the rule a copy of its voluntary self-exclusion procedures. Regulated parties that operate racetracks will be required to produce and maintain a supply of applications, affidavits and release forms for individuals seeking voluntary self-exclusion, along with a file of completed applications, affidavits and release forms; and a list of persons who have voluntarily self-excluded themselves from the respective racetrack.

Local government mandates: This rule would impose no local government mandates.

Duplication: There are no other state or federal requirements similar to the voluntary self-exclusion provisions contained in the rule.

Alternative approaches: There are no other significant alternatives to this rule, which was narrowly drafted to accomplish the express goals established in Chapter 434 of the Laws of 2002.

Federal standards: The rule does not exceed any minimum standards of the federal government because there are no federal rules or laws on voluntary self-exclusion in pari-mutuel wagering venues.

Compliance schedule: Regulated parties must submit their plans for voluntary self-exclusion to the Board by close of business on March 18, 2003, 30 days from the effective date of the emergency rule. The effective date of the rule is February 16, 2003.

Regulatory Flexibility Analysis

The rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments because the rule will apply only to associations and corporations that operate thoroughbred and harness racetracks, simulcast theaters and off-track betting simulcast facilities. Those associations and corporations do not qualify as a small business or local government.

Rural Area Flexibility Analysis

The rule will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Due to the limited administrative nature of the rule, the rule will not impose any adverse economic impact on rural areas. The Racing & Wagering Board has made this determination by calculating the minimal costs of producing applications, compulsive gambling reference sheets and affidavits. The cost of producing the 500 applications, 500 affidavits and 500 tear-offs would total approximately \$36, based upon a cost of \$12 per 500 sheets of 8.5 x 11" paper. The cost of toner and staples would be negligible. Regulated parties will need to pay for the cost of mailing applications to the corporate offices, which in turn could distribute to the branch offices the voluntary self-excluded lists through their in-house computer system.

The Board chose to use 500 in the above example merely to establish unit cost based upon the standard packaging amount of 500 sheets of paper.

Although the rule will apply to various associations and corporations that operate harness racetracks and off-track betting simulcast facilities in rural areas, the rule will not impose any adverse reporting, recordkeeping or compliance requirements on public or private entities in rural areas because the associations and corporations currently have the ability to comply with the rule with existing resources. Furthermore, it is expected that those off-track betting simulcast facilities located in rural areas will be able to rely on the administrative resources of their corporate staff, which are located in non-rural areas. The Racing & Wagering Board has made these determinations based upon its knowledge and familiarity with the various pari-mutuel wagering operations throughout New York State.

Job Impact Statement

The New York State Racing & Wagering Board has determined that the rule will not have a substantial adverse impact, and will in fact have no impact on jobs and employment opportunities.

The New York State Racing and Wagering Board has made this determination based upon its knowledge and familiarity with security systems currently in place at thoroughbred and harness racetracks, simulcast theaters, off-track betting simulcast theaters, and telephone wagering account systems throughout New York State.

Currently, racetracks maintain their own track security plans for excluding undesirable patrons from entering the racetrack grounds. This rule would enable tracks to utilize existing track security systems to identify and prevent the admission of self-excluded individuals. The only difference would be that under the current system, undesirables are excluded at the discretion of the racing corporation or association, while under the new rule the self-exclusion system would require an individual to apply for self-exclusion status.

The rule will have no impact on jobs at associations or corporations that operate simulcast theaters because such facilities currently have an admission system whereby patrons must enter through a turnstile manned by an employee.

The rule will also have no jobs impact on racing associations or corporations that offer telephone betting accounts. Such associations or corporations that offer telephone betting with live operators can modify their computer systems in such a manner that when an operator accesses an individual's account, the program can "flag" any limits and the operator can refuse to accept any wagers in excess of the amount established by the self-excluded individual and posted on the computer.

For automated telephone betting systems, the computer programs could be modified to establish the maximum bet levels for the applicable time period and prohibit the acceptance of a bet in excess of the programmed limit.

In all instances, the Board has determined that the self-exclusion system can be implemented using existing systems and would not result in the creation of new jobs nor would the rule effect the loss of existing jobs.

Department of State

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Administration and Enforcement of the Uniform Code
I.D. No. DOS-34-04-00010-P

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

Proposed action: Repeal of Part 1203 and addition of new Part 1203 to Title 19 NYCRR.

Statutory authority: Executive Law, section 381

Subject: Administration and enforcement of the Uniform Code.

Purpose: To revise the minimum standards applicable to a program for administration and enforcement of the Uniform Fire Prevention and Building Code.

Public hearing(s) will be held at: 10:00 a.m., Oct. 21, 2004 at Yorktown Town Hall, 363 Underhill Ave., Yorktown Heights, NY; 10:00 a.m., Oct. 22, 2004 at Town of Hempstead Pavilion, One Washington St., Hempstead, NY; 10:00 a.m., Oct. 26, 2004 at Amherst Town Hall, Council Chambers, Upper Level, 5583 Main St., Williamsville, NY; 10:00 a.m., Oct. 27, 2004 at Hughes State Office Bldg., First Fl. Main Hearing Rm., 333 E. Washington St., Syracuse, NY; and 10:00 a.m., Oct. 28, 2004 at Town of Colonie, Public Operations Center, 347 Old Niskayuna Rd., Latham, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dos.state.ny.us): Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code. The rule making would repeal the existing regulation which prescribes such minimum standards and replace it with a new 19 NYCRR Part 1203 which will contain revised and expanded standards applicable to administration and enforcement of the Uniform Code.

