

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Examination Appeals

I.D. No. CVS-13-04-00004-P

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

Proposed action: Amendment of section 55.2 of Title 4 NYCRR.

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

Subject: Examination appeals.

Purpose: To avoid unnecessary technical examination appeals that have bearing on the selection of candidates.

Text of proposed rule: RESOLVED, that section 55.2 of the Regulations of the State Civil Service Commission (Commission's Regulations) is amended to read as follows:

55.2 A committee on appeals shall consider only such appeals as clearly demonstrate a manifest material error or mistake appearing in a rating key or scale or in the application of such key or scale to candidate test papers or other records of examination performance or eligibility for appointment and only if such error or mistake affects the eligibility to relative standing of candidates. *Further, the committee on appeals shall not consider the appeal of a candidate whose score, at the time of the establishment of the eligible list, is equal to or higher than the final examination rating of the third highest standing eligible. Provided, how-*

ever, that the committee shall consider such appeal where the candidate's reachability for appointment is affected by the committee's determination of another appeal and he or she has timely filed a notice of intent to appeal.

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

Data, views or arguments may be submitted to: Daniel E. Wall, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: dew@cs.state.ny.us

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

Regulatory Impact Statement

1. Statutory Authority

Section 6(1) of the Civil Service Law grants broad authority to the State Civil Service Commission to prescribe and amend suitable rules and regulations concerning civil service examinations. Consistent with such authority, the Commission is amending section 55.2 to clearly limit examination appeals to candidates not immediately reachable for appointment.

2. Needs and Benefits and Legislative Objectives

Part 55 of the Commission's Regulations governs examination appeals. Section 55.2, which sets forth the subject of appeals, currently provides that the committee on appeals will only consider appeals where the manifest error or mistake demonstrated affects the eligibility or relative standing of candidates. Similarly, section 55.4, which sets forth the post-list appeal procedure, permits a candidate to appeal to improve his or her relative standing.

The Department of Civil Service has had a long-standing practice of denying appeals where the candidate is reachable for appointment under section 61(1) of the Civil Service Law, based on its interpretation of the language in section 55.2 which permits appeals only where "relative standing" is affected. The Department has interpreted relative standing as "reachability" for appointment. Further, the Department's policy was based on the assumption that there would be no benefit to the candidate if the appeal were granted and therefore, the review of such appeal would be a waste of the Department's resources.

The State Civil Service Commission, in a case of first impression, recently granted an appeal from a candidate who was denied review by the Department because the candidate was reachable for appointment. The Commission found that "relative standing" could be interpreted to mean, as the candidate had argued, a candidate's standing on the eligible list vis-à-vis other eligibles. The Commission also recognized, however, that there is little or no merit in granting appeals where a candidate is immediately reachable for appointment, especially in light of the significant amount of staff time consumed in reviewing appeals, and requested that a change in the rule be pursued to eliminate any confusion to candidates.

The proposed amendment clarifies the language in section 55.2 to limit appeals in accordance with the Department's long-standing practice. Limiting appeals to candidates who are not immediately reachable for appointment preserves the integrity of the appeals process while eliminating unnecessary appeals, which have no impact on a candidate's eligibility for appointment.

The proposed amendment also allows such appeals to go forward, however, in cases where a reachable candidate has timely filed a notice of appeal, and subsequently the appeal of another candidate is determined and affects the reachability of that first candidate.

3. Costs

a. Costs to regulated parties for implementation of and continuing compliance with the rule: Because the proposal simply reiterates the De-

partment of Civil Service's longstanding interpretation of Part 55, it will have no effect on State Civil Service Commission practice or procedure, and will not impose any costs on regulated parties.

b. Costs to the agency, the State and its local governments for implementation and continuation of the rule: Again, because the proposal simply reiterates the Department of Civil Service's longstanding interpretation and practice with respect to examination appeals, it will not impose any costs on the agency, the State or its local governments.

c. The information, including the sources of such information, the methodology upon which the cost analysis is based: Discussions with staff confirm that the Department of Civil Service has consistently interpreted Part 55 as prohibiting appeals by persons whose scores are equal to or higher than the final examination rating of the third highest candidate on the eligible list.

4. Paperwork

Since the bill simply clarifies the Department of Civil Service's longstanding interpretation of Part 55, and is consistent with prior practice relative to examination appeals, the rule will not require any new or additional paperwork.

5. Local Government Mandates

The proposal applies only to examination appeals before the State Civil Service Commission and imposes no program, service, duty or responsibility upon any local government.

6. Duplication

The proposal does not duplicate or conflict with any State or federal requirements.

7. Alternative Approaches

As an alternative, the State Civil Service Commission considered not amending the rule. However, since there is little or no merit in granting appeals where a candidate is immediately reachable for appointment, such an alternative would result in a significant waste of valuable staff time reviewing such appeals.

8. Federal Standards

There are no applicable minimum standards of the federal government for the same or similar subject areas. Accordingly, this proposal does not exceed any such standards.

9. Compliance Schedule

Since the rule simply reflects a longstanding practice, the proposal will not require a period of time in order to enable regulated persons to achieve compliance.

Regulatory Flexibility Analysis

The rule simply reiterates the Department of Civil Service's longstanding interpretation of Part 55 of the Commission's Rules, that no civil service examination candidate may appeal his or her score if, at the time of the establishment of the eligible list, such score is equal to or higher than the final examination rating of the third highest candidate. Accordingly, the rule has no economic impact and places no reporting, recordkeeping or other compliance requirements upon small businesses, as defined by Section 102(8) of the State Administrative Procedures Act, or any local government. Therefore, a Regulatory Flexibility Analysis (RFA) is not required by section 202 of such Act.

Rural Area Flexibility Analysis

Since the rule simply reiterates the Department of Civil Service's longstanding interpretation of Part 55 of the Commission's Rules, that no civil service examination candidate may appeal his or her score if, at the time of the establishment of the eligible list, such score is equal to or higher than the final examination rating of the third highest candidate, without regard to geographic distribution of personal residences or work locations of such candidates, the rule will not impose any adverse economic impact or create reporting, recordkeeping or other compliance requirements for public and private entities in rural areas, as defined by section 102(10) of the State Administrative Procedures Act. Therefore, a Rural Area Flexibility Analysis (RAFA) is not required by section 202-bb of such Act.

Job Impact Statement

By simply reiterating the Department of Civil Service's longstanding interpretation of Part 55 of the Commission's Rules, that no civil service examination candidate may appeal his or her score if, at the time of the establishment of the eligible list, such score is equal to or higher than the final examination rating of the third highest candidate, the rule will not have a "substantial adverse impact on jobs and employment opportunities" as set forth in section 201-a(2)(a) of the State Administrative Procedure Act. Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

Department of Correctional Services

NOTICE OF ADOPTION

Discipline and Confinement of Inmates

I.D. No. COR-52-03-00020-A

Filing No. 319

Filing date: March 16, 2004

Effective date: May 1, 2004

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

Action taken: Amendment of sections 251-2.2 and 254.7(a)(5), repeal of section 254.6 and addition of new section 254.6 and Part 310 to Title 7 NYCRR.

Statutory authority: Correction Law, sections 70, 112, 138 and 401

Subject: Discipline and confinement of inmates whose mental state or intellectual capacity may be at issue.

Purpose: To establish standards whereby an inmate's mental state and intellectual capacity shall be considered during disciplinary proceedings, to amend disciplinary procedures and provide, in conjunction with OMH staff, for case management of such inmates when confined in special housing units.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-52-03-00020-P, Issue of December 31, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

Assessment of Public Comment

Comment One - An inmate's mental health should be deemed at issue whenever the inmate is brought to an Office of Mental Health (OMH) Satellite Unit for evaluation following an alleged act of inmate misbehavior.

Response - The fact that an inmate is being evaluated at a correctional facility by OMH staff as a result of an incident is not, without more, an indicator that the inmate has a serious mental health problem. If, following an OMH evaluation, the inmate is designated as being in need of OMH Level 1 services, the inmate's mental state will be considered at issue in accordance with section 254.6(b)(1)(i) of the proposed regulations. Similarly, if an evaluation involves more than a brief stay in the OMH Satellite Unit or results in a subsequent transfer to the CNYPC, a time extension will be required for commencing and completing a Superintendent's Hearing and, in accordance with section 254(b)(1)(vii) of the proposed regulations, the inmate's mental state will again be deemed at issue. Furthermore, as provided in section 254.6(b)(1)(ii) of the proposed regulations, an inmate's mental state will always be at issue following an act of self-harm, irrespective of whether the inmate is brought to an OMH Satellite Unit. Moreover, it should be noted that a Hearing Officer may, pursuant to section 254(b)(1)(viii), consider an inmate's mental health in the hearing process even though none of the specific factors enumerated in the proposed regulations are present.

Comment Two - In addition to an intelligence test, other tests should also be utilized in determining if intellectual capacity needs to be considered in the context of a Tier III inmate disciplinary hearing. An inmate's limited intellectual capacity can have a number of causes and an inmate's functional ability is not determined by such tests.

Response - Last year over 17,000 newly admitted inmates were tested and evaluated at the Department's Reception Centers and every year approximately 20,000 Tier III inmate disciplinary hearings are held. Given these substantial numbers, a requirement that the Department administer additional tests to inmates on a regular basis and capture those test results for use in the inmate disciplinary process would be unduly burdensome. The intellectual testing instrument currently utilized by the Department's Reception Centers is sufficient for determining an inmate's intellectual capacity. The testing instrument has undergone extensive reliability and validity studies. The norm sample included over a thousand adults in the United States and validation data was collected using a large number of individuals incarcerated in correctional facilities. Furthermore, because the

testing instrument does not require any reading skills, it is especially appropriate for use with inmates, some of whom are illiterate or English language learners. The Department also regularly administers a standardized test of adult basic education, in both English and Spanish, which has also undergone rigorous validity testing, including testing among prison populations. The results from the standardized test of adult basic education are weighed along with the intellectual testing instrument.

In addition, it should be noted that, under the proposed regulations, a low test score is not the only trigger that would require consideration of an inmate's mental capacity as part of the Tier III hearing process. If an inmate is housed in one of the Department's Special Needs Units or if it appears to the Hearing Officer, based upon the inmate's demeanor, the circumstances of the alleged offense or any other reason, that the inmate may have been intellectually impaired at the time of the incident or may be intellectually impaired at the time of the hearing, intellectual capacity will be considered at issue in the hearing.

NOTICE OF ADOPTION

Double-Cell Housing

I.D. No. COR-02-04-00004-A

Filing No. 280

Filing date: March 10, 2004

Effective date: March 10, 2004

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

Action taken: Amendment of section 1701.5(c)(6)(i) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Double-cell housing.

Purpose: To correct an omission from revisions to Part 1701, adopted Sept. 5, 2001, which deleted words referring to inmates as smokers or non-smokers.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-02-04-00004-P, Issue of January 14, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

Assessment of Public Comment

The agency received no public comment.

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 standards for laboratory testing of 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 biological or chemical criti-*

Department of Health

EMERGENCY RULE MAKING

Environmental Laboratory Studies

I.D. No. HLT-13-04-00001-E

Filing No. 282

Filing date: March 10, 2004

Effective date: March 10, 2004

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

Action taken: Amendment of section 55-2.12 and 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

cal 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 (bio)safety level facilities and 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, its product 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 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 June 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 determina-

tions 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 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. 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, 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.

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 for Department 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 facilities 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 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 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 ap-

propriate 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 for Department 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 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 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Managed Care Organizations

I.D. No. HLT-13-04-00017-P

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

Proposed action: Amendment of Subpart 98-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, art. 44

Subject: Managed care organizations.

Purpose: To clarify the applicability of Subpart 98-1 to newly legislated and newly evolved forms of managed health care, amend obsolete provisions and provide a clearer guidance to the health care industry concerning the certification and operational requirements for managed care organizations.

Substance of proposed rule (Full text is not posted on a State website): Revisions to Subpart 98-1, Managed Care Organizations (formerly Part 98, Health Maintenance Organizations) reflect changes made to Article 44 since the last time this section of 10 NYCRR was promulgated.

Revisions are made throughout the rule clarifying the applicability of provisions to specific types of managed care entities.

