RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Standards for Conduct of Fairs

I.D. No. AAM-05-04-00004-P

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

Proposed action: Amendment of Part 350 and addition of Part 369 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 287

Subject: Standards for conduct of fairs.

Purpose: To repeal the maximum entry fee requirements for local fairs and clarify existing regulatory language.

Text of proposed rule: Section 350.1 is repealed and a new section 350.1 is added to read as follows:

Section 350.1 Fair sponsor; definition.

For purposes of this Part a fair sponsor shall mean any organization that receives money from the State for the promotion of agriculture and domestic arts pursuant to Article 24 of the Agriculture and Markets Law.

Section 350.4 is amended to read as follows:

No premium should be awarded by any judge or paid by any [society] fair sponsor for an unworthy exhibit.

Section 350.8 is amended to read as follows:

No article shall be [permitted to be] exhibited in the domestic department if it has been previously exhibited therein, unless[,] *permitted* by official action of the board of directors of [any] *the* fair [society] *sponsor*[, an exception is made to this requirement].

Section 350.10 is amended to read as follows:

Any fair [society] *sponsor* shall reserve the right to reject or refuse, and to order the removal of, any exhibit which, in the opinion of its board of directors, is not eligible or worthy of showing or has not met the livestock health requirements *set forth in Part 351 of this Chapter.*

Section 350.11 is amended to read as follows:

Each fair [or exposition] *sponsor* [which receives money from the State pursuant to article 24 of the Agriculture and Markets Law] shall comply with and enforce the livestock health requirements set forth in Part 351 of this Chapter.

Section 350.12 is repealed.

Sections 350.13 - 350.17 are renumbered to be a new Part, PART 369, EXHIBITION AND SOLICITATION AT THE NEW YORK STATE FAIR, sections 369.1 through 369.5.

Text of proposed rule and any required statements and analyses may be obtained from: Ray Christensen, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-4418

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 18, subdivision 6, of the Agriculture and Markets Law (AML) provides that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and the performance of the duties of the Department as prescribed in the AML and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 287 of the AML authorizes the Commissioner to establish standards for the conduct of agricultural fairs and expositions.

2. Legislative objectives:

Article 24 of the AML relates to the promotion of agriculture and domestic arts. Fifty-seven agricultural fairs and expositions are held in New York State each year for the purpose of promoting agriculture and the domestic arts. AML Section 287 directs the Commissioner to establish standards for the conduct of such fairs and expositions after consultation with the dean of the State College of Agriculture at Cornell University. Part 350 establishes such standards.

Pursuant to AML Section 287, the Commissioner consulted with the Dean of the College of Agriculture and Life Sciences at Cornell University regarding the proposed rule. The Dean agreed that the proposed amendments to Part 350 were reasonable and did not object to the rulemaking. The proposed repeal of Part 350.1 will further the promotion of agriculture and the domestic arts by easing the financial constraints experienced by fair sponsors when they are prevented from increasing the entry fees to keep up with rising operating costs.

3. Needs and benefits:

Section 350.1 provides that local fairs can not charge entry fees that are greater than ten percent of the first premium. If fair officials want to charge a higher entry fee they must first obtain permission from the Commissioner. Fair sponsors rely on the entry fees to help them cover the administrative costs associated with sponsoring the exhibits. These costs increase regularly, and it is burdensome for fair officials to go to the Commissioner

every time they need to raise their entry fees. County and/or town agricultural societies and county cooperative extension services that sponsor local fairs are community based organizations that serve and represent local agricultural interests. These organizations are more qualified to determine the needs of the fairs and exhibitors and will keep their entry fees reasonable in order to encourage a variety of exhibitors to participate.

4. Costs:

The fair sponsors, the Department, and the state and local governments will not incur any costs associated with the proposed rule.

5. Local government mandates:

The proposed rule will not impose any program, service, duty or responsibility on any local government.

6. Paperwork:

The proposed rule will not impose any reporting requirements. In fact, paperwork for fair sponsors will be decreased since they will no longer have to request permission from the Commissioner when they want to increase their entry fees.

7. Duplication:

The proposed rule will not duplicate, overlap, or conflict with any other rules or legal requirements of the state and federal government.

8. Alternatives:

The only significant alternative that was considered was to amend 350.1 to increase the minimum amount that the fair sponsors could charge for entry fees. This alternative was rejected because it would not have resulted in a significant decrease in the regulatory burden for the fair sponsors since they would still have to obtain permission from the Department if they wanted to exceed the new maximum threshold for entry fees. The Department decided it would be less burdensome for all to eliminate the maximum entry fee threshold and allow the fair sponsors to set the entry fees based on the financial needs of the individual fairs. The Department is confident that fair sponsors will not make their entry fees prohibitive for exhibitors because it would be against the fair sponsor's own best interest to have the number of exhibits decline. Furthermore, exhibitor groups are generally influential in shaping the various policies implemented by fair sponsors.