Section 1203.2 would establish that most entities responsible for administration and enforcement of the Uniform Code will be subject to the provisions of the new Part 1203. These include cities, towns, villages, and counties, as well as most other agencies accountable for administration and enforcement of the Uniform Code pursuant to 19 NYCRR 1201.2. The major exception to the general requirement that code administration and enforcement must comply with Part 1203 concerns State agencies which are accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of the State of New York. In those circumstances, State agencies are required to comply with 19 NYCRR Part 1204. Section 1203.2 also provides that persons, offices, departments, and agencies authorized and responsible for administering and enforcing the Uniform Code must be clearly identified and any agreement for services associated with administration and enforcement of the Uniform Code cannot allow governmental actions related to code enforcement to be performed by other than public officers.

Section 1203.3 would identify and explain all the features which must be part of a program for administration and enforcement of the Uniform Code. These include: 1) building permits; 2) construction inspections; 3) stop work orders; 4) certificates of occupancy or certificates of compliance; 5) a procedure for notifying the code enforcement official of fires or explosions which involve structural damage, a fuel burning appliance, a chimney, or a gas vent; 6) a procedure for identifying and addressing unsafe structures and equipment; 7) operating permits; 8) fire safety and property maintenance inspections; 9) a procedure for addressing bona fide complaints; and 10) the maintenance of records regarding the activities of code enforcement.

Section 1203.4 would establish a requirement that every city, town, village, and county charged with responsibility for administering and enforcing the Uniform Code shall annually submit to the Secretary of State a report regarding its activities in connection with code administration and enforcement.

Text of proposed rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, Office of Code Enforcement and Administration, 41 State St., Albany, NY 12231, (518) 474-4073

Data, views or arguments may be submitted to: Richard DiGiovanna, Department of State, Office of Counsel, 41 State St., Albany, NY 12231, (518) 474-6740

Public comment will be received until: Wednesday, November 3, 2004.

Summary of Regulatory Impact Statement

1. Statutory authority:

Subdivision 1 of Executive Law § 381 requires the Secretary of State to promulgate rules that prescribe minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code ("Uniform Code"). The rules are to address the nature and quality of enforcement and should include subjects such as the frequency of inspections; the adequacy of inspections; the adequacy of means for insuring compliance with the Uniform Code; and procedures for inspection of certain classes of buildings based upon design, construction, ownership, occupancy or use.

2. Legislative objectives:

Executive Law § 371 states that it shall be the public policy of the State of New York to: 1) insure that the Uniform Code be in full force and effect in every area of the State; and 2) encourage local governments to exercise their full powers to administer and enforce the Uniform Code. The proposed rule making would repeal an existing regulation which prescribes minimum standards for administration and enforcement of the Uniform Code and replace it with a new rule which also establishes minimum standards regarding administration and enforcement of the Uniform Code but is more detailed and explanatory in its provisions to correspond to the recent comprehensive revision of the Uniform Code. In adopting the proposed rule making the Department of State will be advancing the aforementioned public policies of the State.

3. Needs and benefits:

The purpose of the proposed rule is to prescribe minimum standards for administration and enforcement of the Uniform Code whether enforced by a city, town, village or some other governmental entity. Executive Law § 381 directs the Secretary of State to promulgate rules and regulations that establish such standards. The rule making would repeal 19 NYCRR Part 1203 and replace it with a new Part 1203 which contains revised and expanded standards.

The Uniform Code was recently amended by completely replacing the text of the code. The new code text contains many new features, approaches and methodologies for building construction, fire safety and property maintenance. In developing the proposed new Part 1203, the Department of State has sought to prescribe standards for administration and enforcement of the Uniform Code which will produce enforcement programs that account for these new features, approaches, and methodologies and that will provide an increased measure of assurance that the Uniform Code is being fully and effectively enforced throughout the State.

The proposed rule would require municipalities (cities, towns, villages and counties) charged with responsibility for administering and enforcing the Uniform Code to provide for such administration and enforcement by local law, ordinance or other appropriate regulation. Other governmental agencies accountable for administering and enforcing the Uniform Code would be required to provide for administration and enforcement in regulation.

Most of the provisions of the proposed rule identify and describe the features which must be included as part of a program for administration and enforcement of the Uniform Code. Programs for administering and enforcing the Uniform Code must include: 1) building permits; 2) construction inspections; 3) stop work orders; 4) certificates of occupancy or certificates of compliance; 5) a procedure for notifying the code enforcement official of fires or explosions which involve structural damage, a fuel burning appliance, a chimney, or a gas vent; 6) a procedure for identifying and addressing unsafe structures and equipment; 7) operating permits; 8) fire safety and property maintenance inspections; 9) a procedure for addressing bona fide complaints; and 10) the maintenance of records regarding the activities of code enforcement. By requiring all these features in a program for administration and enforcement, the Department seeks, in accordance with the stated public policy of the State Legislature, to encourage local governments to exercise their full powers to administer and enforce the Uniform Code.

The rule would provide not only that code enforcement programs shall use building permits but would further specify that certain information must be included as part of the application for a permit. Specifically identifying the information which must be collected along with an application for a building permit will ensure that code enforcement officials obtain the information necessary to determine compliance with the Uniform Code. The rule also introduces the feature of operating permits into the minimum standards for the first time. The use of operating permits for hazardous operations and for buildings where there exists an increased risk for loss of life is anticipated by certain provisions in the new text of the Uniform Code. Providing for periodic fire safety and property maintenance inspections of buildings in conjunction with the use of operating permits for the most hazardous activities and for buildings containing one

or more areas of public assembly with an occupant load of 100 persons or more, should result in municipalities being better informed about the risk of fire in their communities. It should also result in increased levels of conformance with the fire prevention and maintenance portions of the Uniform Code within existing buildings.