Title

The title was changed to incorporate new managed care entities that have been authorized by statutory changes.

98-1.1 Applicability

New types of managed care entities are added.

98-1.2 Definitions

Definitions are added for: "capitation"; "care management"; "comprehensive HIV special needs plan" (HIV SNP); "HIV SNP case management"; "HIV specialist primary care provider"; "independent practice association" (IPA); "managed care organization" (MCO); "managed long term care plan" (MLTCP); "material change to a contract"; "prepaid health services plan" (PHSP); "primary care partial capitation program" (PCPCP); "referral"; "Title XIX"; and, "Title XXI".

Existing definitions were changed to reflect these new managed care entities, to achieve consistency with state and federal law and regulation and to update to reflect current practice.

98-1.3 Letter of Intent

Section 98-1.3, Letter of Intent, is obsolete and has been eliminated.

98-1.4 Certificate of Incorporation or Articles of Organization

This section is changed to recognize articles of organization.

98-1.5 Application for a Certificate of Authority

Changes to this section include: already approved MLTCPs may enroll members prior to obtaining a certificate of authority; applicants for certification provide notice to the Department of the resignation, termination or replacement of any officer or the medical director; pre-operational reserves and deposits must be calculated using projected net premium income and expenditures for the first calendar year; requirements for enrollee consent for release of medical records; provider contracts are required to include enrollee hold harmless provisions; authorization for the Commissioner of Health access to enrollee medical records; requirements are added for approvals of material changes to MCO/provider contracts; State guidelines for provider contracts are authorized; recognition of limited liability corporations and IPAs organized under articles of organization; IPAs must use the term, "IPA" in the IPA name; an IPA certificate of incorporation or articles of organization must disclaim the operation of a hospital and other facilities; "Adult Care Facility" is added to this disclaimer; delineate the

permitted activities of an IPA; proposed contracts for reinsurance must be submitted to the Commissioner and Superintendent prior to issuance of a certificate of authority; rates of payment must be consistent with the principles of community rating; and, requirements for review and prior approval of MCO and IPA name changes.

98-1.6 Issuance of the Certificate of Authority

Language is added requiring approval of risk sharing arrangements and including holding companies and limited liability company members and managers in the character and competence reviews. This section is also updated for consistency with State statute regarding utilization review procedures, quality monitoring, complaints and grievances programs and open enrollment. A new provision requires approval of performance improvement programs prior to issuance of a certificate of authority. Approval authority for each line of business is specified.

98-1.7 Limitations of a Certificate of Authority

Changes to this section authorize the Commissioner and/or Superintendent to request financial projections related to an MCO's request to extend its service area.

98-1.8 Continuance of a Certificate of Authority

Changes provide the Commissioner authority to impose limitations and conditions on a certificate of authority, require that the notice period for new contracts and contract amendments be consistent with contract guidelines, and specify the approval requirements and entities for amendments to risk sharing arrangements, enrollee contracts and Medicaid rates of payment. Provisions requiring demonstration of compliance with the regulations by December 10, 1986 have been eliminated.

98-1.9 Acquisition or Retention of Control of Managed Care Organizations

This section contains modified approval requirements for acquisitions of control of MCOs, including consideration of the MCO's holding company and its directors.

98-1.10 Transactions within a Holding Company System Affecting Controlled Managed Care Organizations

Changes to this section modify approval requirements for loans and extensions of credit between an MCO and anyone in its holding company system, as well as notice and approval requirements for certain transactions between an MCO and its holding company.

98-1.11 Operational and Financial Requirements for Managed Care Organizations

Changes in this section modify requirements for: transfers or loans between lines of business or to contractors, subsidiaries or members of the MCO's holding company system; contingent reserves, which are increased to 12.5 percent over six years for HMOs, PHSPs and HIV SNPs except that reinsurance contract premiums may be substituted for up to half of the required annual reserve increase and the reserve may be offset by up to 50 percent of the required level at the end of a calendar year by means of an approved reinsurance agreement; escrow deposits, which must be in the form of trust accounts; governing authority composition and responsibilities, including an optional enrollee advisory council; management contracts, including what functions may and may not be delegated to a management contractor, management contract approval requirements and State authority to conduct character and competence and financial feasibility reviews. Changes also establish criteria for the declaration and distribution of dividends on capital stock by HMOs, including prior approval requirements in certain instances, authorize sanctions against MCOs engaging in improper management contracting activities and modify rules concerning the use of brokers. Several provisions related to obsolete contingency reserve requirements were eliminated.

98-1.12 Quality Management Program

Amendments to this section clarify the respective responsibilities of the internal quality assurance committee and the peer review committee, and modify requirements for quality assurance programs, including provider credentialing/recertification and removal of disciplined providers from the network, record retention and provider manual distribution.

98-1.13 Assurance of Access to Care

Amendments to this section require that covered services be provided within the network except when services are not available in-network, require that limitations on accessing the entire network be communicated to enrollees and potential enrollees, establish requirements for prior approval of assignment of, and noticing for, termination of contracts with certain large providers, establish requirements for HIV SNP primary care practitioner (PCP) qualifications and HIV SNP member-to PCP ratios, establish access and availability standards for HIV SNPs and MLTCPs, limit enrollee liability for referral services, modify enrollee consent and

confidentiality provisions and establish criteria for retrospective review of pre-authorized services.

98-1.14 Enrollee Services and Grievance Procedures

Amendments to this section modify requirements for the content, approval and distribution of enrollee handbooks, modify language regarding complaint, grievance and internal utilization review procedures for consistency with State law, require approval of grievance and complaint procedures prior to the start of enrollment and include requirements for acknowledgement of grievances and complaints and explanations of determinations.

98-1.16 Disclosure and Filing

Amendments to this section include requirements for the content and submission of financial statements, establish penalties for failure to submit complete reports or other information within 30 days of a written request, modify requirements for maintaining, distributing and submitting Health Provider Network information, add a requirement that MCOs serving Medicaid enrollees submit a compliance plan for the Americans with Disabilities Act (ADA) and establish reporting requirements for MLTCs.

98-1.18 Relationship Between an MCO and an IPA

Amendments to this section makes MCOs responsible for agreements between a contracted IPA and other IPAs, specify the information required for approval of risk sharing arrangements between an MCO and an IPA and add non-compliance with Title 1 of Article 49 as an offense subject to fines.

98-1.19 Marketing by MLTCs

This new section delineates MLTCP requirements for marketing plans, marketing materials, marketing activities, marketing prohibitions, application processing and enrollment agreements consistent with Social Services and Public Health Law.

98-1.20 Waived Requirements for Managed Long Term Care Plans

This new section is added to waive requirements of Section 365-i of the Social Services Law pertaining to prescription drug payments as authorized by Section 4403-f(7)(ii) of the Public Health Law.

98-1.21 Fraud and Abuse Prevention Plans and Special Investigation Units

This new section requires MCOs with 10,000 or more enrollees that participate in public or government sponsored programs to develop a fraud and abuse prevention plan, to include establishment of a Special Investigations Unit, and details the required contents of the plan. The section also details the required qualifications of staff of the Special Investigations Unit and the contents and timetable for submission of the required annual report.

98-1.22 Warning Statements

This new section provides requirements for language to be contained in claim forms warning individuals of the consequences of fraud.

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: regsqa@health.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority

Article 44 of the Public Health Law, as amended by Chapters 649 and 705 of the Laws of 1996, Chapters 433 and 659 of the Laws of 1997 and Chapter 2 of the Laws of 1998, provides general statutory authority for regulations promulgated in Subpart 98-1 of Title 10 of the NYCRR in Section 4403(2). The primary purpose of the proposed revisions is to clarify the application of the regulations to newly developed forms of managed care organizations (MCOs), including prepaid health services plans (PHSPs), primary care partial capitation providers (PCPCPs), HIV special needs plans (HIV SNPs) and managed long term care (MLTCs), consistent with the provisions of Chapter 649 of the Laws of 1996 and Chapter 659 of the Laws of 1997. Public Health Law 4414 requires the Commissioner to establish, by regulation, fraud and abuse prevention programs.

Legislative Objectives

The intent of the Legislature in enacting Article 44 of the Public Health Law and subsequent amendments was to encourage the expansion of managed care as a health care option available to residents of the State, to improve the quality and accessibility of health care services and to control costs. The Legislature also intended to protect consumers from market

volatility by building in provisions promoting structurally and financially sound managed care organizations.

The proposed regulatory changes clarify the applicability of Subpart 98-1 due to legislative changes and evolved forms of managed health care (e.g., MLTCs and HIV SNPs), amend obsolete provisions and provide clearer guidance to the health care industry concerning certification and operational requirements for MCOs. The following is a brief discussion of how the proposed regulatory amendments are consistent with legislative intent.

New managed care entities are incorporated throughout the proposed regulations, including PHSPs, PCPCPs, HIV SNPs and MLTCs. To recognize that these types of managed care organizations have different operational requirements depending upon the population served and the types of services offered, changes are also made to specify the unique provisions that apply to each type of entity and program. For example, certain requirements applicable to a commercially insured population must be reviewed and/or approved by both the Commissioner of Health and the Superintendent of Insurance, whereas the same activities undertaken for the Medicaid managed care population require only the Commissioner's review and/or approval. Unique requirements for MLTCs are added, consistent with the authorizing statute and appropriate to the range of services provided by these entities to a population that requires on-going, intensive and varied services. Likewise, provisions unique to PCPCPs are added to reflect the fact that PCPCPs offer only primary care services and do not generally have a corporate structure.

Other changes to Subpart 98-1 include:

- Revisions that achieve consistency between State Public Health and Insurance Law and regulation and federal law and regulation;
- Deletions of obsolete provisions, including deletion of the provisions of Section 98-1.3, Letter of Intent, and addition of provisions to reflect actual practice;
- New provisions regarding revocation, limitation or annulment of a certificate of authority;
- Expansion and delineation of permitted activities of an IPA;
- Provisions to ensure the solvency and stability of managed care organizations and to protect enrollees in the event a plan makes changes to its organizational structure that may affect quality or continuity of care or access to care;
- Revisions to management contracting requirements;
- Establishment of criteria for retrospective review of pre-authorized services;
- New requirements for availability and accessibility of services provided by HIV SNPs and MLTCs, consistent with Public Health Law;
- Requirements for handling complaints, consistent with Public Health Law;
- Modifications to requirements for submitting annual financial statements;
- Updated provisions concerning maintenance and distribution of provider network information;
- New requirements for plans of compliance with the federal Americans with Disabilities Act (ADA);
- New marketing provisions for MLTCs;
- A new section waiving certain requirements of the Social Services Law that are not applicable to MLTCs;
- A new section establishing fraud and abuse prevention requirements as required by Section 4414 of the Public Health Law; and
- A new section requiring a fraud warning statement on all claim forms.

Needs and Benefits

Over the last two decades, employers and public assistance agencies increasingly turned to managed care in an attempt to control the rising costs of and improve access to health care. In response, the marketplace has developed different models of managed care to address various issues in the health care delivery system. For example, managed long term care is intended to reduce fragmentation in service delivery, improve quality of care and enrollee satisfaction through coordination and management of long term care services covered by Medicaid and integrate Medicaid services with Medicare benefits.

Subpart 98-1 was originally promulgated to address certification and operational issues for HMOs. However, with the passage of legislation authorizing PCPCPs, HIV SNPs and MLTCs, the application of Subpart 98-1 has expanded. Revising Subpart 98-1 will allow application of existing regulations to other types of managed care organizations where appropriate. Revisions will also provide guidance to the industry regarding

certification, operational and reporting requirements where such requirements differ from those applicable to HMOs, and update rules to better reflect current practice and need.

Costs

Additional costs may be incurred by some MCOs related to phase-in of higher reserve requirements. However, these requirements are consistent with the reserves required of other licensed insurers under Article 43 of the Insurance Law, and most HMOs currently maintain reserves at levels which would satisfy the new reserve requirements. In addition, no additional costs will be incurred by MCOs in the first calendar year after implementation of the regulations. After the first year, reserves must be increased by 1½% each year for five years. Those MCOs with 10,000 or more enrollees that are not subject to State Insurance Law will incur costs associated with establishment of a Special Investigations Unit and development of a fraud and abuse prevention plan.