9. Federal standards:

There are no applicable federal standards.

10. Compliance schedule:

The fair sponsors will not need to take any additional action to comply with the proposed rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rule will not affect small businesses and local governments.

2. Compliance requirements:

The proposed rule will not require small businesses and local governments to undertake any reporting, recordkeeping or other affirmative acts.

3. Professional services:

The proposed rule will not impose any requirements for professional services on small business or local government

4. Compliance costs:

Small businesses and local governments will not incur any costs associated with the proposed rule.

5. Economic and technological feasibility:

The proposed rule will not impact small businesses and local governments.

6. Minimizing adverse impact:

The proposed rule will not have an adverse impact on small businesses or local governments. The rule is not imposing any compliance requirements on small businesses or local governments.

7. Small business and local government participation:

In January, 2002, prior to initiating the rulemaking process, the Department sent a letter to all local fair sponsors asking for input regarding the Department's proposal to repeal section 350.1. The Department received 7 responses, all of which supported the repeal of section 350.1. In July, 2002 the Department sent a draft of the proposed express terms to 47 local fair officials, 56 Cornell Cooperative Extension Agents, and 35 regional and statewide agricultural organizations whose members are likely to be exhibitors at the local fairs for review and comment. The Department received 2 favorable responses to the proposed rulemaking. The Department did not receive any other responses.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule will apply to local fairs conducted throughout New York State. Most of the 57 fairs are conducted on a county-wide basis and take place in rural communities.

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

The proposed rule will not impose any compliance requirements or professional services requirements. Overall, paperwork for fair sponsors will decrease since they will no longer have to request permission from the Commissioner when they want to increase their entry fees.

3. Costs:

The proposed rule will not impose any costs on public and private entities in rural areas.

4. Minimizing adverse impact:

The proposed rule will not have an adverse impact on rural areas. The rule is not imposing any compliance requirements on public or private entities in rural areas. The proposed rule will actually eliminate a requirement that currently applies to local fair sponsors.

5. Rural area participation:

In January, 2002, prior to initiating the rulemaking process, the Department sent a letter to all local fair sponsors asking for input regarding the Department's proposal to repeal section 350.1. The Department received 7 responses, all of which supported the repeal of section 350.1. In July, 2002 the Department sent a draft of the proposed express terms to 47 local fair officials, 56 Cornell Cooperative Extension Agents, and 35 regional and statewide agricultural organizations whose members are likely to be exhibitors at the local fairs for review and comment. The Department received 2 favorable responses to the proposed rulemaking. The Department did not receive any other responses.

Job Impact Statement

This action will not have an impact on jobs and employment opportunities. The proposed rule merely clarifies existing regulatory provisions and removes provisions that establish the maximum amount that fair sponsors can charge for entry fees. The proposed rule will not impact the regulated parties to such a degree as to affect jobs and employment opportunities.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Grievance Program

I.D. No. COR-05-04-00001-P

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

Proposed action: Amendment of sections 701.2(e), 701.6(a), 701.7(a)(1), (4) and (5), 701.7(c)(5), 701.11(b)(1), (2) and (8) and 701.12(a) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 139

Subject: Inmate Grievance Program.

Purpose: To make minor amendments and clarifications.

Text of proposed rule: Section 701.2(e) is amended as follows:

(e) Harassment grievances. [Allegations of] *Those grievances that allege* employee misconduct meant to annoy, intimidate or harm an inmate.

Subdivision (a) of section 701.6 is amended as follows:

(a) The CORC shall consist of the deputy commissioners or designees expressly authorized to act for them. [The assistant commissioner of affirmative action, or a representative thereof] *A representative of the Office of Diversity Management* will also attend CORC meetings as a nonvoting member, and shall have input on grievances alleging discrimination. The CORC provides dispositions on grievances appealed or passed through to the commissioner by determining how they affect departmental and/or institutional policy. The CORC is to render decisions which are in the best interests of the department as well as of the grievants.

Paragraph (1) of subdivision (a) of section 701.7 is amended as follows:

(1) Filing the complaint. An inmate must submit a complaint to the Grievance Clerk within 14 calendar days of an alleged occurrence on Inmate Grievance Complaint Form #2131. If this form is not readily available, a complaint may be submitted on plain paper. *The complaint may only be filed at the facility where the inmate is housed even if it pertains to another facility.*

Note: Exceptions to this time limit or any appeal time limits may be approved by the IGP supervisor based on mitigating circumstances (e.g., attempts to resolve informally by the inmate[, referrals back to the IGP by the courts], etc.). *An inmate may pursue a complaint that an exception to the time limit was denied through the grievance mechanism.*

(i) Content. In addition to the grievant's name, department identification number, housing unit, program assignment, etc., the grievance should contain a concise, specific description of the problem and the action requested and indicate what actions the grievant has taken to resolve the complaint, i.e., specific persons/areas contacted and responses received. *The IGP Supervisor shall review the grievance complaint and designate the grievance code and title. If the IGP Supervisor determines that the grievance may be a harassment or discrimination grievance, it shall be processed in accordance with the respective expedited procedure (section 701.11 or 701.12).*

(ii) *The clerk* [Grievances] shall [be] consecutively number[ed] and log[ged] *each grievance* at the time of receipt.