Among the benefits expected from adoption of the proposed rule making are the standardization of practices from municipality to municipality, an enhanced economic atmosphere encouraging building construction, and safer existing building stock.

4. Costs:

Any costs incurred by regulated parties in connection with implementation of or compliance with the rule would arise from the need to revise existing programs for administration and enforcement of the Uniform Code or the local legislation that implements such programs. Upon the adoption of the rule, cities, towns, villages and any other governmental agencies responsible for administering and enforcing the Uniform Code will need to review their administration and enforcement program and any local legislation or regulation implementing such program to determine whether such program is in compliance with the newly adopted regulation. There will be no additional costs incurred by the Department of State or the State of New York for the implementation or continuation of the proposed rule.

5. Local government mandates:

The proposed regulation would require counties, cities, towns and villages which administer and enforce the Uniform Code to establish a program for administration and enforcement that conforms to the provisions of the regulation and includes all the features set forth therein. The rule would not impose any program, service, duty or responsibility upon any school district, fire district, or other special district.

6. Paperwork:

The rule would require every city, town, village and county which administers and enforces the Uniform Code to annually submit to the Secretary of State a report pertaining to its activities regarding code administration and enforcement. A form would be provided by the Department of State for such annual report.

7. Duplication:

There would be no duplication or overlapping with other state or federal rules.

8. Alternatives:

Executive Law § 381 charges the Secretary of State with the responsibility of promulgating a rule which prescribes minimum standards for the administration and enforcement of the Uniform Code. In drafting the proposed rule the Department of State incorporated concepts from both the current regulation prescribing standards for administration and enforcement and the administrative provisions of several of the International Codes.

9. Federal standards:

There are no federal standards which address the same or similar subject areas addressed by the proposed rule.

10. Compliance schedule:

Some who administer and enforce the Uniform Code may need up to 6 months to review and revise, if necessary, existing enforcement programs and any associated implementing legislation so as to bring such programs into compliance with the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

No small businesses would be affected by the proposed rule. The rule would impose requirements on local governments and others who administer and enforce the New York State Uniform Fire Prevention and Building Code.

Subdivision 2 of Executive Law § 381 charges the cities, towns and villages of the State with the responsibility of administering and enforcing the Uniform Fire Prevention and Building Code within their boundaries. The statute further provides, however, that a city, town, or village may adopt a local law providing that it will not enforce the Uniform Code. In that event, responsibility for administering and enforcing the Uniform Code within the boundaries of the particular city, town, or village transfers to the county in which the particular municipality is located. Counties may also decline to administer and enforce the Uniform Code. If a county adopts a local law providing that it will not enforce the Uniform Code, responsibility is transferred to the Department of State to administer and enforce the Uniform Code in the place of the particular city, town or village. The proposed rule would apply to each city, town, village and county that administers and enforces the Uniform Code. Most local gov-

ernments have not relinquished their authority to enforce the code and therefore would be subject to the proposed rule.

2. Compliance requirements:

The proposed rule would require each local government that administers and enforces the Uniform Code to generate and retain records pertaining to its activities regarding administration and enforcement. In addition, each local government would be required annually to submit a report to the Secretary of State regarding code enforcement activities in the municipality. A reporting form will be generated by the Department of State.

3. Professional services:

No professional services will be necessary to comply with the proposed rule. Local governments may wish to consult legal counsel in revising a local enforcement program to bring it into compliance with the rule.

4. Compliance costs:

There will be no capital costs incurred by regulated parties for the purpose of complying with the proposed rule. Some local governments may incur costs in connection with revising a local program for administration and enforcement of the Uniform Code in order to bring it into compliance with the proposed rule. Amending the local law which implements the local enforcement program may require expenses associated with the preparation of revised text, the publication of notices of a public hearing, and the conduct of the hearing itself.

5. Economic and technological feasibility:

Small businesses would not be regulated by the proposed rule. There would be no economic or technological barriers to full compliance with the proposed rule by local governments.

6. Minimizing adverse impact:

Small businesses would not be regulated by the proposed rule and therefore would not be subject to any economic impact, adverse or otherwise. No adverse economic impact on local governments from adoption of the rule is anticipated. Executive Law § 381 charges the cities, towns and villages of New York with the responsibility of administering and enforcing the Uniform Fire Prevention and Building Code. The proposed rule merely sets forth the components or features that must be included as part of any program of administration and enforcement performed in satisfaction of the statutory duty. As local governments are the parties that primarily would be subject to the provisions of the proposed rule, the Department did not consider establishing differing compliance or reporting requirements or timetables, nor exempting local governments from coverage by the rule as is suggested by State Administrative Procedure Act § 202-b(1). However, in establishing the features which must be included as part of a minimally acceptable program for administration and enforcement of the Uniform Code, the proposed rule mostly makes use of performance rather than design standards.

7. Small business and local government participation:

Both the New York State Building Officials Conference and the New York State Fire Marshals Association were consulted during the development of the proposed rule. Changes in the text of the rule were made in response to their comments and concerns.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule will apply to every city, town, village, and county which administers and enforces the New York State Uniform Fire Prevention and Building Code. There is no differentiation between the rural areas and the urban areas of the State.

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

The proposed rule would require each municipality that administers and enforces the Uniform Code to generate and retain records pertaining to its activities regarding administration and enforcement. In addition, every municipality would be required annually to submit a report to the Secretary of State regarding code enforcement activities performed by the municipality. A reporting form will be generated by the Department of State.