Costs to the State will be related to certification and surveillance activities associated with assuring regulatory compliance by new types of MCOs. Existing Department resources will absorb this workload. The regulations do not impose additional requirements or costs on local governments.

Paperwork

As required by legislation, MLTCPs will be required to collect and report health outcomes data, uniform cost data, an annual statement to include financial, provider, demographic and utilization data and quarterly listings of providers in the MLTCP's network. In addition, MCOs with 10,000 or more enrollees will be required to develop a fraud and abuse prevention plan and annually prepare a report of fraud and abuse issues and activities.

Local Government Mandates

The proposed changes to the regulations do not create any additional burden to local social services districts beyond those currently imposed by law.

Duplication

The proposed regulations do not duplicate any State or federal requirements currently in force. Federal regulations implementing the Balanced Budget Act of 1997 have been finalized. While these regulations, which are applicable only to managed care entities that participate in the Medicaid program, may require minor changes to Article 44 of the Public Health Law, they are consistent with proposed Subpart 98-1. For MLTCPs, however, Chapter 659 of the Laws of 1997 authorizes the Department to seek waivers, as appropriate, for financial integration of Titles XIX and XVIII. To the extent that conflicts exist between the State and federal rules under the two funding streams, federal waivers will be sought or State requirements will be preempted by federal rules. Similarly, some MLTCPs will be subject to federal PACE statute and regulations.

Alternative Approaches

Making no changes to the regulations was considered. However, this approach was not considered feasible because of the proliferation of new types of managed care organizations, the need to clarify and update existing regulations to reflect the evolving managed care industry, the desire to ensure adequate financial safeguards and the need to achieve greater consistency with State Insurance Law and regulation. In addition, the authorizing legislation for MLTCPs envisioned changes to regulation.

Promulgation of separate rules for MLTCPs was considered. However, since Section 4403-f(5) applies HMO rules to MLTCPs, and the requirements in Subpart 98-1, for the most part, set forth appropriate rules for the operation of an MLTCP, revising Subpart 98-1 was determined to be the most efficient alternative.

Excluding PCPCPs from the proposed rule was considered. However, enrollees who choose to join a PCPCP should be assured that their plan meets the same or similar quality of care and access requirements as comprehensive plans and has acceptable enrollee services and grievance programs.

Federal Standards

The Centers for Medicare and Medicaid Services (CMS) incorporated requirements identical to the program changes required by Chapters 649 and 705 of the Laws of 1996 into New York State's Special Terms and Conditions for implementing the mandatory Medicaid managed care program under Section 1115 of the federal Social Security Act. The proposed regulatory changes are consistent with the Terms and Conditions and do not exceed any minimum standards of the federal government currently in force. Federal regulations implementing the Balanced Budget Act of 1997 have been finalized. While these regulations, which are applicable only to managed care entities that participate in the Medicaid program, may re-

quire minor changes to Article 44 of the Public Health Law, they are consistent with proposed Subpart 98-1.

The proposed rules for MLTCPs may exceed federal rules for managed care organizations in Part 434 of 42 CFR. However, applicability of state HMO rules to MLTCPs is required by Public Health Law Section 4403-f(5); State rules will control to the extent that they are not preempted by federal rules.

Compliance Schedule

With the exception of those HIV SNPs that have not initiated operations, PCPCPs and MLTCPs, managed care entities are currently in compliance with most provisions of the proposed rule. The reserve requirement increase is phased in over six years to be consistent with requirements imposed on other health insurers under Article 43 of the State Insurance Law. Certain larger MCOs must submit a fraud and abuse prevention plan within ninety days of promulgation of the regulations, and the plan must be implemented within six months of plan submission. New PCPCPs must meet the requirements in Subpart 98-1 in order to be certified and operate a PCPCP. Contracts for existing PCPCPs contain requirements that closely mirror the provisions of the proposed rule and therefore, it is expected that these entities are already in substantial compliance with these requirements.

The compliance schedule for MLTCPs is set forth in Section 4403-f, as follows: 1) Operating demonstrations have until year 2003 to comply with Subpart 98-1; 2) Approved demonstrations have one year from promulgation of the regulations; and 3) plans selected in the future through a legislatively mandated request for proposals are required to meet the requirements in Subpart 98-1 in order to be certified and operate as an MLTCP.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments

The rule applies to all health maintenance organizations (HMOs), prepaid health services plans (PHSPs), primary care partial capitation providers (PCPCPs), HIV special needs plans (HIV SNPs) and managed long term care plans (MLTCPs). Of these, 8 partial capitation providers and 6 managed long term care plans are small businesses. Managed care organizations may subcontract for health and social services with small businesses in the community. MLTCPs are subject to Subpart 98-1 pursuant to statute. PCPCPs may be comprised of individual primary care providers or groups of providers and may also be considered small businesses. Some local social services districts (LDSS) also operate PCPCPs. These entities will be required to comply with all applicable provisions in Subpart 98-1. New fraud and abuse prevention requirements are not applicable to plans with fewer than 10,000 enrollees, including PCPCPs and MLTCPs.

Compliance Requirements

Newly organizing PCPCPs will be required to comply with all applicable provisions contained in those sections dealing with applications for a certificate of authority, performance standards and prior approval for issuance and continuation of a certificate of authority. Currently operating and newly organizing PCPCPs must comply with all applicable provisions regarding governing authorities and management contractors, quality assurance and improvement programs, access to health care, including emergency care, grievance and complaint procedures, member handbooks, disclosure and reporting, audits and examinations by the state, and relationships with IPAs.

Section 4403-f(5) requires that MLTCPs meet the requirements in Article 44 and its existing implementing regulations. The proposed changes to the regulations do not create any additional burden to local social services districts beyond those currently imposed by law.

MCOs with 10,000 or more enrollees must comply with fraud and abuse prevention requirements, however, some of the larger MCOs are already in compliance with these requirements by virtue of being subject to State Insurance Law.

Professional Services

Professional services required to operate an MCO are necessitated by the certification and operating requirements set forth in statute. Regulations require that MLTCPs designate health care professionals responsible for care management. MLTCPs provide a wide array of health and social services to elderly and adult disabled persons. Many of the enrollees have multiple chronic illnesses and disabilities which require planning, coordinating and arranging for a variety of services. Care management of these enrollees may be time consuming and is generally beyond the scope of conventional physician services, thus requiring additional personnel to carry out this function. In addition to health care professionals, MCOs and local governments currently utilize attorneys, certified public accountants

and various types of consultants. It is expected that such professionals will continue to be needed to assist with compliance.

Compliance Costs

The most significant cost item associated with the proposed rule is the increase in contingent reserve requirements to 12.5 percent of net premium income for the calendar year by year six. However, all plans currently meet the year six reserve requirements and, therefore, will experience no additional costs. The only other significant cost item is associated with development of a fraud and abuse prevention plan and a special investigations unit. These requirements will only apply to plans with more than 10,000 enrollees that do not already have such a program in place under State Insurance Law.

Economic and Technological Feasibility

As noted above, small businesses and local governments are more likely to seek certification as a PCPCP than as another form of MCO. The less stringent standards for PCPCPs provide economic and technological feasibility to comply with the rules proposed. PCPCPs are currently operated by both small businesses and local governments. PCPCP contracts contain requirements that closely mirror the provisions of the proposed rule and therefore, compliance should be feasible for PCPCPs. As the result of applying the requirements in Subpart 98-1 to MLTCPs, as authorized by statute, a small business seeking certification as an MLTCP will need to meet the fiscal solvency requirements and demonstrate the capability to assume financial risk for services provided under a capitated payment system. Plans will also need sufficient management information systems capability to manage services, coordinate care, pay claims and assure quality. PCPCPs are currently operated by both small businesses and local governments. PCPCP contracts contain requirements that closely mirror the provisions of the proposed rule and therefore, compliance should be feasible for PCPCPs.

Minimizing Adverse Impact

The rule changes are necessitated by statute, including authorizing legislation for MLTCPs (Chapter 659 of the Laws of 1997), the Medicaid Managed Care Act (Chapters 649 of the Laws of 1996 and Chapter 433 of the Laws of 1997) and the Managed Care Bill of Rights (Chapter 705 of the Laws of 1996). Furthermore, many of the changes codify current managed care industry practices and contract requirements. The regulations recognize that MLTCPs are likely to be small businesses, PCPCPs are likely to be either small businesses or local governments, with MLTCPs and PCPCPs having smaller administrative structures than other MCOs. Requirements are therefore modified in some areas, such as certification application and issuance requirements for PCPCPs, certification issuance requirements for MLTCPs, reserve and escrow requirements for PCPCPs and MLTCPs and financial reporting requirements for PCPCPs. However, the impact on existing PCPCPs is minimal, as compliance will be achieved through contractual arrangements prior to promulgation of the proposed rule.

Small Business and Local Government Input

Representatives of both large and small MCOs were consulted and invited to submit comments and did submit numerous comments on the proposed regulations. For MLTCPs, providers, applicants, industry representatives and consumers were similarly consulted. PCPCP contracts contain requirements similar to those in the proposed rule. Local governments are not affected by this rule unless the LDSS chooses to operate a PCPCP.

Rural Area Flexibility Analysis

Effect on Rural Areas

The proposed rule will apply to rural areas to the extent that non-HMO managed care organizations are formed in these areas. HIV SNPs will be located in or near urban centers. Currently, eight (8) primary care partial capitation plans (PCPCPs) and six (6) managed long term care plans (MLTCPs) currently operate or propose to operate in rural areas. PCPCPs were specifically developed to address the lack of managed care capacity in rural areas. To retain the flexibility necessary for PCPCPs to operate as managed care entities for primary care only, and to recognize that they are not full risk entities, PCPCP requirements are somewhat less stringent than requirements for other managed care entities. All existing PCPCPs will be in compliance with the regulations before promulgation, as a function of contract requirements. According to the authorizing statute for MLTCPs, operating plans must comply with the regulations as of 2003, while approved plans have one year from promulgation to comply.

Compliance Requirements

This rule applies compliance requirements for HMOs to prepaid health services plans (PHSPs), HIV special needs plans (HIV SNPs), MLTCPs and, to a somewhat lesser extent, PCPCPs. Section 4403-f (5) requires MLTCPs to meet the requirements for HMOs in Article 44 and its companion

regulations. PCPCPs will be required to comply with those provisions that are applicable based on each entity's organizational structure. Newly organizing PCPCPs must apply for and meet the requirements for obtaining a Certificate of Authority. Existing and new PCPCPs must develop and maintain quality assurance systems, assure access to care for enrollees, develop enrollee services and grievance programs, comply with disclosure and audit requirements and, to the extent applicable to each PCPCP based on its specific structure, comply with organizational requirements.

Professional Services

Professional services may be necessitated by law, but are not required by regulations. Professional services required to operate an MLTCP are necessitated by the certification and operating requirements set forth in statute. Regulations require that MLTCPs designate health care professionals to be responsible for care management. MLTCPs provide a wide array of health and social services to the elderly and adult disabled. Many of the enrollees have multiple chronic illnesses and disabilities and require planning, coordinating and arranging for a variety of services. Care management of these services may be time consuming and is generally beyond the scope of conventional medical practice, thus requiring additional personnel to carry out this function. PCPCPs may elect to engage professional services to assist in the development of quality assurance systems.

Compliance Costs

No additional compliance costs will be incurred as a result of this rule as the rule codifies current practice. PCPCPs may incur some costs to comply with the terms of existing managed care contracts, which closely mirror the requirements of the proposed rule.

Minimizing Adverse Impact

Not applicable.

Feasibility Assessment

Not applicable.

Small Business and Local Government Input

Not applicable.

Job Impact Statement

Nature of Impact

The proposed rules will not substantially adversely impact jobs or employment opportunities in New York. These rules will serve to implement the provisions of Chapters 649 and 705 of the Laws of 1996 and Chapters 433 and 659 of the Laws of 1997, which in turn, may enhance employment opportunities in the State. In particular, the legislation authorizing HIV Special Needs Plans (SNPs) (Chapter 649 L. 1996) and Managed Long Term Care Programs (MLTCPs) (Chapter 659 L. 1997) upon which this proposed rule is based will expand job opportunities by encouraging new managed care organizations in New York State.