Subparagraph (ii) of paragraph (4) of subdivision (a) of section 701.7 is amended as follows:

(ii) Any inmate whose confinement status precludes his/her attendance at an IGRC hearing and who will be released within 30 *calendar* days should be given the option of having the hearing held in his absence or postponed until his release from confinement. The grievant's decision shall be obtained in writing. If the grievant is not scheduled for release from confinement within 30 *calendar* days, the hearing shall be held in his absence.

Subparagraph (iv) of paragraph (5) of subdivision (a) of section 701.7 is amended as follows:

(iv) If the grievant believes that a dismissal in his case is not authorized by this directive, he may apply directly to the facility IGP supervisor for review *within seven (7) calendar days after receipt of the committee's decision dismissing the grievance.* If the IGP supervisor determines that the grievance does not fall into one of the categories cited in subparagraph (i) of this paragraph, then the grievance will be returned to the IGRC for a hearing and recommendation. *The supervisor's written response shall be forwarded to the grievant within seven (7) calendar days of receipt. An inmate may pursue a complaint that the IGP supervisor failed to reinstate an improperly dismissed grievance by filing a separate grievance.*

Paragraph (3) of subdivision (c) of section 701.7 is amended as follows:

(3) The IGP central office staff shall date stamp all appeals upon receipt, and shall notify facility IGP staff, in writing, that the grievance was received. *The facility IGP staff shall forward a copy of the written notice of receipt to the grievant of record.*

Paragraphs (1) and (2) of subdivision (b) of section 701.11 are amended and restructured as follows:

(1) *An inmate who wishes to file a grievance complaint that alleges employee harassment shall follow the procedures set forth in section 707.1(a)(1) above.*

Note: An inmate who feels that s(he) has been the victim of employee misconduct or harassment should [first] report such occurrences to the immediate supervisor of that employee. *However, this is not a prerequisite for filing a grievance with the IGP.* [This does not preclude submission of a formal grievance.]

(2) All *grievances alleging* [allegations of] employee misconduct shall be given a grievance calendar number and recorded in sequence. All documents submitted with the allegation must be forwarded to the superintendent by close of business that day.

Paragraph (8) of subdivision (b) of section 701.11 is amended as follows:

(8) *Unless otherwise stipulated in this section,* [A]*a*ll procedures, rights, and duties required in the processing of any other grievance as set forth in section 701.7[(c) of this Part] *above* shall be followed.

Subdivision (a) of section 701.12 is amended and restructured as follows:

(a) *An inmate who wishes to file a grievance complaint that alleges discrimination by an employee shall follow the procedures set forth in section 701.7(a)(1) above.*

Note: An inmate who feels that he/she is being unlawfully discriminated against by an employee, program, policy or procedure shall report such incident to the immediate supervisor of the employee or supervisor/administrator of such program. However, this is not a prerequisite for filing a grievance with the IGP.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 112 of the Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibility to make rules and regulations for the government of correctional facilities. Section 139 of the Correction Law requires the commissioner to establish a grievance program in each correctional facility and to promulgate rules and regulations for the fair, simple and expeditious resolution of grievances.

Legislative Objective:

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to establish and publish rules and procedures to ensure that all inmates have opportunity for fair, simple and expeditious resolution of grievances.

Needs and Benefits:

At section 701.7(a)(1), the phrase "referrals back to the IGP by the courts," which was included as an example of a circumstance which might justify an exception to the time limit for filing a grievance, is now excluded. This change recognizes that the example was misleading: in practice, a matter would be referred back to the IGP by a court only when the court was reviewing a determination already rendered through the IGP. Under such circumstances, it would not be necessary for a new grievance to be filed, and thus no exception to the time limit would be needed.

The addition of the statement "The complaint may only be filed at the facility where the inmate is housed even if it pertains to another facility" is intended to ensure that grievances of inmates who have been moved from one facility to another are received and processed in a consistent manner. In the past, this was the procedure, however, clarification was needed because there have been instances where it was not properly applied.

At section 701.7(a)(5)(iv), time frames are now specified for the review of grievances dismissed by the inmate grievance resolution committee. This is intended to ensure that the grievance mechanism is responsive to an inmate's challenge that a dismissal by the IGRC is not authorized.