No professional services will be necessary in rural areas to comply with the proposed rule. Local governments, in rural areas as well as in urban areas, may wish to consult legal counsel if it becomes necessary to reorganize a local enforcement program to bring it into compliance with the rule.

3. Costs:

There will be no capital costs incurred by regulated parties in achieving compliance with the proposed rule. Some local governments may incur costs in connection with revising a local program for administration and enforcement of the Uniform Code in order to bring such program into compliance with the rule. Amending a local law which implements the local enforcement program may require expenses associated with the prep-

aration of revised text, the publication of notices of a public hearing, and the conduct of the hearing itself.

Operational costs such as payroll, office space and equipment, paperwork, storage and clerical support may be paid through the municipality's tax base or by user fees.

4. Minimizing adverse impact:

The proposed rule would not have an adverse impact on rural areas. Executive Law § 381 charges the cities, towns and villages of New York with the responsibility of administering and enforcing the Uniform Fire Prevention and Building Code. Under certain circumstances, counties may become responsible for administering and enforcing the Uniform Code in the place of an individual city, town, or village. The proposed rule would establish the components or features that must be included as part of any program for administration and enforcement of the Uniform Code. Clearly then, the proposed rule would primarily regulate the activities of local governments as the entities which administer and enforce the Uniform Code.

In developing the proposed rule, the Department did not consider establishing differing compliance or reporting requirements or timetables, nor exempting rural areas from coverage by the rule as is suggested by State Administrative Procedure Act § 202-bb(2). Executive Law § 371(2) declares that it shall be the public policy of the State of New York to "(i)nsure that the Uniform Code be in full force and effect in every area of the State" and to "(e)ncourage local governments to exercise their full powers to administer and enforce the Uniform Code." Establishing differing standards or exempting rural areas from the application of the proposed rule would have conflicted with the public policy of the State as established by the Legislature. In establishing the features which must be included as part of a minimally acceptable program for administration and enforcement of the Uniform Code, however, the proposed rule focuses upon performance or outcome standards rather than design or input standards as is suggested by SAPA § 202-bb(2).

5. Rural area participation:

In developing the proposed rule, the Department consulted with the New York State Building Officials Conference and the New York State Fire Marshals Association, each of which represent a broad constituency that includes both urban and rural building and fire officials.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the proposed rule that it will not have an adverse impact on jobs and employment opportunities in New York. The proposed rule making would repeal 19 NYCRR Part 1203 and replace it with a new 19 NYCRR Part 1203 that would establish those components or features which are required if a program for administration and enforcement of the Uniform Fire Prevention and Building Code is to be minimally acceptable.

Pursuant to Executive Law § 381, cities, towns and villages, and on occasion counties, are primarily responsible for administering and enforcing the Uniform Code. The provisions of the proposed rule would therefore primarily regulate the activities of cities, towns, villages and counties. Although the proposed rule would direct to some extent how the statutory duty of code administration and enforcement must be performed, it does not specify the number of municipal officers or employees which must be allocated to the task. Nor would the provisions of the proposed rule require an increase in current staffing provided a municipality is at present adequately administering and enforcing the Uniform Code as required by the statute.

The Department finds that it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities.

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

Identification of Buildings Utilizing Truss Type Construction

I.D. No. DOS-34-04-00006-P

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

Proposed action: Addition of Part 1264 to Title 19 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. DOS-04-04-00011-P.

Statutory authority: Executive Law, section 382-a

Subject: Identification of buildings utilizing truss type construction.

Purpose: To establish requirements for signs which identify the existence of truss construction in a building.

Text of proposed rule:

Part 1264

IDENTIFICATION OF BUILDINGS UTILIZING TRUSS TYPE CONSTRUCTION

1264.1 Introduction. Section 382-a of the Executive Law provides that commercial and industrial buildings and structures that utilize truss type construction shall be marked by a sign or symbol that informs persons conducting fire control and other emergency operations of the existence of truss construction. Section 382-a further directs the State Fire Prevention and Building Code Council to promulgate rules and regulations it deems necessary to carry into effect the provisions of the statute. This Part establishes certain requirements pertaining to the identification of buildings and structures that utilize truss type construction.

1264.2 Enforcement. (a) Subdivision 4 of section 382-a of the Executive Law directs local governments to provide for enforcement of the statute. Enforcement of section 382-a of the Executive Law shall include enforcement of the provisions of this Part. A fee of fifty dollars shall be paid by the owner of a building with truss type construction to the authority having jurisdiction for enforcement of section 382-a of the Executive Law prior to the issuance of a building permit.

(b) This Part shall not apply within a city with a population of one million or more persons.

1264.3 Definition. For the purposes of this Part, truss type construction shall mean a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own. Truss type construction shall not include:

(1) individual wind or seismic bracing components which form triangles when diagonally connected to the main structural system; and

(2) structural components that utilize solid plate web members.

1264.4 Identification of truss type construction. (a) Truss type construction shall be identified by a sign or signs in accordance with the provisions of this Part.

(b) Signs shall be affixed where a building or a portion thereof is classified as Group A, B, E, F, H, I, M, or S occupancy, and in hotels and motels classified as Group R-1 or R-2 occupancy, in accordance with the provisions for the classification of buildings set forth in chapter 3 of the Building Code of New York State (see 19 NYCRR Part 1221).

(c) Signs shall be provided in newly constructed buildings that utilize truss type construction and in existing buildings where an addition that extends or increases the floor area of the building utilizes truss type construction. Signs shall be affixed prior to the issuance of a certificate of occupancy or a certificate of compliance.