Categories and Numbers Affected

Managed care organizations generally employ health care and business administrators, health care professionals and other health care workers. They also contract with other health care and social service organizations. Chapter 649 of the Laws of 1996 authorizes up to twelve HIV SNPs and Chapter 659 of the Laws of 1997 authorizes up to 36 MLTCPs, of which 18 are currently operating or approved.

Regions of Adverse Impact

None.

Minimizing Adverse Impact

Not applicable.

Self-employment Opportunities

Not applicable.

Industrial Board of Appeals

NOTICE OF ADOPTION

Answers to Petitions

I.D. No. IBA-01-04-00010-A

Filing No. 284

Filing date: March 11, 2004

Effective date: March 31, 2004

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

Action taken: Amendment of section 66.5 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 100 and 101

Subject: Procedures for service and filing of answers to petitions filed pursuant to Labor Law section 101.

Purpose: To remove redundant language.

Text or summary was published in the notice of proposed rule making, I.D. No. IBA-01-04-00010-P, Issue of January 7, 2004.

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

Text of rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-13-04-00005-E

Filing No. 312

Filing date: March 15, 2004

Effective date: March 15, 2004

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

Action taken: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2 and 362-5.3 (Regulation 171) of Title 11 NYCRR.

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

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

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

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

Subject: Healthy New York Program.

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

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

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

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

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

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

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

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

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

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

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

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

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

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

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

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

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

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

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

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

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

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

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

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

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any

such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 12, 2004.

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

Regulatory Impact Statement

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

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

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce an second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance

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

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

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

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

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

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-

existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

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

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

Regulatory Flexibility Analysis

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

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

requirements for local governments. This amendment eases existing compliance requirements.

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

NOTICE OF ADOPTION

Change of Address by Licensees

I.D. No. INS-48-03-00004-A
Filing No. 281
Filing date: March 10, 2004
Effective date: March 10, 2004

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

Action taken: Amendment of Parts 21, 22, 23, 25 and 26 (Regulations 5, 6, 7, 10, 25) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 2134

Subject: Provisions concerning notification of change of address by licensees under art. 21 of the Insurance Law.

Purpose: To conform language relating to notification of the Insurance Department of a change of address of licensees under art. 21 of the Insurance Law.

Substance of final rule: The amendments conform language relating to notification of change of address of licensees under Article 21 of the Insurance Law to reflect language set forth in new Section 2134 of the Insurance Law, added by Chapter 687 of the Laws of 2003, requiring notification of the Superintendent of Insurance within thirty days of the change of address.

Final rule as compared with last published rule: Nonsubstantive changes were made in the section reference in the 3rd Amendment to Regulation No. 7 (11 NYCRR 23) should be to section 23.4 rather than 23.5. The section had been renumbered in July of 2003.

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

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

This rule making was proposed as a consolidated consensus amendment of 11 NYCRR Parts 21, 22, 23, 25, and 26 (Regulations 5, 6, 7, 10, 25). Accordingly, no RIS, RFA, or RAFA were required. The only change from the proposed rule is to correct an incorrect section reference in Regulation No. 7 (11 NYCRR 23). The section had been renumbered in July of 2003.

Accordingly, filing of a RIS, RFA and RAFA are not necessary and the previously published JIS requires no changes.

Assessment of Public Comment

The agency received no public comment.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-51-03-00012-P, Issue of December 24, 2003.

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

Text of rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

**Office of Mental Retardation
and Developmental Disabilities**

**EMERGENCY
RULE MAKING**

Health Care Decisions Act for Persons with Mental Retardation

I.D. No. MRD-13-04-00003-E
Filing No. 291
Filing date: March 12, 2004
Effective date: March 12, 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

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

Specific reasons underlying the finding of necessity: The Health Care Decisions Act for Persons with Mental Retardation establishes a specific process that can only occur "in accordance with regulations" promulgated by the commissioner of OMRDD. These regulations are necessary to fully implement the safeguarding processes of the new law to ensure that in accordance with the new law, appropriate health care decisions can be made for persons with mental retardation who are terminally ill or have other extremely serious medical conditions.

Subject: Regulations to implement the 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 of emergency rule: A new paragraph (7) is added to 14 NYCRR 633.10(a) to read as follows:

(7) Provisions relevant to implementation of the Health Care Decisions Act for Persons with Mental Retardation

(i) Parties involved in decisions to withdraw or withhold life-sustaining treatment.

(a) Pursuant to § 1750-b of the surrogate's court procedure act (SCPA), in addition to parties specified by the statute, parties may seek the approval of the commissioner to be authorized to perform the following duties:

(1) serve as the attending physician to confirm, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if the consultant lacks specified additional qualifications); or

(2) serve as a consulting physician or psychologist regarding confirmation, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if the attending physician lacks specified additional qualifications); or

(3) serve as the attending physician to determine that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if the consultant lacks specified additional qualifications); or

(4) serve as a consulting physician or psychologist regarding a determination that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury

Department of Labor

NOTICE OF ADOPTION

Public Access to Industrial Board of Appeals Records

I.D. No. LAB-51-03-00012-A
Filing No. 288
Filing date: March 11, 2004
Effective date: March 11, 2004

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

Action taken: Amendment of section 73.2 of Title 12 NYCRR.

Statutory authority: Public Officers Law, art. 6; Labor Law, section 101

Subject: Location and hours for public access to Industrial Board of Appeals records.

Purpose: To update the mailing addresses listed in the State regulations.

from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if the attending physician lacks specified additional qualifications).

(b) In order to obtain the approval of the commissioner, physicians and licensed psychologists shall either possess specialized training in the provision of services to persons with mental retardation or have at least three years experience in the provision of such services, and shall satisfy any other criteria established by the commissioner.

(ii) Upon receipt of notification of a decision to withdraw or withhold life-sustaining treatment in accordance with § 1750-b(4)(e)(ii) of the surrogate's court procedure act (SCPA), the chief executive officer (see § 633.99) of the agency (see § 633.99) shall confirm that the person's condition meets all of the criteria set forth in SCPA § 1750-b(4)(a) and (b). In the event that the chief executive officer is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA § 1750-b(5) and (6).

(iii) For purposes of communicating the notification required by § 1750-b(4)(e)(iii) of the surrogate's court procedure act (SCPA), the commissioner (see § 633.99) designates the directors of each of the DD-SOs (see § 633.99) to receive such notification from an attending physician. In any such case, the DDSO director shall confirm that the person's condition meets all of the criteria set forth in SCPA § 1750-b(4)(a) and (b). In the event that the director is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA § 1750-b(5) and (6).

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 June 9, 2004.

Text of emergency 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.

Regulatory Impact Statement

1. Statutory Authority:

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

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

c. OMRDD's authority under the New York State Surrogate's Court Procedure Act Section 1750-b to promulgate regulations to implement the statutory provisions.

2. Legislative Objectives: These proposed amendments further the legislative objectives embodied in Section 1750-b of the New York State Surrogate's Court Procedure Act, which provide for regulations of the Commissioner of OMRDD as a prerequisite to implement specific aspects of safeguarding processes established by the law.

3. Needs and Benefits: The newly enacted Health Care Decisions Act for Persons with Mental Retardation (Chapter 500 of the Laws of 2002), which added a new Section 1750-b to the Surrogate's Court Procedure Act, establishes procedures whereby health care decisions involving life-sustaining treatment may be made for persons with mental retardation by guardians appointed pursuant to Article 17-A of the Surrogate's Court Procedure Act.

The new law is intended to be applicable during a health care crisis so that appropriate health care decisions can be made to avoid needless pain and suffering.

Specific processes in the new law are explicitly made subject to regulations of the Commissioner of OMRDD. According to Chapter 500, OMRDD may promulgate regulations to establish a process for OMRDD

approval of physicians and psychologists. Only OMRDD-approved clinicians and other clinicians meeting specifications in the statute can perform functions required by the law, such as serving as a consultant to confirm the person's lack of capacity to make health care decisions (if the attending physician is not an OMRDD-approved clinician or does not meet specifications). The law provides that in order for approval to be granted by OMRDD, physicians or psychologists must possess specialized training or three years experience in providing services to persons with mental retardation. The proposed regulations closely track the statutory language.

The regulations also include additional delineation of the responsibility of OMRDD and agencies operating OMRDD-certified residences when they receive notification of health care decisions that involve the withdrawal or withholding of life-sustaining treatment.

Similar regulations were previously adopted on an emergency basis. The regulations are necessary because without them, it may be difficult or impossible to implement the safeguarding provisions of the law in some situations. If the protections required by the law cannot be implemented because qualified physicians or psychologists are not available, desperate health care emergencies may continue to be unrelieved and pain and suffering may be needlessly prolonged.

The regulations are being adopted as an emergency rulemaking for the preservation of the public health. If OMRDD did not adopt these regulations as an emergency rule, there would be a period of time during which some physicians and psychologists would not be able to provide the services required by law to protect the person, and pain and suffering may be needlessly prolonged. It is therefore important to promulgate the new regulations on an emergency basis.

4. Costs:

a. Costs to the Agency and to the State and its local governments: There are no additional costs associated with this new regulation.

There will be no costs to local governments as a result of the proposed amendments. Local governments do not play a role in either implementation of the new regulation or the new law.

OMRDD will incur no additional costs associated with processing applications from physicians and psychologists and, from confirming that a person's condition meets the criteria of the law when notice is received of the intention to implement a decision to withdraw or withhold life-sustaining treatment. No additional personnel will be required to perform these minimal new functions.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs of any significance associated with implementation and continued compliance with the rule.

Physicians and psychologists who meet the qualifications will need to apply to OMRDD for approval. The time and paperwork involved in the application process is minimal.

In addition, residential agencies which receive notices pursuant to the law are required by the regulation to confirm that the person's condition meets all of the relevant criteria. Since notifications will occur only in rare circumstances, and the amount of time available for compliance is restricted (as implementation of the decision to withdraw life-sustaining treatment may occur 48 hours after notification), required compliance activities are expected to be minimal and are expected to be performed by existing personnel.

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

6. Paperwork: Physicians and psychologists who meet the qualifications and seek OMRDD approval will need to provide documentation of their qualifications to OMRDD. Otherwise, no new paperwork is required of any party.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements. However, the regulations reiterate some provisions of Section 1750-b of the Surrogate's Court Procedure Act, as necessary to provide a context for the regulatory concepts.

8. Alternatives: OMRDD had considered not filing regulations. However, OMRDD believes that it is crucial to take this step and to adopt the regulations on an emergency basis so as to continue to expand the pool of qualified physicians and psychologists that may be available to provide the services necessary to implement the new law and to provide guidance regarding the responsibility of residential providers who receive notification of decisions to withdraw or withhold life-sustaining treatment.

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

10. Compliance Schedule: The emergency rule is adopted effective March 12, 2004. OMRDD intends to file the rule as a Notice of Proposed Rule Making in the future, pending approval of the proposal by the Governor's Office of Regulatory Reform, so that it can be adopted on a permanent basis within the time frames mandated by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted because the amendments will not impose any adverse economic impact or significant reporting, recordkeeping or other compliance requirements on small businesses or local governments. This is because the amendments only establish the minimum regulations necessary to implement specific provisions of recently enacted Chapter 500 of the Laws of 2002, or section 1750-b of the Surrogate's Court Procedure Act. As discussed more thoroughly in the Regulatory Impact Statement, the process contemplated by the new law and these emergency regulations is so minimal, and is expected to be invoked so rarely, that it will not impose a burden on OMRDD or its regulated small business provider agencies. Neither the new law nor the regulations involve local government participation. Since the emergency regulations very closely track the language of this provision of recently enacted section 1750-b of the Surrogate's Court Procedure Act, any compliance activities associated with the rule will be the absolute minimum, consistent with the legislation.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted because the amendments will not impose any adverse economic impact or significant reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This is because the amendments only establish the minimum regulations necessary to implement specific provisions of recently enacted Chapter 500 of the Laws of 2002, or section 1750-b of the Surrogate's Court Procedure Act. As discussed more thoroughly in the Regulatory Impact Statement, the process contemplated by the new law and these emergency regulations is so minimal, and is expected to be invoked so rarely, that it will not impose a burden on any party, public or private. It should be noted that clinicians wishing to participate in the process established by the law and these amendments do so voluntarily. Further, neither the law nor the regulations disadvantage any party to this process because of its geographic situation (rural or urban).