The remaining revisions merely clarify text in areas where there has been confusion resulting from ambiguity in the current text. Increased litigation in this area and numerous judicial opinions setting forth sometimes inconsistent analysis of the provisions of this regulation have been, on occasion, contrary to the department's interpretation, intention or existing practice. These clarifying changes reflect the policies and procedures the department has followed and have been in place at least since the last general changes were adopted effective May 4, 1994; they are not intended to change program policies.

Costs:

a. To State government: None.

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

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

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

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

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

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

Local Government Mandates:

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

Duplication:

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

Alternatives:

The Department is always considering improvements to the grievance mechanism, but in this proposal is only offering two relatively minor changes of substance and a number of changes of wording intended to clarify, primarily for the courts, the departments ongoing policies and procedures. Within the context of this proposal, no other notable alternatives have become apparent or have been considered.

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal merely makes minor amendments and clarifications to existing text.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal merely makes minor amendments and clarifications to existing text.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely makes minor amendments and clarifications to existing text.

Education Department

EMERGENCY RULE MAKING

Chief of Staff and Chief Operating Officer

I.D. No. EDU-44-03-00006-E
Filing No. 56
Filing date: Jan. 14, 2004
Effective date: Jan. 16, 2004

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

Action taken: Amendment of sections 3.8 and 3.9 of Title 8 NYCRR.

Statutory authority: Education Law, section 101 (not subdivided)

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

Specific reasons underlying the finding of necessity: In order to ensure the successful attainment of the goals of the State Education Department's Strategic Plan, the Board of Regents and the Commissioner of Education have determined that a new position of Chief of Staff should be created, with responsibility for ensuring that the policies and positions of the Board of Regents and the Commissioner of Education are reflected in the Department's activities.

The proposed rule provides for the appointment of a chief of staff; specifies the duties of the chief of staff and the chief operating officer; and designates the chief of staff as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

The proposed rule was adopted at the October 8-9, 2003 Regents meeting, as an emergency measure effective October 25, 2003, to ensure that the Rules of the Board of Regents were immediately brought into conformance with changes in the Department's internal organization so that the Chief of Staff and the Chief Operating Officer could assume the duties of their respective positions in a timely and efficient manner.

The proposed rule is being presented to the Board of Regents for adoption as a permanent rule at their January 12, 2004 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act. Pursuant to SAPA section 202(5), the permanent adoption cannot become effective until after its publication in the *State Register* on February 4, 2004. However, the October emergency adoption will expire on January 18, 2004, 90 days after its filing with the Department of State on October 21, 2003. A second emergency adoption is therefore necessary to ensure that the rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Chief of staff and chief operating officer.

Purpose: To provide for the appointment of a chief of staff; specify the duties of the chief of staff and the chief operating officer; and designate the chief of staff as the deputy commissioner of education, who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties of the commissioner.

Text of emergency rule: 1. Section 3.8 of the Rules of the Board of Regents is amended, effective January 16, 2004, as follows:

3.8 Chief *of staff, chief* operating officer, counsel and other personnel.

(a) There shall be *a chief of staff,* a chief operating officer, a counsel to the Education Department and the University and such other personnel as may be appointed from time to time by the commissioner.

(b) *The chief of staff shall be the deputy commissioner of education as specified in section 101 of the Education Law and shall advise the commissioner on policy, coordinate action across the Department on policy issues, facilitate internal and external communications in support of policy, and perform special assignments as directed by the commissioner. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the chief of staff shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.*

[(c)] The chief operating officer [shall be the deputy commissioner of education as specified in section 101 of the Education Law and] shall advise the commissioner on the formulation and review of policy, budget planning and development, legislative program developments, and program planning and evaluation, shall supervise the administration of specific department programs as delegated by the commissioner, and shall perform special assignments as directed by the commissioner. [In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the chief operating officer shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.]

[(c)] *(d)* There shall be in the department, in addition to the divisions established by statute, such other divisions and such bureaus as shall be established by the commissioner with the approval of the Regents.

2. Section 3.9 of the Rules of the Board of Regents is amended, effective January 16, 2004, as follows:

3.9 Appointments.

The commissioner shall appoint all officers and employees of the department, except the [chief operating officer] *chief of staff.* Appointments to the positions of *chief operating officer,* deputy commissioner, associate commissioner, assistant commissioner and director of the Office of Professional Discipline shall be made with approval of the Board of Regents.

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. EDU-44-03-00006-EP, Issue of November 5, 2003. The emergency rule will expire March 13, 2004.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 101 of the Education Law designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform

the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

LEGISLATIVE OBJECTIVES:

The proposed rule carries out the legislative objectives of Education Law section 101 by creating the position of Chief of Staff and designating such officer as the deputy commissioner of education as specified in Education Law section 101: ". . . who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by this chapter."

NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the Department, by providing for the appointment of a chief of staff; specifying the duties of the chief of staff and the chief operating officer; and designating the chief of staff as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

COSTS:

(a) Costs to State: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed rule is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, relating to the appointment of a Chief of Staff and a Chief Operating Officer, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

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

LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

DUPLICATION:

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

ALTERNATIVES:

The proposed rule is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, relating to the appointment of a Chief of Staff and a Chief Operating Officer. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

NOTICE OF ADOPTION

Purified Protein Derivative (PPD) Mantoux Tuberculin Skin Tests

I.D. No. EDU-44-03-00005-A
Filing No. 58
Filing date: Jan. 14, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6503(3), 6506(9), 6507(2)(a), 6509(9), 6527(6), 6807(3), 6902(1) and 6909(4) and (5)

Subject: Purified protein derivative (PPD) mantoux tuberculin skin tests.

Purpose: To establish requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin tests.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-44-03-00005-P, Issue of November 5, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Chief of Staff and Chief Operating Officer

I.D. No. EDU-44-03-00006-A
Filing No. 57
Filing date: Jan. 14, 2004
Effective date: Feb. 5, 2004

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

Action taken: Amendment of sections 3.8 and 3.9 of Title 8 NYCRR.

Statutory authority: Education Law, section 101 (not subdivided)

Subject: Chief of staff and chief operating officer.

Purpose: To provide for the appointment of a chief of staff; specify the duties of the chief of staff and the chief operating officer; and designate the chief of staff as the deputy commissioner of education, who, in the absence or disability of the commissioner or when a vacancy exists in the office of the commissioner, shall exercise and perform the functions, powers sand duties of the commissioner.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. EDU-44-03-00006-EP, Issue of November 5, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

New York State Energy Research and Development Authority

NOTICE OF ADOPTION

Minimum Energy Efficiency Standards

I.D. No. ERD-48-03-00006-A
Filing No. 72
Filing date: Jan. 20, 2004
Effective date: Feb. 4, 2004

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

Action taken: Addition of Part 506 to Title 21 NYCRR.

Statutory authority: Energy Law, section 5-108-a; and Public Authorities Law, section 1855(4)

Subject: Minimum energy efficiency standards for energy using products purchased by or for the State and State agencies.

Purpose: To establish minimum energy efficiency standards for appliances and energy using products purchased by or for the State or an agency thereof.

Text or summary was published in the notice of proposed rule making, I.D. No. ERD-48-03-00006-P, Issue of December 3, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Jacquelyn L. Jerry, Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203, (518) 862-1090, ext. 3284, e-mail: jlj@nyserda.org

Assessment of Public Comment
The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Payment for Psychiatric Social Work Services

I.D. No. HLT-05-04-00002-E
Filing No. 66
Filing date: Jan. 15, 2004
Effective date: Jan. 15, 2004

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

Action taken: Amendment of section 86-4.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201.1(v)

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

Specific reasons underlying the finding of necessity: The amendment to 10 NYCRR 86-4.9 will permit Medicaid billing for individual psychotherapy services provided by certified social workers in Article 28 Federally Qualified Health Centers (FQHCs). In conjunction with this change, DOH is also amending regulations to prohibit Article 28 clinics from billing for group visits and to prohibit such services from being provided by part-time clinics.

Based upon the Department's interpretation of Part 86-4.9(c), social work services have not been considered billable threshold visits in Article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by federal law. Failure to comply with these mandates could lead to federal sanctions and the loss of federal dollars. Additionally, allowing Medicaid reimbursement for clinical social worker services is expected to increase access to needed mental health services.

Subject: Payment for psychiatric social work services in art. 28 federally qualified health centers.

Purpose: To permit psychotherapy by certified social workers a billable service under certain circumstances.

Text of emergency rule: Pursuant to the authority vested in the State Hospital Review and Planning Council, and subject to the approval of the Commissioner of Health by Section 2803(2)(a) of the Public Health Law, section 86-4.9 of Subpart 86-4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows to be effective upon filing a Notice of Emergency Adoption with the Secretary of State:

86-4.9 Units of service. (a) The unit of service used to establish rates of payment shall be the threshold visit, except for dialysis, abortion, sterilization services and free-standing ambulatory surgery, for which rates of payment shall be established for each procedure. For methadone maintenance treatment services, the rate of payment shall be established on a fixed weekly basis per recipient.

(b) A threshold visit, including all part-time clinic visits, shall occur each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit. Only one threshold visit per patient per day shall be allowable for reimbursement purposes, except for transfusion services to hemophiliacs, in which case each transfusion visit shall constitute an allowable threshold visit.