(d) Signs identifying the existence of truss construction shall consist of a circle 6 inches (152.4 mm) in diameter, with a stroke width of 1/2 inch (12.7 mm). The sign background shall be reflective white in color. The circle and contents shall be reflective red in color, conforming to Pantone matching system (PMS) #187. Where a sign is directly applied to a door or sidelight, it may be a permanent non-fading sticker or decal. Signs not directly applied to doors or sidelights shall be of sturdy, non-fading, weather resistant material.

(e) Signs identifying the existence of truss construction shall contain the roman alphanumeric designation of the construction type of the building, in accordance with the provisions for the classification of types of construction set forth in section 602 of the Building Code of New York State (see 19 NYCRR Part 1221), and an alphabetic designation for the structural components that are of truss construction, as follows:

"F" shall mean floor framing, including girders and beams

"R" shall mean roof framing

"FR" shall mean floor and roof framing

The construction type designation shall be placed at the twelve o'clock position over the structural component designation, which shall be placed at the six o'clock position.

(f) Signs identifying the existence of truss construction shall be affixed in the locations specified in Table I-1264.

TABLE I-1264

TRUSS IDENTIFICATION SIGN LOCATIONS

<i>Sign location</i>	<i>Sign placement</i>
<i>Exterior building entrance doors, exterior exit discharge doors, and exterior roof access doors to a stairway</i>	<i>Attached to the door, or attached to a sidelight or the face of the building, not more than 12 inches (305 mm) horizontally from the latch side of the door jamb, and not less than 42 inches (1067 mm) nor more than 60 inches (1524 mm) above the adjoining walking surface</i>
<i>Multiple contiguous exterior building entrance or exit discharge doors</i>	<i>Attached at each end of the row of doors and at a maximum horizontal distance of 12 feet (3.65M) between signs, and not less than 42 inches (1067 mm) nor more than 60 inches (1524 mm) above the adjoining walking surface</i>
<i>Fire department hose connections</i>	<i>Attached to the face of the building, not more than 12 inches (305 mm) horizontally from the center line of the fire department hose connection, and not less than 42 inches (1067 mm) nor more than 60 inches (1524 mm) above the adjoining walking surface</i>

Text of proposed rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, Division of Code Enforcement and Administration, 41 State St., Albany, NY 12231, (518) 474-4073

Data, views or arguments may be submitted to: Richard DiGiovanna, Department of State, Office of Counsel, 41 State St., Albany, NY 12231, (518) 474-6740

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

Consensus Withdrawal Objections

The Governor's Office of Regulatory Reform has notified the State Fire Prevention and Building Code Council by letter dated March 3, 2004 that the Office of Regulatory Reform objects to adoption of the rule making to add Part 1264 entitled Identification of Buildings Utilizing Truss Type Construction to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York as a consensus rule (*State Register* I.D. No. DOS-04-04-00011-P). The objection asserts that the rule does not meet the criteria of State Administrative Procedure Act § 102(11) which sets forth the definition of the term "consensus rule." The statute defines "consensus rule" as:

a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely

(a) repeals regulatory provisions which are no longer applicable to any person,

(b) implements or conforms to non-discretionary statutory provisions, or

(c) makes technical changes or is otherwise non-controversial.

The Code Council based its determination that the subject rule making qualifies as a consensus rule on the grounds that it implements non-discretionary statutory provisions and therefore no person would be likely to object to its adoption. Executive Law § 382-a requires commercial and industrial structures utilizing truss type construction to be marked by a sign or a symbol and the proposed rule would implement that statutory requirement. The Governor's Office of Regulatory Reform notes, however, that Executive Law § 382-a gives the Code Council discretion in the details of how the law is to be implemented and the Council is exercising that discretion. The Office therefore concludes that the rule making does not meet the condition cited as the basis for adoption as a consensus rule.

Regulatory Impact Statement

1. Statutory authority:

Subdivision 1 of Executive Law § 382-a requires all commercial and industrial buildings and structures that utilize truss type construction to be marked by a sign or symbol to notify fire and other emergency personnel that truss construction exists in the structure. Subdivision 2 directs the State Fire Prevention and Building Code Council to promulgate rules and regulations it deems necessary to carry into effect the provisions of the statute. This rule making would establish specific requirements which must be satisfied when identifying buildings and structures that utilize truss type construction.

2. Legislative objectives:

Subdivision 1 of Executive Law § 382-a requires all commercial and industrial buildings and structures that utilize truss type construction to be marked by a sign or symbol indicating the existence of the truss construction. Subdivision 2 directs the State Fire Prevention and Building Code Council to promulgate rules and regulations it deems necessary to carry into effect the provisions of the statute. Among the topics to be addressed by a regulation are:

- a. the dimensions and color of the sign or symbol;
- b. the time within which structures that utilize truss type construction shall be marked; and
- c. the location on each structure that utilizes truss type construction where the sign or symbol should be posted.

In accordance with the directive of the statute that all commercial and industrial structures using truss type construction be marked by a sign or symbol, the proposed rule would specify those occupancy classifications used by the Uniform Fire Prevention and Building Code that would trigger for a particular building the requirement to display a sign identifying the existence of truss construction. The classifications listed in the proposed regulation are those which could be described as commercial or industrial in nature. In addition, the proposed rule would prescribe the dimensions and color of the required sign and specify the information regarding the building's structural system and the structural components using truss construction that must be included on the sign. The proposed rule would require that the signs be affixed at specific exterior locations on the building prior to the issuance of a certificate of occupancy or a certificate of compliance.