Job Impact Statement

A Job Impact Statement is not being submitted because it is evident from the subject matter of the amendments that the rule will have no impact on jobs or employment opportunities. This is because the amendments only establish the minimum regulations necessary to implement specific provisions of recently enacted Chapter 500 of the Laws of 2002, or section 1750-b of the Surrogate's Court Procedure Act. As discussed more thoroughly in the Regulatory Impact Statement, the process contemplated by the new law and these emergency regulations is so minimal, and is expected to be invoked so rarely, that it is reasonable to expect that it will not affect jobs or employment opportunities in New York State.

Specific reasons underlying the finding of necessity: The Department of Motor Vehicles is adopting this rule as an emergency rule making in order to maintain sufficient funding and oversight to adequately support the State's efforts to ensure the proper testing of motor vehicle emissions systems and the reduction of air pollutants. The State is required to have a dedicated funding mechanism that supports the level of program oversight required by Federal statute and rule. Without such oversight, it has been demonstrated that an increased level of improper testing of motor vehicle emission systems occurs. As motor vehicles are a major source of air pollutants, this would detract from the State's efforts to maximize cleaner air and the benefit to the public health that results from cleaner air. Ground level ozone has been associated with increased respiratory problems in children and older adults. Unless sufficient funding and oversight are provided, the State will also be subject to federal sanctions that can range between \$1 and \$2 billion dollars in highway safety funds, potentially disrupting a number of highway safety improvement initiatives by the Department of Transportation. Thus, immediate adoption of this rule is necessary to preserve the public health, safety and general welfare of the citizens of New York.

Subject: Emissions inspection sticker fees.

Purpose: To increase the fees.

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

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

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

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

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

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

Department of Motor Vehicles

EMERGENCY RULE MAKING

Emissions Inspection Sticker Fees

I.D. No. MTV-04-04-00009-E

Filing No. 290

Filing date: March 11, 2004

Effective date: March 11, 2004

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

Action taken: Amendment of Part 79 of Title 15 NYCRR.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. MTV-04-04-00009-EP, Issue of January 28, 2004. The emergency rule will expire May 9, 2004.

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

Regulatory Impact Statement

1. Statutory authority: As part of the State Budget, Vehicle and Traffic Law § 305(a)(2) was amended by Chapter 62 of the Laws of 2003, Part U1, § 4 to provide that the fee for a certificate representing that an emissions inspection has been successfully completed shall be set by the Commissioner through regulation, at an amount not to exceed four dollars, or eight dollars if performed on a biennial basis. This legislative amendment represents a maximum two-dollar increase that may be charged for emissions inspection stickers for inspections that are performed on an annual basis.

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

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

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

b. The Department, the State and local governments (for the implementation of and continuing compliance with the rule). The total estimated cost to the Department to revise forms and send out memoranda and notifications is approximately \$6,500. Other State and local agencies are not affected by this rule, and, therefore, this rule will not impose any costs on those agencies.

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment.

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

Driver's License Endorsement for Operation of Large Recreational Vehicles

I.D. No. MTV-13-04-00019-EP

Filing No. 318

Filing date: March 16, 2004

Effective date: March 16, 2004

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

Action taken: This is a consensus rule making to amend Part 3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 385(1)(h) and 501(2)(b)

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

Specific reasons underlying the finding of necessity: Required clarification of a previous submission.

Subject: Driver's license endorsement for operation of large recreation vehicles.

Purpose: To clarify that a personal use endorsement is required for operation of a recreational vehicle which exceeds forty feet in length.

Text of emergency/proposed rule: Subparagraph (iii) of paragraph (1) of subdivision (b) of section 3.2 is amended to read as follows:

(iii) Personal use vehicle endorsement. An R endorsement is the personal use vehicle endorsement. It is required on a non-CDL for operation of recreational vehicles and rental vehicles over 26,000 pounds GVWR or over [forty-five] *forty* feet in length for transportation of personal household goods. It shall be issued upon passage of a skills test in a recreational vehicle over 26,000 pounds GVWR or over [forty-five] *forty* feet in length when the licensee has not passed a CDL knowledge test.

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 June 13, 2004.

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

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

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

Consensus Rule Making Determination

Chapter 493 of the Laws of 2003 permits the operation of house coaches of up to forty-five feet in length on the State's highways outside of New York City, provided they meet certain turning capabilities. In a previously submitted regulation, it mistakenly stated that operators of only those house coaches which exceed 26,000 pounds GVWR or forty-five feet in length or both are required to have a personal use endorsement on their driver's licenses. However the statute requires such an endorsement for vehicles in excess of forty feet in length, 26,000 pounds GVWR or both.

This proposal is submitted to clarify that the personal use endorsement is required on vehicles exceeding forty feet in length.

Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the amendment will not result in a substantial adverse impact on jobs and employment opportunities. The amendment, necessary to implement Chapter 493 of the Laws of 2003, concerns the maximum length of recreational vehicles.

NOTICE OF ADOPTION

Washington County Motor Vehicle Use Tax

I.D. No. MTV-04-04-00001-A

Filing No. 313

Filing date: March 16, 2004

Effective date: March 31, 2004

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

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

Subject: Washington County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-04-04-00001-P, Issue of January 28, 2004.

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

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

Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Schuyler County Motor Vehicle Use Tax

I.D. No. MTV-04-04-00002-A

Filing No. 314

Filing date: March 16, 2004

Effective date: March 31, 2004

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

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

Subject: Schuyler County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-04-04-00002-P, Issue of January 28, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Chautauqua County Motor Vehicle Use Tax

I.D. No. MTV-04-04-00003-A

Filing No. 315

Filing date: March 16, 2004

Effective date: March 31, 2004

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

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

Subject: Chautauqua County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-04-04-00003-P, Issue of January 28, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Madison County Motor Vehicle Use Tax

I.D. No. MTV-04-04-00004-A

Filing No. 316

Filing date: March 16, 2004

Effective date: March 31, 2004

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

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

Subject: Madison County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-04-04-00004-P, Issue of January 28, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Appeal of Denial of Access to Records

I.D. No. MTV-04-04-00005-A

Filing No. 317

Filing date: March 16, 2004

Effective date: March 31, 2004

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

Action taken: Amendment of Part 160 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 215(a); and Public Officers Law, section 89(4)(a)

Subject: Appeal of denial of access to records.

Purpose: To allow 10 business days in which to appeal a denial of access to records.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-04-04-00005-P, Issue of January 28, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

Text of rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

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

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

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

(04-W-0214SA2)

NOTICE OF ADOPTION

Submetering of Electricity by Sea Park East, LP

I.D. No. PSC-48-03-00011-A

Filing date: March 16, 2004

Effective date: March 16, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-E-1575, allowing Sea Park East, LP to submeter electricity at 2980 W. 28th St., 2970 W. 27th St. and 2727 Surf Ave., Brooklyn, NY.

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

Subject: Submetering of electricity.

Purpose: To submeter electricity.

Substance of final rule: The Commission granted Sea Park East, LP the authorization to submeter electricity at 2980 West 28th Street, 2970 West 27th Street and 2727 Surf Avenue in Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-1575SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Sea Park West, LP

I.D. No. PSC-48-03-00012-A

Filing date: March 16, 2004

Effective date: March 16, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-E-1576, allowing Sea Park West, LP to submeter electricity at 2929 W. 31st St. and 2930 W. 30th St., Brooklyn, NY.

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

Subject: Submetering of electricity.

Purpose: To submeter electricity.

Substance of final rule: The Commission granted Sea Park West, LP to submeter electricity at 2929 West 31st and 2930 West 30th Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

Public Service Commission

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

Operation and Management of Camfield-Purcell Water Works, Inc. and Brickyard Road Water System

I.D. No. PSC-13-04-00020-EP

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

Action taken: The commission, on March 15, 2004, adopted an order in case 04-W-0214 appointing the Town of Stillwater as a temporary operator of Camfield-Purcell Water Works, Inc. (Camfield-Purcell) and Brickyard Road Water System (Brickyard), pending the proposed transfer of these entities to the Town of Stillwater.

Statutory authority: Public Service Law, section 89-b

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

Specific reasons underlying the finding of necessity: Immediate adoption is necessary to ensure that customers of Camfield-Purcell and Brickyard continue to receive safe and adequate water service.

Subject: Operation and management of Camfield-Purcell and Brickyard.

Purpose: To avoid interruption of water service to customers.

Substance of emergency/proposed rule: The Commission designated the Town of Stillwater as a temporary operating agent for the Camfield-Purcell Water Works, Inc. and Brickyard Road Water System to ensure that the water service of customers is not adversely affected, subject to the terms and conditions set forth in the order.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire June 13, 2004.

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-1576SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Sea Park North, LP

I.D. No. PSC-48-03-00013-A

Filing date: March 16, 2004

Effective date: March 16, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-E-1577, allowing Sea Park North, LP to submeter electricity at 2828 W. 28th Street, Brooklyn, NY.

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

Subject: Submetering of electricity.

Purpose: To submeter electricity.

Substance of final rule: The Commission granted Sea Park North, LP the authorization to submeter electricity at 2828 West 28th Street in Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-1577SA1)

NOTICE OF ADOPTION

Issuance of Debt by the New York Independent System Operator, Inc.

I.D. No. PSC-03-04-00011-A

Filing date: March 16, 2004

Effective date: March 16, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-E-1770, allowing the New York Independent System Operator, Inc. (NYISO) to enter into a three-year revolving credit facility worth up to \$100,000,000.

Statutory authority: Public Service Law, section 69

Subject: Issuance of debt.

Purpose: To provide funding for strategic initiatives, including computer equipment and software upgrades that are necessary to improve the operation of the NYISO's wholesale electricity market.

Substance of final rule: The Commission granted approval for the New York Independent System Operation, Inc. to enter into a \$100,000,000 three-year revolving credit facility with three separate four-year loan conversion options, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-1770SA1)

NOTICE OF ADOPTION

Load Aggregation Service by Niagara Mohawk Power Corporation

I.D. No. PSC-04-04-00018-A

Filing date: March 16, 2004

Effective date: March 16, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-G-1695, approving modifications to Niagara Mohawk Power Corporation's (Niagara Mohawk) tariff schedule, P.S.C. No. 219—Gas.

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

Subject: Upstream capacity release term provision.

Purpose: To reflect the changes in Federal regulation related to the capacity release provisions of Dominion Transmission, Inc.'s tariff.

Substance of final rule: The Commission allowed Niagara Mohawk Power Corporation to amend both the term of upstream capacity release transactions and the provision pertaining to consolidated bills that are provided by the company for Load Aggregation Service (S.C. No. 11), subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-G-1695SA1)

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

Attachment of Wireless Facilities by Niagara Mohawk Power Corporation and Independent Wireless One Leased Realty Corporation

I.D. No. PSC-13-04-00006-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 joint petition filed by Niagara Mohawk Power corporation (Niagara Mohawk) and Independent Wireless One Leased Realty Corporation (IWO) for approval of the attachment of IWO's wireless facilities to Niagara Mohawk's transmission facilities.

Statutory authority: Public Service Law, sections 70 and 66(1)

Subject: Attachments of IWO's wireless facilities to Niagara Mohawk's transmission facilities.

Purpose: To approve the attachment.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a joint petition filed by Niagara Mohawk Power Corporation (Niagara Mohawk) and Independent Wireless One Leased Realty Corporation (IWO) for approval of the attachment of IWO's wireless facilities to Niagara Mohawk's transmission facilities.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0231SA1)

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

Mini Rate Increase by the Village of Silver Springs

I.D. No. PSC-13-04-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by the Village of Silver Springs to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Electricity to become effective Aug. 1, 2004.

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

Subject: Mini rate increase.

Purpose: To increase annual base electric revenues by about \$56,662 or 25 percent.