(c) Offsite services, visits related to the provision of offsite services, visits for ordered ambulatory services, and patient visits solely for the purpose of the following services shall not constitute threshold visits: pharmacy, nutrition, medical social services *with the exception of clinical social services as defined in paragraph (g) of this section,* respiratory therapy, recreation therapy. Offsite services are medical services provided by a facility's clinic staff at locations other than those operated by and under the licensure of the facility.

(d) A procedure shall include the total service, including the initial visit, preparatory visits, the actual procedure and follow-up visits related to the procedure. All visits related to a procedure, regardless of number, shall be part of one procedure and shall not be reported as a threshold visit.

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

(f) Ordered ambulatory services may be covered and reimbursed on a fee-for-service basis in accordance with the State medical fee schedule. Ordered ambulatory services are specific services provided to nonregistered clinic patients at the facility, upon the order and referral of a physician, physician's assistant, dentist or podiatrist who is not employed by or under contract with the clinic, to test, diagnose or treat the patient. Ordered ambulatory services include laboratory services, diagnostic radiology services, pharmacy services, ultrasound services, rehabilitation therapy, diagnostic services and psychological evaluation services.

(g)(1) For purposes of this section, clinical social services are defined as,

(i) individual psychotherapy services provided in a Federally Qualified Health Center by a licensed clinical social worker on or after September 1, 2004, or before September 1, 2004 by a certified social worker with psychotherapy privileges on their New York State Education Department certification; or

(ii) individual psychotherapy services provided in a Federally Qualified Health Center by a licensed clinical social worker on or after September 1, 2004, or before September 1, 2004 by a certified social worker who is working in a clinic under qualifying supervision in pursuit of a psychotherapy privileges certification by the New York State Education Department.

(2) Clinical social services provided in a part time clinic shall be ineligible for reimbursement under this paragraph. Clinical social services shall not include group psychotherapy services or case management services.

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 April 13, 2004.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in sections 2803(2)(a) of the Public Health Law which authorize the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner.

Legislative Objective:

The legislative objective of this authority is to allow, in limited instances, social work visits to be a billable threshold service in Article 28 clinics. This amendment will allow psychotherapy by certified social workers (CSWs) as a billable visit under the following circumstances:

- Services are provided by a certified social worker with psychotherapy privileges (on their SED certification), or a CSW who is working in a clinic under qualifying supervision in pursuit of such certification.
- Payment will only be made for services that occur in Article 28 clinic base and extension clinics only. Billings by part-time clinics will not be allowed.
- Psychotherapy services only will be permitted, not case management and related services.
- Billings for group psychotherapy will not permitted in Article 28 clinics.
- Payment will only be made for services that occur in Federally Qualified Health Centers (FQHCs).

Needs and Benefits:

For some time, the Department of Health (DOH) has interpreted existing regulation Part 86-4.9(c) as restricting threshold reimbursement for medical social work services in Article 28 outpatient and Diagnostic and Treatment Center (D&TC) clinics. Advocacy groups (*e.g.*, United Cerebral Palsy (UCP), Community Health Care Association of New York (CHCANYS)) have challenged this policy interpretation arguing that the prohibition only relates to the provision of social work services coincident to medical care, not to medical/behavioral health services provided by certified social workers.

In addition, DOH's policy interpretation has also been inconsistent with the billing practices of the Office of Alcoholism and Substance Abuse (OASAS), the Office of Mental health (OMH), and the Office of Mental Retardation and Developmental Disabilities (OMRDD). It is clear that permitting certified social workers to be reimbursed for behavioral health services is the generally accepted practice model. Thus, this amendment will to some extent, provide consistency with billing practices of other state agencies in Article 31, 16 and 32 clinics. Furthermore, recent Federal changes related to Medicaid reimbursement for FQHCs mandate that psychotherapy services provided by a social worker be considered a billable service.

This approach will ensure access to social work services in the most underserved areas and increase consistency with the policies of other state agencies.

Costs:

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

Annually the estimated gross Medicaid cost for all CSW psychotherapy visits in FQHCs totals $600,000, with a state share of $150,000. This increase is anticipated to be partially offset by the savings associated with the elimination of clinic payments for group psychotherapy and the prohibition of CSW psychotherapy in part-time clinics.

Cost to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

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

Paperwork:

This amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

Duplication:

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

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for the services of certified social workers. The alternative to not permit payment for these psychotherapy services in FQHCs is not feasible since it could result in fiscal sanctions and/or litigation.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective on the 1st day of the month following publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

To the extent that there are FQHCs that fall into the category of small businesses, there will be reimbursement but their costs will be reduced.