3. Needs and benefits:

Subdivision 19 of Executive Law § 372 defines the term "truss type construction" to mean a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own. The ease of prefabrication and the ability to span long distances has made the use of trusses very popular in building construction. However, the size of the dimensional members in trusses affects their tolerance to fire with the possibility of catastrophic failure. Consequently, the State Legislature adopted Executive Law § 382-a which requires all commercial and industrial buildings and structures that utilize truss type construction to be marked by a sign or symbol to notify fire and other emergency personnel that truss construction exists in the structure. In addition, the statute authorizes and directs the State Fire Prevention and Building Code Council to promulgate rules and regulations it deems necessary to carry into effect the provisions of the statute. The proposed rule is the council's response to the statute's directive.

In accordance with specific directives of the statute, the proposed rule would specify the dimensions and color of the required signs and the text to be contained thereon. It would require that the signs be placed at specific exterior locations on the building so as to notify fire service and emergency operations personnel that structural components of truss construction exist in the building. In addition, the rule would provide that signs shall be affixed prior to the issuance of a certificate of occupancy or a certificate of compliance. Furthermore, the proposed rule would list the building occupancy classifications as specified by the Uniform Fire Prevention and Building Code where a sign identifying the existence of truss construction would be required.

The primary benefit derived from the proposed rule will be the protection of firefighters and rescue workers by noting the presence of truss type construction. A second benefit will be the increased survival of buildings and structures with truss construction as a result of their identification. An understanding of the building's construction by firefighters will allow for a quicker response to a fire and an increased likelihood that the building will survive the fire.

4. Costs:

a. Subdivision 3 of Executive Law § 382-a provides for payment of a \$50.00 fee by the owners of buildings that utilize truss type construction. The proposed rule provides for the fee to be paid to the authority having jurisdiction for enforcement of Executive Law § 382-a. The rule would require the installation of six inch diameter signs when a commercial or industrial building is built utilizing truss type construction or when an existing commercial or industrial building is altered utilizing truss type construction. The cost of such signs is projected to vary between \$16.50 and \$25.00 for vinyl decals and between \$25.00 and \$75.50 for metal signs.

b. There will be no costs to the Department of State or to the State of New York in general for the implementation and continuation of the rule. There may be a minimal cost incurred by local government in connection

with the implementation of the rule. Local governments currently administer and enforce the Uniform Fire Prevention and Building Code. Enforcement of Executive Law § 382-a and the provisions of the proposed rule is expected to be performed in conjunction with enforcement of the Uniform Code. The \$50.00 fee paid by building owners is intended to cover local government costs.

c. To determine the projected cost of the required signs, three sign manufacturers were contacted to ascertain the likely cost of obtaining a sign satisfying the specifications set forth in the proposed rule.

5. Local government mandates:

The proposed rule provides that its enforcement shall be the responsibility of local governments (villages, towns or cities) (see Executive Law § 372(11)). Subdivision 4 of Executive Law § 382-a provides that local governments shall provide by local law for the enforcement of Executive Law § 382-a. A municipality's duty to enforce Executive Law § 382-a shall include enforcement of the proposed rule since the purpose of the rule is to carry into effect the provisions of the statute.

6. Paperwork:

There are no reporting requirements, including forms or other paperwork, that are required by the proposed rule.

7. Duplication:

There are no relevant rules or other legal requirements of the State or federal government that duplicate, overlap or conflict with the proposed rule.

8. Alternatives:

Following adoption of Executive Law § 382-a, a group including representatives of the construction industry, the fire service, and municipal officials responsible for administration and enforcement of the Uniform Fire Prevention and Building Code was formed for the purpose of developing a proposed regulation for implementing the statute that would be acceptable to all interested parties. In developing its proposed regulation, the group reviewed a number of documents from other states and from the National Fire Protection Association (NFPA). Among the documents reviewed were reports, existing code provisions, and proposals to amend code provisions including:

Vermont Fire Prevention and Building Code - 1999, Section 3-7.4

National Fire Protection Association (NFPA) 1, Section 3-7.1, "premises identification" NFPA 5000, Code Change Proposal No. 239 and the TC actions for 239 through 239i, NFPA 5000, task group log #621, minutes and NFIRS data

"Fire Investigation Report, Firefighter Fatalities, Hackensack Ford," Bureau of Fire Safety, State of New Jersey, July 1, 1988

After reviewing the various documents, the group concluded that there did not exist a nationally accepted standard for signs identifying truss construction. Consequently, the group formulated a proposal acceptable to all the members of the group and presented it to the Code Council. The Council used the recommended regulation as the basis for the proposed rule.

9. Federal standards:

There are no standards of the federal government for the same or similar subject areas. The proposed rule would not exceed any minimum standards of the federal government.

10. Compliance schedule:

The provisions of the proposed rule are triggered when construction is undertaken, either the erection of a new building or the enlargement of an existing building by means of an addition. As no requirements are applicable until a regulated party proposes to undertake construction, there will be no period of time needed to achieve compliance with the rule. In order to obtain a building permit, the design documents associated with the proposed construction must provide for compliance with the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

Any party that proposes to build or alter a building using truss type construction is subject to regulation by the proposed rule. Although not specifically directed towards small businesses or local governments, members of each of those categories would be subject to the proposed rule if the individual small business or local government undertook a construction project utilizing truss type construction. It is not possible to estimate the number of small businesses or local governments that will be regulated by the proposed rule as it is not possible to estimate how many small businesses or local governments in the future will undertake construction projects utilizing truss type construction. Information regarding the number of construction projects undertaken within the State on an annual basis is neither collected nor maintained making such estimates virtually impossible.