Substance of proposed rule: Village of Silver Springs (the Village) has made a tariff filing to revise its rates and charges to increase annual base electric revenues by about \$56,662 or 25% to become effective August 1, 2004. The Commission may approve, modify or reject the rate filing in whole or part.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (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-0269SA1)

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

Transfer of Ownership Interests by Black River Power LLC, et al.

I.D. No. PSC-13-04-00008-P

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

Proposed action: The commission is considering a petition from Black River Power LLC, Black River Generation LLC, EIF Hamakua LLC and United States Power Fund LLC requesting approval of the transfer of ownership interests in a 50 MW coal-fired generation facility located near Watertown, NY. The commission may adopt, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests in a 50 MW coal-fired generation facility.

Purpose: To approve the transfer of ownership interests.

Substance of proposed rule: The Commission is considering a petition from Black River Power LLC, Black River Generation LLC, EIF Hamakua LLC and United States Power Fund LLC requesting approval of the transfer of ownership interests in a 50 MW coal-fired generation facility located near Watertown, NY. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0302SA1)

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

Transfer of an Easement by Consolidated Edison Company of New York, Inc. and Astoria Energy LLC

I.D. No. PSC-13-04-00009-P

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

Proposed action: The commission is considering a joint petition from Consolidated Edison Company of New York, Inc. and Astoria Energy LLC for approval to transfer an easement in certain real property located in Queens County to Astoria Energy LLC. The commission may adopt, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, section 70

Subject: Transfer of an easement in certain real property sale located in Queens County.

Purpose: To approve the transfer.

Substance of proposed rule: The Commission is considering a joint petition from Consolidated Edison Company of New York, Inc. and Astoria Energy LLC for approval to transfer an easement in certain real property located in Queens County to Astoria Energy LLC. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-M-0317SA1)

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

Refund of Residual Net Benefit by Long Island Water Corporation

I.D. No. PSC-13-04-00010-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a filing of Long Island Water Corporation for a revenue adjustment clause reconciliation, property tax reconciliation and refund of excess earning.

Statutory authority: Public Service Law, section 113(1)

Subject: To refund any residual net benefit to be determined to customers.

Purpose: To resolve the net amount to be refunded to customers.

Substance of proposed rule: The Commission is considering the filing of Long Island Water Corporation for a Revenue Adjustment Clause Reconciliation, Property Tax Reconciliation and refund of Excess Earnings. The company proposes a net refund of \$11.70 per customer. The Commission may approve, modify, or reject, in whole or in part the request of Long Island Water Corporation.

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-W-1949SA2)

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

Merger of Wellesley Island Water Corp. and The Thousand Islands Club Water Company, Inc.

I.D. No. PSC-13-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a joint petition filed by Wellesley Island Water Corp. and The Thousand Islands Club Water Company, Inc. for approval to merge the two companies and to dissolve The Thousand Islands Club Water Company, Inc.

Statutory authority: Public Service Law, section 89-h

Subject: Merger of companies.

Purpose: To approve the merger.

Substance of proposed rule: On February 20, 2004, the Wellesley Island Water Corp. (Wellesley) and The Thousand Islands Club Water Company, Inc. (Thousand Islands) filed a joint petition requesting Public Service Commission approval to merge Thousand Islands with Wellesley and to dissolve Thousand Islands upon receiving Commission approval. Both systems are owned by the Wellesley Island Holding Corp. Wellesley provides flat rate water service to 125 residential homes and 4 commercial customers. Thousand Islands provides flat rate service to 14 townhouses, 64 villa units, 4 mixed customers and 1 commercial customer. Both systems are adjacent to each other and are located on the southeast portion of Wellesley Island, Town of Alexandria, Jefferson County, New York. Wellesley is currently providing water service to Thousand Islands. The Commission may approve or reject, in whole or in part, or modify the petitioner'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-0204SA1)

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

Issuance of Debt by Wellesley Island Water Corp.

I.D. No. PSC-13-04-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Wellesley Island Water Corp. for the authority to issue debt in order to construct new wells, pump house, storage tank and mains.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of debt.

Purpose: To construct new wells, pump house, storage tank and mains.

Substance of proposed rule: On February 20, 2004, the Wellesley Island Water Corp. filed a petition requesting Public Service Commission approval to issue debt of approximately \$2,000,000 through the Drinking Water State Revolving Fund to construct new wells, pump house, storage tank and mains. The company provides flat rate water service to 125 residential homes and 4 commercial customers located on the southeast portion of Wellesley Island, Town of Alexandria, Jefferson County, New York. The company also provides water to The Thousand Islands Club Water Company, Inc., and adjacent company. The Commission may approve or reject, in whole or in part, or modify the company'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-0205SA1)

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

Request for a Special Annual Assessment by The Thousand Islands Club Water Company, Inc.

I.D. No. PSC-13-04-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by The Thousand Islands Club Water Company, Inc. for a special annual assessment of \$42,840 to support its portion of a drinking water State revolving fund loan.

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

Subject: Request for a special annual assessment of \$42,840.

Purpose: To approve surcharge statement no. 1 to P.S.C. No. 1 — Water which contains a special assessment to support its share of debt service on a financing from the drinking water State revolving fund.

Substance of proposed rule: On February 25, 2004, The Thousand Islands Club Water Company, Inc. (Thousand Islands) filed Drinking Water State Revolving Fund (DWSRF) Capital Improvement Surcharge Statement No. 1 to P.S.C. 1 -Water, effective July 1, 2004, containing a special annual assessment to support its portion of an annual debt service on a Wellesley Island Water Corp. (Wellesley) \$2,000,000 financing from the DWSRF. It is estimated that Thousand Islands' share will be approximately 33% (\$42,840) of the total debt service of \$127,008. Wellesley provides water directly to Thousand Islands' customers. The loan will be used to construct new wells, a pump house, a storage tank and mains to meet Health Department requirements. The surcharge will fluctuate each year according to the actual debt service repayment schedule and will be billed on June 1 of each year and continue for 20 years. Thousand Islands provides flat rate water service to 14 townhouses, 64 villa units, 4 mixed customers and 1 commercial customer located on the southeast portion of Wellesley Island, Town of Alexandria, Jefferson County, New York. The Commission may approve or reject, in whole or in part, or modify the company'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-0232SA1)

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

Annual Revenue Decrease by The Thousand Islands Club Water Company, Inc.

I.D. No. PSC-13-04-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a tariff filing by The Thousand Islands Club Water Company, Inc. which would decrease annual revenues by approximately \$400 or 2% and establish a new rate structure based upon the relative design demands of each customer.

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

Subject: Decrease annual revenues by approximately \$400 or two percent and establish a new rate structure.

Purpose: To decrease rates and modify rate structure.

Substance of proposed rule: On February 25, 2004, The Thousand Islands Club Water Company, Inc. (the company) filed Sixth Revised Leaf No. 6 which would decrease annual revenues by approximately \$400 or 2% and establish a new rate structure based upon the relative design demands of each customer. The new rate structure would establish a rate per equivalent domestic unit (EDU) and set forth the number of EDU's each customer would be assigned. A single family home or townhouse would be assigned 1 EDU. The company provides flat rate water service to 14 townhouses, 64 villa units, 4 mixed customers and 1 commercial customer located on the southeast portion of Wellesley Island, Town of Alexandria, Jefferson County, New York. The Commission may approve or reject, in whole or in part, or modify the company'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. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-W-0232SA2)

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

Request for a Special Annual Assessment by Wellesley Island Water Corp.

I.D. No. PSC-13-04-00015-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, or modify, a request filed by the Wellesley Island Water Corp. for a special annual assessment of \$84,168 to support its portion of a drinking water State revolving fund loan.

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

Subject: Request for a special annual assessment of \$84,168.

Purpose: To approve surcharge statement No. 1 to P.S.C. No.1 — Water, which contains a special assessment to support its share of debt service on a financing from the drinking water State revolving fund.

Substance of proposed rule: On February 26, 2004, the Wellesley Island Water Corp. (Wellesley Island) filed Drinking Water State Revolving Fund (DWSRF) Capital Improvement Surcharge Statement No. 1 to P.S.C. 1 - Water, effective July 1, 2004, containing a special annual assessment to

support an annual debt service on a \$2,000,000 financing from the DWSRF. It is estimated that Wellesley Island's share will be approximately 66.3% (\$84,168) of the total debt service of \$127,008. The remainder of the debt service will be paid by The Thousand Islands Club Water Company, Inc., an adjacent company. The loan will be used to construct new wells, a pump house, a storage tank and mains to meet Health Department requirements. The surcharge will fluctuate each year according to the actual debt service repayment schedule and will be billed on June 1 of each year and continue for 20 years. Wellesley Island provides flat rate water service to 125 residential homes and 4 commercial customers located on the southeast portion of Wellesley Island, Town of Alexandria, Jefferson County, New York. The Commission may approve or reject, in whole or in part, or modify the company'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. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-W-0273SA1)

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

New Rate Structure by Wellesley Island Water Corp.

I.D. No. PSC-13-04-00016-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, or modify, a filing by the Wellesley Island Water Corp. which would essentially maintain its current level of annual revenues and establish a new rate structure based upon the relative design demands of each customer.

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

Subject: New rate structure.

Purpose: To approve third revised leaf no. 8 which would modify company's rate structure.

Substance of proposed rule: On February 26, 2004, the Wellesley Island Water Corp. filed Third Revised Leaf No. 8 which would essentially maintain its current level of annual revenues and establish a new rate structure based upon the relative design demands of each customer. The new rate structure would establish a rate per equivalent domestic unit (EDU) and set forth the number of EDU's each customer would be assigned. A single family home or townhouse would be assigned one EDU. The company provides flat rate water service to 125 residential homes and 4 commercial customers located on the southeast portion of Wellesley Island, Town of Alexandria, Jefferson County, New York. The Commission may approve or reject, in whole or in part, or modify the company'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. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-W-0273SA2)

Department of State

EMERGENCY RULE MAKING

Inspection of College Buildings for Fire Safety Compliance

I.D. No. DOS-52-03-00002-E

Filing No. 283

Filing date: March 10, 2004

Effective date: March 10, 2004

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

Action taken: Addition of Part 500 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 91, 156 and 156-e; and Education Law, section 807-b

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

Specific reasons underlying the finding of necessity: The legislation and these implementing regulations are essential to the protection of college students and staff from injury or death through a program of inspection and enforcement of the Uniform Fire Prevention and Building Code.

Subject: Inspection of college buildings for fire safety compliance with the Uniform Fire Prevention and Building Code.

Purpose: To protect college students and staff from injury or death because of fires.

Substance of emergency rule: By passage of Chapter 81 (Part A) of the Laws of 2002, the Department of State, Office of Fire Prevention and Control (OFPC), under the direction of the State Fire Administrator, was granted authority to inspect the majority of public and independent college facilities in the state for compliance with the Uniform Fire Prevention and Building Code of New York State (UFPBC) and its fire safety standards, prepare inspection reports, issue citations and corrective orders for violations, take appropriate actions to ensure compliance with its orders, and do all things necessary and appropriate to effectuate the law. It is the purpose of this Part to establish procedural and substantive requirements to implement and apply Section 156-e of the Executive Law and Section 807-b of the Education Law. This part is inapplicable to the City of New York, which shall continue to conduct inspections of public and independent colleges under its jurisdiction.

Part 500 provides for the inspection and re-inspection of college or university buildings, issuance of the Report of Inspection/Notice of Violation, issuance of Report of Re-inspection/Order to Comply, penalties; methods of abatement, Certificates of Conformance issuance, issuance of Order to Vacate and revocation and delegation of inspection authority to local governments.

OFPC may order the closing of a building, buildings or parts thereof whenever a severe or serious violation exists; or whenever justified by the cumulative effect of numerous significant violations, which constitute conditions that are considered an imminent threat to public health or safety. Fines may also be imposed by OFPC for the failure to remedy violations of the UFPBC and its fire safety standards. The authority to close buildings and impose fines will be retained by OFPC alone, and will not be delegated.