Compliance Requirements:

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

Professional Services:

No new professional services are required as a result of this proposed action. The proposed regulation will allow threshold visits to be billed in Article 28 clinics by CSW's with a "P" or "R" designation on their State Education Department's (SED) Certification or by CSWs who are working in a supervised situation towards that certification, in a primary or extension (not part-time) clinic. Although some providers might experience problems hiring the higher level of supervision, the new prospective reimbursement system for FQHCs should ease the hiring of this staff.

Compliance Costs:

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

Economic & Technology Feasibility:

DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

Opportunity for Small Business Participation:

Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

With the exception of part-time clinics, this rule will apply to all Article 28 primary and extension clinics (not part-time clinics) in New York. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

Compliance Costs:

There are no direct costs associated with compliance. However, part-time clinic providers that perform fraudulent billing may be investigated and subsequently realize reduced Medicaid reimbursement.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has met with provider advocacy groups and the National Association of Social Workers Association to discuss Medicaid reimbursement for social work services. These groups and Association represent social workers from across the State, including rural areas.

Job Impact Statement

Nature of Impact:

It is anticipated that this rule will result in decreased Medicaid reimbursement to Article 28 part-time clinics that are currently providing CSW services, and primary and extension clinics that provide CSW services in group settings. This decreased revenue may have an adverse impact on jobs and employment opportunities in clinics.

Categories and Numbers Affected:

There are approximately 58 FQHCs, FQHC look-alikes, and rural health clinics.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic.

Minimizing Adverse Impact:

The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work services, based upon the Center's reasonable costs for delivering covered services.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

EMERGENCY RULE MAKING

Part-Time Clinics

I.D. No. HLT-05-04-00003-E
Filing No. 70
Filing date: Jan. 20, 2004
Effective date: Jan. 20, 2004

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

Action taken: Amendment of sections 703.6 and 710.1 of Title 10 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare and compliance with State Administrative Procedure Act Section 202(1) would be contrary to the public interest. These regulations repeal existing section 703.6 of 10 NYCRR and add a new section 703.6, amend sections 710.1(c)(1)(i) and 710.1(c)(4)(ii) and add section 710.1(c)(6)(v) to establish additional standards for the approval and operation of part-time clinics under Article 28 of the Public Health Law. The proposed rules would help ensure the provision of quality health care through needed preventive health screening programs and other public health initiatives to underserved populations and others in safe environments that protect both the patient and the general public.

A review of the part-time clinics approval system and operations raised serious questions and concerns as to whether care was being provided in appropriate sites, under adequate supervision, whether unnecessary care was being provided, whether the site environments were adequate and safe, and whether the type of services provided exceeded the original intent of the part-time clinic regulation. Examples of the problem areas include:

- The provision of radiology services in stationary sites and mobile vans where shielding may be inadequate.
- The provision of a full range of primary care services where minimum physical plant standards may not be met, as part-time clinics are exempt from most physical plant requirements. Inadequate space to provide the range of services safely compromised patient safety with narrow corridors which, if an emergency arises, would not provide for stretcher or wheelchair access or egress.
- The provision of a variety of complex services where more extensive supervision would be expected.
- The provision of services to all the residents in a given location, such as an Adult Home, raises questions about appropriate utilization.
- The provision of specialty services, such as pediatric cardiology utilizing sophisticated equipment, is considered inappropriate for a part-time clinic setting, since a comprehensive, integrated plan of care is needed to treat these patients effectively.
- The use of part-time clinics by some patients as their main source of health care compromises the continuity of their care, as the link to emergency and after-hours treatment becomes problematic.
- The improper application of infection control principles for sterilizing equipment.

The persistence of these problems warrants the issuance of these rules on an emergency basis.

The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
- Addition of a requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic an treatment center to ensure adequate supervision.
- Enhanced operating standards, including requirements for quality assurance and improvement and for credentialing of staff.
- Addition of a requirement for prior limited review of all new part-time clinic sites and the continuation or proposed relocation of existing clinics.
- Recognition that part-time clinics which are operated by city and county health departments are governed by section 614 of the Public Health Law.

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis, including the requirements for a period of time for public comment, would be contrary to the public interest because to do so would place patients at continued risk that they would be served in sub-standard environments without adequate supervision and where continuity of care cannot be insured. In addition, the proposed rules guard against the unnecessary expenditure of Medicaid funds for unneeded or duplicative services thereby making funds available for needed care. This emergency regulation will go into effect immediately after the expiration of the prior emergency regulation. Its duration will extend until permanent regulations are promulgated or a subsequent regulation is adopted on an emergency basis.

Subject: Part-time clinics.

Purpose: To clarify and enhance the requirements and require prior limited review of all part-time clinic sites.

Text of emergency rule: The current section 703.6 is repealed and a new section 703.6 is hereby adopted as follows:

Section 703.6 Part-time clinics.