All local governments (with the exception of the City of New York) will be affected by the proposed rule, however. Subdivision 4 of Executive Law § 382-a provides that local governments shall enforce the provisions of the statute and consequently will also be responsible for enforcing the proposed rule which is to be adopted to carry into effect the provisions of the statute.

2. Compliance requirements:

There is no reporting or recordkeeping that a small business or local government will have to undertake to comply with the proposed rule. If a small business or local government builds or alters a building utilizing truss type construction, it will be required to affix to its building one or more signs that identify the truss construction in the same manner as any other party with a building utilizing truss type construction would be required to do.

3. Professional services:

Although professional services are not necessary to comply with the proposed rule, small businesses and/or local governments which build or alter buildings utilizing truss type construction and thereby become subject to the requirements of the proposed rule will, in all likelihood, engage some type of design professional for the construction project. This design professional is likely to assist the regulated party in complying with the proposed rule. Compliance with the rule would be included as part of the design documents created for the building project.

4. Compliance costs:

No initial capital costs would be incurred by a regulated business or industry, or by a local government for compliance with the proposed rule. Regulated parties would not incur annual costs for continuing compliance with the proposed rule. Costs would only be incurred by regulated parties when they propose to erect a new building or alter an existing building utilizing truss type construction. Costs will not vary for small businesses or local governments depending on the type and/or size of such business or local government.

Subdivision 3 of Executive Law § 382-a provides for payment of a \$50.00 fee by the owners of buildings that utilize truss type construction. The proposed rule provides for the fee to be paid to the authority having jurisdiction for enforcement of Executive Law § 382-a. The rule would require the installation of six inch diameter signs when a commercial or industrial building is built utilizing truss type construction or when an existing commercial or industrial building is altered utilizing truss type construction. The cost of such signs is projected to vary between \$16.50 and \$25.00 for vinyl decals and between \$25.00 and \$75.50 for metal signs.

There may be minimal costs incurred by local government in connection with the implementation and enforcement of the rule. Local governments currently administer and enforce the Uniform Fire Prevention and Building Code. Enforcement of Executive Law § 382-a and the provisions of the proposed rule is expected to be performed in conjunction with enforcement of the Uniform Code. The \$50.00 fee paid by building owners is intended to cover local government costs.

5. Economic and technological feasibility:

Small businesses and local governments that erect new buildings or alter existing buildings utilizing truss type construction would be required to affix one or more signs to their buildings to notify persons conducting fire control and other emergency operations of the existence of the truss construction. The signs must conform to specifications set forth in the proposed rule. These specifications do not present any economic or technological obstacle to full compliance with the proposed rule.

6. Minimizing adverse impact:

The proposed rule would have no adverse economic impact on small businesses or local governments. The proposed rule implements the provisions of Executive Law § 382-a by establishing specifications for signs that the statute requires be installed when a new or altered building utilizes truss type construction. Small businesses and local governments would be subject to the provisions of the rule only if they erected or altered a building using truss construction. As the proposed rule does not impose any adverse economic impact, the approaches for minimizing adverse economic impact suggested by SAPA § 202-b(1) were not considered.

7. Small business and local government participation:

The proposed rule is based upon text developed and recommended by a group formed for the purpose of developing a proposed regulation for the implementation of the requirements of Executive Law § 382-a. This group consisted of representatives of the construction industry, the fire service, and municipal officials responsible for administration and enforcement of New York's Uniform Fire Prevention and Building Code. In developing its recommended proposed regulation the group sought input from affected

businesses and local governments in order to develop a proposed rule that would be acceptable to all interested parties.

Rural Area Flexibility Analysis

The State Fire Prevention and Building Code Council has concluded that the adoption of proposed 19 NYCRR Part 1264 would not impose any adverse economic impact on rural areas, nor any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed rule would establish requirements for signs that identify buildings and structures that utilize truss type construction. Executive Law § 382-a requires commercial buildings and industrial structures that utilize truss type construction to be marked by a sign or a symbol that warns persons conducting fire control and other emergency operations of the existence of truss construction in the structure. The proposed rule would carry into effect the provisions of the statute. It directs that the signs must be placed at specific exterior locations to notify fire service and emergency operations personnel that structural components of truss construction exist in the building. In addition, the signs must provide information about the type of structural components that utilize truss construction as well as information about the building's structural system.

For newly constructed buildings and existing buildings where a new addition utilizes truss type construction, signs shall be installed as part of the construction process. Compliance will be subject to enforcement by the cities, towns and villages of the State through permit and inspection procedures. Therefore, enforcement of the proposed rule should not place additional burdens on local governments. The cost of sign manufacture and installation will not place a significant financial burden on the developers or owners of buildings which are subject to the rule.

The rule applies to buildings using truss construction whether such buildings are located in rural or non-rural areas. Any economic impact of the rule is imposed in rural areas in no greater amount than it is imposed in non-rural areas.

Job Impact Statement

The State Fire Prevention and Building Code Council has concluded after reviewing the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities in New York. The proposed rule would add a new Part to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York that would establish requirements pertaining to the identification of buildings and structures that utilize truss type construction. Executive Law § 382-a requires commercial buildings and industrial structures that utilize truss type construction to be marked by a sign or a symbol that informs persons conducting fire control and other emergency operations of the existence of truss construction in the structure. The proposed rule would carry into effect the provisions of the statute. It directs that the signs must be placed at specific exterior locations to notify fire service and emergency operations personnel that structural components of truss construction exist in the building. In addition, the signs must provide information about the type of structural components that utilize truss construction as well as information about the building's structural system.