The laws which created this inspection program and these regulations result from the work of the Governor's Task Force on Campus Fire Safety. Members of the Task Force included representatives from independent and public colleges, the fire services, and college students.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. DOS-52-03-00002-EP, Issue of December 31, 2003. The emergency rule will expire May 8, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: John F. Mueller, Department of State, 41 State St., Albany, NY 12231, (518) 474-6746

Regulatory Impact Statement

1. Statutory Authority

Chapter 81 of the Laws of 2002 amended Education Law § 807-b and added a new Executive Law § 156-e. These provisions direct the Department of State, Office of Fire Prevention and Control (OFPC) to conduct

fire inspections at least annually of all public and independent college buildings outside of the City of New York, to ensure compliance with the State Uniform Fire Prevention and Building Code (UFPBC) and its fire safety standards. Education Law § 807-b(3) authorizes OFPC to adopt rules establishing minimum standards for the content and frequency of inspections, and Executive Law 156-e(2) authorizes OFPC to adopt rules regarding the issuance of violations, compliance with orders, and providing time for compliance, reinspection procedures, and issuance of certificates of conformance. The statutes also authorize OFPC to take appropriate actions to ensure that violations are promptly remedied.

2. Legislative Objectives

The governing statutes constitute a legislative commitment to provide maximum possible protection to all college students and staff from the perils of fire. They clearly indicate that compliance with the UFPBC and its fire safety standards is viewed as a critical component in providing this protection. To carry out this critical public safety objective, the legislation has recognized that OFPC is best positioned both to assume inspection responsibility and to undertake effective enforcement.

3. Needs and Benefits

Following a dormitory fire at Seton Hall University in New Jersey, in which several students lost their lives, the threat fire poses to students attending schools away from home became apparent. In fact, it became apparent that all campus buildings, not just dormitories, need to be inspected for fire hazards on a regular basis. The Governor therefore created a Task Force on Campus Fire Safety. Members of the Task Force, which included representatives of public and independent colleges, students, and the fire service, all agreed on the need to designate a single inspection and enforcement entity. The Task Force Report recommended that this entity be OFPC. The Governor accepted these recommendations and they were embodied within the provisions of the Article VII bill that became Chapter 81. The expected benefits are: discovery and abatement of hazardous fire conditions; probable avoidance of personal injury and loss of life and property; savings in resulting medical and disability costs; savings in firefighting resources (which translates into enhanced protection of all properties); and greater day-to-day personal safety.

The purpose of this rule is to clarify the procedures and steps that will allow colleges to comply with Chapter 81. The establishment of uniform procedures will enhance compliance with the UFPBC by providing colleges with the framework to be utilized during the process; and will provide for the necessary enforcement steps, including the imposition of fines and the ordering of buildings to be closed. Currently, no regulations exist that detail the procedural steps necessary to comply with the law. These regulations will benefit both OFPC and the regulated parties by clearly outlining the expectations and responsibilities of each.

4. Costs

Currently, regulated parties are required to comply with the provisions of the UFPBC. This rule will not increase this requirement, but rather provide a mechanism to assure compliance. Therefore, colleges will incur no additional costs. If regulated parties are in compliance, there will be no fiscal impact. Moreover, some colleges and universities have heretofore hired contractors to conduct inspections. The inspections will now be conducted at government expense, which will result in a cost savings to colleges.

If violations are found, financial penalties may be assessed against the most recalcitrant. The rule minimizes impacts in two ways. First, it provides a reasonable time between inspection and penalty-assessment to allow the college to address the problem. Second, the rule considers fire probability and severity of the violation in determining the amount of a given penalty. This will reduce the fiscal impact of less severe violations and will result in the assessment of a realistic penalty based on the hazard.

The statutes have fiscal impacts on OFPC as resources will be required to conduct inspections and enforce compliance. These costs have been anticipated and the necessary funding has been included within the 2002-2003 State budget.

There is no fiscal impact on local governments except for those who volunteer to be delegated inspection duties by OFPC.

5. Local Government Mandates

This rule places no mandate upon local governments.

6. Paperwork

The bulk of paperwork requirements will be fulfilled by OFPC, which will produce an inspection report for each building, issue orders and complete the paperwork necessary to obtain compliance with the UFPBC. Reporting requirements for regulated parties are minimal. Paperwork consists primarily of documentation of actions taken to abate fire safety violations. In any event, even before Education Law § 807-b was amended

to authorize promulgation of this rule, all colleges and universities were required to file annual fire inspection reports with the Commissioner of Education.

Any paperwork requirements for local governments will be occasioned only by a local government's voluntary participation in the inspection process.

7. Duplication

There will be no duplication. Only OFPC or a delegated local government may conduct the required inspections, and only OFPC will have enforcement authority.

8. Alternatives

There are no viable alternatives to this rule. It is necessary to effect satisfactory compliance with the governing statutes.

9. Federal Standards

There are no applicable federal standards related to this rule.

10. Compliance Schedule

This rule became effective in substantially similar form as an Emergency Rule on January 1, 2003. Compliance will only be required following inspections, at which point the time periods provided in the rule will apply. These periods are long enough to abate most of the violations. Where an inspection shows a condition extremely hazardous to life, health or safety, compliance times will accordingly be shorter.

Regulatory Flexibility Analysis

1. Effect of Rule

The only businesses affected by this rule will be the colleges and universities outside of the City of New York. According to information provided by the State Education Department, there only 15 colleges which employ fewer than 101 people and qualify as small businesses under SAPA. This rule will not affect them, except as noted below, because under prior law, they were required to have annual inspections for compliance with the UFPBC and file the resulting inspection reports with the Commissioner of Education. They were then required by the UFPBC to correct any violations.

This rule will not impact local governments because a request for statutory delegation of authority to conduct inspections is entirely voluntary. No requirements are otherwise imposed upon local governments.

2. Compliance Requirements

Affected colleges and universities will be required to correct violations noted as a result of the inspection, as was true under prior law. In order to allow compliance with the UFPBC to be undertaken in a reasonable manner, OFPC may allow colleges to develop compliance plans to address each violation. These are expected to be under exceptional circumstances.

3. Professional Services

In some instances, colleges and universities may need to utilize the services of a professional engineer or licensed architect in the development of compliance plans. It is anticipated that this activity will be infrequent due to the focus of the inspection relating to behavioral aspect or maintenance rather than structural or design features.

4. Compliance Costs

Compliance costs associated with the rule will vary based on the following: level of compliance currently found at each college; nature and severity of the noncompliant items; length of time the noncompliant condition continues to exist. Again, this is no different as was the case under prior law, as compliance with the UFPBC has always been required and violations would have to be addressed. The statute and rule will actually reduce costs to small business as OFPC will be providing the inspections at no cost, whereas previously, the colleges bore the inspection cost themselves.

Part 500 provides for the establishment of a reasonable time frame to allow correction of noncompliant items before the penalty portion of the rule becomes effective. If the correction is not completed within the original abatement date, a second date is established. It is this second date by which the penalty assessments are based.

5. Economic and Technological Feasibility

Economic impact on colleges will solely be driven by the level of current compliance with the UFPBC and its standards. Again, nothing in this rule increases the current requirements placed on colleges, but rather, the rule is designed to assure compliance. Colleges which address noncompliant conditions in a reasonable time frame will not incur any additional economic impacts than they would have under prior law.

The allowance of a compliance plan as outlined in Part 500 permits the college to incorporate technological changes and advancements when addressing noncompliant items.

6. Minimizing Adverse Impact

Deferring the penalty assessment portion of the rule to the second abatement date allows a period of time for the college to correct the violation without fear of penalty. This greatly reduces any negative economic impact the rule may have in terms of the assessment of fines.

7. Small Business and Government Participation

Representatives of the Commission on Independent Colleges and Universities were members of the Governor's Task Force on Campus Fire Safety, which actually recommended to the Governor that OFPC be given the statutory authority which the rule implements. In addition, the proposed rule will be available for public comment for a period of at least 45 days.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

Approximately 167 colleges and universities will be inspected under Section 807-b of the Education Law and Section 156-e of the Executive Law. While many of this number are in rural areas, the regulations will not negatively impact rural areas. Inspection of colleges and universities was a legislative mandate under prior law, and continues to be so under the new statutes. The only difference is that OFPC will conduct the inspections.

Rural areas will actually benefit from the new inspection program. In many instances code enforcement personnel in rural areas conducted the inspections required by Education Law 807-b prior to the change in statute. The laws requiring the state to conduct inspections shifts responsibility to the OFPC relieving the local official of an unfunded mandate while not negatively impacting their employment status.

In addition, any impacts on rural areas at all are the result of a legislative mandate, and not these regulations.

2. Reporting, recordkeeping and other compliance requirements

Reporting and recordkeeping requirements of colleges is minimal and consists primarily of describing the mechanism for compliance of identified violations if they are not quickly abated. There may be a need for architectural or engineering professional services to develop compliance plans. It is anticipated that this will not be a frequent occurrence. There are no additional reporting or recordkeeping requirements for regulated parties within rural areas. Local governments within rural areas have no reporting or recordkeeping requirements unless they voluntarily choose to conduct required inspections under the delegation portion of the rule.

3. Costs

No adverse changes in costs are expected. Compliance with the UFPBC and its fire safety standards, and annual fire inspections of colleges were mandated by statute before Chapter 81 of the Laws of 2002 was adopted. This remains unchanged, except that the state will now conduct the inspections. For those colleges and universities who paid a contractor to conduct annual fire inspections, this cost will now be eliminated.

4. Minimizing adverse impact

Statute directs OFPC to assure compliance and empowers OFPC to assess fines for non-compliance. This rule establishes time periods between the initial inspection and the first re-inspection whereby colleges can correct the violation without fear of penalty. College facilities within rural areas that comply with the applicable fire safety standards should translate into a reduction in the fire protection demands within the rural area. Properly designed and maintained buildings will reduce the potential for a fire to occur.

5. Rural area participation

The proposed rule will be available for public comment for a period of at least 45 days.

Job Impact Statement

As provided in SAPA section 201-a(2)(a), it is apparent from the nature and purpose of this rule that it will not have a substantial adverse impact on jobs or employment opportunities. Instead, DOS has determined that the rule will have a positive impact on jobs and employment opportunities.

The inspection function performed by OFPC has already created over twenty state positions necessary to accomplish legislative objectives. Many of these positions will be regionally based throughout the state, and have already presented job opportunities for localized individuals who are qualified to perform OFPC's statutory duties, and have been presented with state employment which would not otherwise have been available.

OFPC staff members are well qualified in familiarity with the requirements of the UFPBC, and the majority have experience in code enforcement and fire fighting. With the implementation of this comprehensive fire safety inspection program, annual inspections by qualified individuals will first ensure that inspections are made; and second allow comprehensive enforcement activity to take place to correct violations. Before inspection and enforcement authority was conferred upon OFPC, there existed no

efficient mechanism to make certain that annual inspections occurred or that violations be corrected.

Many violations of the UFPBC will require employment of qualified individuals to correct violations detected. It is expected that under some circumstances correction of violations will require the expertise of trained individuals, including electricians, contractors, engineers and design professionals.

In many instances, Local Code Officials conducted the inspections pursuant to Education Law 807-b prior to the change in statute. The statutory change shifts this responsibility to the OFPC, relieving the local government of an unfunded mandate, while not negatively impacting the employment status of local inspectors. They will still be required to perform all of the other duties they are responsible for under the UFPBC. In a few cases, private contractors were employed by the colleges to conduct inspections. While the change in statute may have a minimal impact on this specific group, the Legislature and Governor removed them as eligible inspectors in the new law. Therefore, it is not these regulations which may have an effect on them.

The statutory scheme which created the inspection program will positively impact both state and local employment opportunities.

NOTICE OF ADOPTION

Filing of Security Interests

I.D. No. DOS-52-03-00019-A

Filing No. 292

Filing date: March 12, 2004

Effective date: March 31, 2004

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

Action taken: Repeal of Part 143 of Title 19 NYCRR adopted on May 22, 1964 and Part 144 of Title 19 NYCRR adopted on September 24, 1986; and addition of new Part 143 to Title 19 NYCRR.

Statutory authority: Uniform Commercial Code, section 9-526(a); and Executive Law, section 96-a

Subject: Filing of security interests.