For newly constructed buildings and existing buildings where a new addition utilizes truss type construction, signs shall be installed as part of the construction process. Compliance will be enforced by the cities, towns and villages of the State through permit and inspection procedures. These permit and inspection procedures are already established and used for administration and enforcement of the New York Uniform Fire Prevention and Building Code. Consequently, enforcement of the proposed rule will not place any additional burden on local governments. Furthermore, the required signs will utilize commonly available construction materials and installation procedures. Accordingly, the Code Council finds that it is evident from the subject matter of the proposed rule that it could only have a positive impact, or no impact on jobs and employment opportunities.

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

Proposed action: Amendment of Parts 151, 152, 153 and 155 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 354, subdivision 5 and section 382, subdivisions 7(d) and (k); Canal Law, section 6, subdivision 3 and section 10, subdivision 9

Subject: Management and operation of the New York State Canal System.

Purpose: To simplify the rules by making language consistent with the management structure of the New York State Canal Corporation and simplify the rules for operating a vessel on the canal system.

Substance of proposed rule (Full text is posted on the following State website: www.canals.state.ny.us): This proposal includes amendments to 21 NYCRR Parts 151, 152, 153 and 155. The proposed Rule Making merely conforms the regulations contained in 21 NYCRR 151, 152, 153 and 155 to reflect the jurisdictional transfer of the Canal System to the New York State Canal Corporation and make other changes clarifying and simplifying the management and operational rules for operating a vessel on the canal system.

Text of proposed rule and any required statements and analyses may be obtained from: J. Marc Hannibal, New York State Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-2867, e-mail: marc_hannibal@thruway.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:

Subdivision 9 of section 10 of the Canal Law, in pertinent part, authorizes the prescription of "rules and regulations not inconsistent with law relating to the navigation, protection and maintenance of the Canal system..." Section 6 of the Canal Law transfers jurisdiction of the canal lands and other assets to the Thruway Authority and subdivision 3 of such section continues in force "all rules, regulations. . . pertaining to the functions transferred. . . until duly modified or abrogated..." Subdivision five of section 354 of the Public Authorities Law authorizes the Thruway Authority to make "rules and regulations governing the use of the thruways and all other properties and facilities under its jurisdiction." Subdivision one (1) of section 382 of such chapter establishes the New York State Canal Corporation as a subsidiary of the Authority. Subdivision 7, paragraph d, of section 382 of such chapter authorizes the subsidiary corporation to make "rules and regulations governing the use of its property and facilities." Further, paragraph k of subdivision 7 of this section authorizes the subsidiary corporation "to exercise those powers and duties of the authority pursuant to the canal law." Finally, subdivision 11 of this section authorizes the subsidiary corporation to "do all things necessary or convenient to carry out its purposes and exercise the powers given and granted by this section."

Inherent in these powers is the administrative discretion to make effective and rational rules for the management and operation of the New York State Canal System.

2. Legislative Objectives:

The amendments to Parts 151, 152, 153 and 155 of Title 21 NYCRR are intended to clarify and simplify the rules for operating a vessel on the New York State Canal System.

3. Needs and Benefits:

Currently the public is directed to navigate vessels on the canal system pursuant to rules that were promulgated when the system was under the jurisdiction of the New York State Department of Transportation. Many of the titles and procedures previously in place were changed following the transfer to the New York State Thruway Authority and the New York State Canal Corporation. While the governing regulations were transferred to Title 21 NYCRR from their previous location in Title 17 NYCRR and some technical amendments were promulgated to reflect the jurisdictional shift, there have remained numerous references to prior procedures that could cause confusion for the public. Amending the regulations as proposed will help eliminate such confusion. Further, there have been numerous occasions when the existing regulations related to speed on the canals have caused confusion with the statutory provisions of the Navigation Law. The amendments proposed for Part 151.15 are designed to clarify and simplify the rules for operating a float on the canal system by regularizing the requirements with the Navigation Law provisions.

4. Costs:

Thruway Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Management and Operation of the New York State Canal System
I.D. No. THR-34-04-00002-P

(a) The costs to regulated parties for implementation of and continuing compliance with the rule: this rule will impose no costs on regulated parties for implementation of or compliance with the reclassification.

(b) The costs to the agency, the state and local governments for implementation and continuation of the rule: there are no significant costs associated with this rule. Promulgation and administration will be accomplished with existing staff.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: this analysis is based upon an examination of the rule and familiarity with the policies involved.

5. Local Government Mandates:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

There were no significant alternatives to be considered.

9. Federal Standards:

None.

10. Compliance Schedule:

Ongoing.

Regulatory Flexibility Analysis

This regulation has no application to, nor impact upon, the small business community and local governments, whether through compliance, reporting, or in any other way, and as such, a Regulatory Flexibility Analysis is not required. The basis for this conclusion is that the regulation will conform the rules of the Canal Corporation with the procedures currently in use. There will be no substantive impact upon the small business community or Local Governments.

Rural Area Flexibility Analysis

This regulation has no application to, nor impact upon, public or private entities in rural areas, whether through compliance, reporting, or in any other way, and as such, a Rural Area Flexibility Analysis is not required. The basis for this conclusion is that the regulation will conform the rules of the Canal Corporation with the procedures currently in use. There will be no substantive impact upon the small business community or Local Governments.

Job Impact Statement

It is apparent from the nature and purpose of the proposed rule that it will have no impact on jobs and employment opportunities. As such, a Job Impact Statement is not required.