Purpose: To implement the provisions of art. 9 of the uniform commercial code, as revised by L. 2001, ch. 84.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. DOS-52-03-00019-EP, Issue of December 31, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 473-2278, e-mail: jball@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

**Office of Temporary and
Disability Assistance**

**EMERGENCY
RULE MAKING**

Temporary Shelter Supplements

I.D. No. TDA-24-03-00001-E

Filing No. 289

Filing date: March 11, 2004

Effective date: March 11, 2004

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

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

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

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

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

Subject: Temporary shelter supplements.

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

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

370.10(a) Scope.

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

370.10(b) Application of other regulations.

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

370.10(c) District responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

370.10(f) Needs and allowances.

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

By family size

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

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

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

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

370.10(g) Budgeting.

The following general provisions apply:

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

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

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

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

370.10(h) Notice and procedural rights.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency/proposed rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. TDA-24-03-00001-EP, Issue of June 18, 2003. The emergency rule will expire May 9, 2004.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

2. Legislative Objectives:

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

3. Needs and Benefits:

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

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

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

To ease the transition from FA to SNA, the Legislature, in Chapter 53 of the Laws of 2001, appropriated funds to reimburse one-half of the cost of a rent supplement to be provided to families formerly receiving preliminary relief in the various shelter allowance cases or who might be eligible for such relief but for the time limits. In order to receive the shelter supplement, a person must be in receipt of SNA, have exhausted their FA

eligibility as a result of the 60-month time limit or receipt of such assistance and be eligible for FA except for the application of the time limit. Because the allowance is a creature of the appropriation language and is not a special needs allowance in the SNA program, it does not increase the standard of need or standard of payment for that program. Funds also were appropriated in the recently passed 2003-04 State Operations and Aid to Localities Budget to continue the rent supplement program.

4. Costs:

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

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

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

5. Local Government Mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

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

9. Federal Standards:

There are no Federal standards concerning temporary shelter supplements.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

1. Effect of Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

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

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Assessment of Public Comment

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

Comment:

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

Response:

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

Comment:

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

Response:

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

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

Case Management Subsystem

I.D. No. TDA-13-04-00002-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 600.6 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 21, 21(2), 34(3)(f) and 82

Subject: Use of the case management subsystem of the welfare management system.

Purpose: To require social services districts to use the case management subsystem of the welfare management system for purposes of maintaining appropriate documentation to support their recovery and recoupment claims against public assistance recipients and record all repayment of public assistance.

Text of proposed rule: Paragraph (6) of subdivision (c) of section 600.6 is renumbered subdivision (7) and a new subdivision (6) is added to read as follows:

(6) *Cash receipts and repayment. Social services districts must use the cash management subsystem (CAMS) of the welfare management system (WMS), as described in section 21 of the Social Services Law, for receipt of cash and for refunds and recoveries of past expenditures, as well as for the collection and tracking of overpayments. In New York City, the WMS must be used in conjunction with CAMS and the primary system of maintaining records concerning information on family assistance, safety net assistance, veteran assistance, medical assistance, food stamps social services and emergency assistance to adults will continue to be WMS.*

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

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

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

Regulatory Impact Statement**1. Statutory Authority:**

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

Section 21 of the SSL requires the OTDA to design and implement a Welfare Management System (WMS) which is capable of receiving, maintaining and processing information relating to persons who have applied for or been determined eligible for benefits under any program for which OTDA has supervisory responsibilities for the purpose of providing individual and aggregate data to such districts to assist them in making eligibility determinations and basic management decisions.

Section 21(2) of the SSL requires OTDA to promulgate regulations specifying the types of information to be collected and transmitted by each social services district, the methods of collection and transmittal of such information and the procedures for use by the social services districts of the data maintained by WMS.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 82 of the SSL requires all social services districts to keep such accounts regarding the receipt and disbursements of social services funds as may be required by OTDA.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that social services districts maintain appropriate documentation to support their claims against persons receiving public assistance, veteran assistance, medical assistance, food stamps, social services and emergency assistance to adults concerning the receipt of cash and for refunds and recoveries of past expenditures and the collection and tracking of overpayments.

3. Needs and Benefits:

The proposed regulations would standardize local cash processing systems by requiring social services districts outside of New York City to use the cash management subsystem (CAMS) of the Welfare Management System (WMS) for receipt of cash and for refunds and recoveries of past expenditures, as well as for the collection and tracking of overpayments. The proposed regulations would require New York City to use WMS as its primary system of records and to use WMS in conjunction with CAMS for receipt of cash and for refunds and recoveries of past expenditures, as well as for the collection and tracking of overpayments. The proposed amendments would reduce the number of systems used by social services districts to establish and collect recoveries and overpayments on a timely basis and to identify claims on collection cases. In addition, the proposed regulations would encourage more orderly claims processing.

4. Costs:

There would be short-term systems implementation costs in most social services districts as a result of the amendments. While public assistance and food stamp local administrative costs are subject to the State's administrative cost cap, the State share of CAMS expenditures may be submitted as part of a district's annual administrative cap waiver plan. Therefore, the non-federal portion of any additional administrative costs would be reimbursed in part by State funds to the extent that they are part of approved administrative cap waiver plans. In 2000, 24 social services districts included CAMS expenditures in their administrative cap waiver plans, claiming a total of \$1.2 million in additional State share reimbursement for this activity. While social services districts are not required to provide savings figures for CAMS in their waiver plans, 10 districts did so. In those 10 districts, State share savings of \$890,000 exceeded additional State share costs of \$478,000 by 186 percent. Therefore, it is likely that any additional costs incurred by social services districts implementing or expanding CAMS will be at least partially offset on a long-term basis by improved efficiency, increased collections and a reduction in the overall administrative burden on the districts.

5. Local Government Mandates:

The proposed amendments would standardize local cash management processing by requiring social services districts to use the cash management subsystem (CAMS) of the Welfare Management System (WMS) for receipt of cash and for refunds and recoveries of past expenditures as well as for the collection and tracking of overpayments. The regulations also

would require New York City to use WMS in conjunction with CAMS and require WMS in New York City to be the primary system of maintaining records concerning information on public assistance, medical assistance and food stamps.

6. Paperwork:

No new forms or reporting requirements are anticipated as a result of the proposed amendments as they impact the public assistance programs.

7. Duplication:

The proposed amendments do not duplicate State or Federal requirements.

8. Alternatives:

The purpose of the proposed regulations is to ensure that social services districts keep accurate records concerning the receipt of cash, any refunds and recoveries of past expenditures and the collection and tracking of overpayments. Because the proposed regulations accomplish that purpose, no alternatives were considered.

9. Federal Standards:

The proposed amendments do not exceed Federal minimum standards for the same subject.

10. Compliance Schedule:

Social services districts will be able to implement the proposed amendments when they become effective.

Regulatory Flexibility Analysis**1. Effect of rule:**

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

2. Compliance requirements:

The proposed amendments would standardize local cash management processing by requiring social services districts to use the cash management subsystem (CAMS) of the Welfare Management System (WMS) for receipt of cash and for refunds and recoveries of past expenditures as well as for the collection and tracking of overpayments. The regulations also would require New York City to use WMS in conjunction with CAMS and require WMS in New York City to be the primary system of maintaining records concerning information on public assistance, medical assistance and food stamps.

3. Professional services:

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

4. Compliance costs:

There would be short-term systems implementation costs in most social services districts as a result of the amendments. While public assistance and food stamp local administrative costs are subject to the State's administrative cost cap, the State share of CAMS expenditures may be submitted as part of a district's annual administrative cap waiver plan. Therefore, the non-federal portion of any additional administrative costs would be borne by localities, and to the extent that they are part of approved administrative cap waiver plans, by the State. In 2000, 24 social services districts included CAMS expenditures in their administrative cap waiver plans, claiming a total of \$1.2 million in additional State share reimbursement for this activity. While social services districts are not required to provide savings figures for CAMS in their waiver plans, 10 districts did so. In those 10 districts, State share savings of \$890,000 exceeded additional State share costs of \$478,000 by 186 percent. Therefore, it is likely that any additional costs incurred by social services districts implementing or expanding CAMS will be at least partially offset on a long-term basis by improved efficiency, increased collections and a reduction in the overall administrative burden on the districts.

5. Economic and technological feasibility:

The social services districts have the economic and technological means to comply with the proposed amendments.

6. Minimizing adverse impact:

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

7. Small business and local government participation:

Several social services districts were asked whether they had any comments on the proposed regulations. Of the districts that responded, none had any problems with the amendments.

Rural Area Flexibility Analysis**1. Type and estimated numbers of rural areas:**

The proposed amendments will affect the 44 rural social services districts in the State.

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

The proposed regulations would not establish new reporting or record-keeping requirements and no new professional services will be needed to implement the proposed regulations. The proposed amendments would standardize local cash management processing by requiring social services districts to use the cash management subsystem (CAMS) of the Welfare Management System (WMS) for receipt of cash and for refunds and recoveries of past expenditures as well as for the collection and tracking of overpayments. The regulations also would require New York City to use WMS in conjunction with CAMS and require WMS in New York City to be the primary system of maintaining records concerning information on public assistance, medical assistance and food stamps.

3. Costs:

There would be short-term systems implementation costs in most social services districts as a result of the amendments. While public assistance and food stamp local administrative costs are subject to the State's administrative cost cap, the State share of CAMS expenditures may be submitted as part of a district's annual administrative cap waiver plan. Therefore, the non-federal portion of any additional administrative costs would be borne by localities, and to the extent that they are part of approved administrative cap waiver plans, by the State. In 2000, 24 social services districts included CAMS expenditures in their administrative cap waiver plans, claiming a total of \$1.2 million in additional State share reimbursement for this activity. While social services districts are not required to provide savings figures for CAMS in their waiver plans, 10 districts did so. In those 10 districts, State share savings of \$890,000 exceeded additional State share costs of \$478,000 by 186 percent. Therefore, it is likely that any additional costs incurred by social services districts implementing or expanding CAMS will be at least partially offset on a long-term basis by improved efficiency, increased collections and a reduction in the overall administrative burden on the districts.

4. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

Several social services districts in rural areas were asked whether they had any comments on the proposed regulations. Only one district responded and that district supported the amendments.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulations. It is evident from the subject matter of the regulations that they will not have any adverse impact on jobs and employment opportunities in the State.

That section was promulgated in 1970, prior to the creation of the Welfare Management System (WMS; 1976) and the Automated Budgeting Eligibility Logic (ABEL; 1979). One of the purposes of WMS is to promote efficiency in social services district determinations of eligibility for public assistance, to expedite such determinations and to reduce unauthorized or excessive payments. ABEL is the automated budgeting system that calculates public assistance budgets based on information placed into the system by the caseworker. Before WMS and ABEL, the caseworkers calculated budgets using a manual worksheet. Requiring a caseworker to sign or initial the worksheet was logical, given the need to ensure that calculations were made correctly. ABEL includes the date that the budget is calculated and the effective date of the budget. ABEL also includes the initials or other information to identify the caseworker. ABEL also enables a social services district to trace a specific transaction to a security password of the caseworker who placed the information into ABEL.

The current regulatory requirement that a caseworker sign or initial the budget for a public assistance recipient and to indicate the effective period of the budget is unnecessary given the computer systems available to the caseworkers that will accomplish the purpose of the current requirement. The repeal of this requirement will relieve caseworkers of an unnecessary mandate. Those social services districts that want to continue to require caseworkers to sign or initial the budgets will be able to do so even after the repeal of 18 NYCRR 352.32(c).

Job Impact Statement

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

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

Budgets for Public Assistance Cases

I.D. No. TDA-13-04-00018-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 352.32(c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 355(3)

Subject: Budgets for public assistance cases.

Purpose: To repeal the regulatory provision that requires caseworkers to date and sign the original budget and each successive budget revision with initials and to indicate the effective period of the budget.

Text of proposed rule: Section 352.32(c) of 18 NYCRR is repealed.

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

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

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

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

Consensus Rule Making Determination

The Office of Temporary and Disability Assistance is proposing to repeal 18 NYCRR 352.32(c). That section requires caseworkers to date and sign the original budget for public assistance recipients and to sign each successive budget revision with initials. The section also requires the caseworkers to indicate the effective period of the budget.