(a) Applicability. In lieu of Parts 702, 711, 712 and 715 of this Title, this section shall apply to part-time clinic sites, except for those operated by the State Department of Health (other than those part-time clinics which are operated as an extension of Article 28 hospitals operated by the State Department of Health) or by the health department of a city or county as such terms are defined in section 614 of the Public Health Law. Such cities and counties shall submit to the State Department of Health information which lists the location(s), hours of operation and services offered at each part-time clinic operated by or under the authority of the city or county health department. This information shall be submitted annually, by January 30 of each year, as an update to the Municipal Public Health Services Plan (MPHSP) submitted by the city or county pursuant to section 602 of the Public Health Law, and shall provide such information for each part-time clinic operated by or under the authority of the city or county health department in the previous calendar year. Consistent with the definition of part-time clinic site in section 700.2(a)(22) of this Title, a part-time clinic shall:

(1) provide services which shall be limited to low-risk (as determined by prevailing standards of care and services) procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility. Such services may include health screening (such as blood pressure screening), preventive health care and other public health initiatives, procedures and examinations (such as well child care, the provision of immunizations and screening for chronic or communicable conditions which are treatable or preventable by early detection or which are of public health significance);

(2) be located at a site that has adequate and appropriate space and resources to provide the intended services safely and effectively and is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised; and

(3) not be located at a private residence or apartment, an intermediate care facility, congregate living arrangements (not including an individualized residential alternative, a shelter for adults or other group shelter operated by governmental or other organizations to provide temporary housing accommodations in a safe environment to at-risk populations), an area within an adult home, a residence for adults or enriched housing program as defined in section 2 of the Social Services Law unless the part-time clinic is an outpatient mental health program approved by the Office of Mental Health, or the private office of a health care practitioner or group of practitioners licensed by the State Education Department, except if the private office space is leased for a defined period of time and on a regular basis for the provision of services consistent with paragraph (1) of this subdivision.

(b) Department approval and/or notification.

(1) An operator of part-time clinics may initiate patient care services at a specific site only upon written approval from the department in

accordance with the department's prior limited review process set forth at section 710.1(c)(6)(v) of this Title. To request such approval, the operator shall submit to the department, for each such site, information and documentation in a format acceptable to the department and in sufficient detail to enable the Commissioner to make a decision, including the following:

(i) the location, type and nature of the building, days and hours of operation, expected duration of operation (specified limited period of time, for example, seasonally), staffing patterns and objectives of the part-time clinic;

(ii) the leasing or other arrangement for gaining access to the site's real property, (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site);

(iii) the plans and strategies for meeting the operational standards set forth in this section and an explanation of how the operator will provide adequate supervision and ensure quality of care;

(iv) a listing of all part-time clinic sites already operated by the applicant;

(v) a description of the services to be provided and the populations to be served; and

(vi) procedures or strategies for advising patients on making arrangements for follow-up care.

(2) After initiating patient care services, an operator of part-time clinics may relocate a part-time clinic or change a category of service only upon written approval from the department in accordance with the department's prior limited review process as set forth in section 710.1(c)(6)(v) of this Title. The operator shall give written notification to the department at least 45 days prior to the relocation or change in services of a part-time clinic site. To request approval, the operator shall submit to the department, for the site of relocation or change in services, information concerning:

(i) the location, type and nature of the building, days and hours of operation, and expected duration of operation (specified limited period of time, for example, seasonally);

(ii) the leasing or other arrangement for gaining access to the site's real property (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site); and

(iii) a description of the services to be provided and the populations to be served.

(3) After initiating patient care services, the operator shall give written notification, including a closure plan acceptable to the department, to the appropriate regional office of the department at least 15 days prior to the discontinuance of a part-time clinic site other than a scheduled discontinuance as indicated in accordance with subparagraph (i) of paragraph (l) of this subdivision. No part-time clinic site shall discontinue operation without first obtaining written approval from the department.

(4) (i) The operator of any part-time clinic that was in operation on the effective date of this paragraph, and in conformance with all pertinent statutes and regulations in effect prior to that date, and has submitted request(s) to the department for approval to continue providing services for each such site by November 13, 2000 in accordance with such requirements shall be permitted to operate until and unless the department issues a written denial of approval to continue operation. If a request to continue operation of a part-time clinic site is denied, the operator shall cease providing services at such site.

(ii) The operator of any part-time clinic site for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall give the department the written notification and a closure plan required by subdivision (b)(3) of this section by November 28, 2000. Notwithstanding any other provision of this section, any part-time clinic for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall cease operations by December 31, 2000.

(c) Policies and procedures. (1) The operator shall ensure the development and implementation of written policies and procedures specific to each part-time clinic site which shall include, but need not be limited to:

(i) security, confidentiality, maintenance, access to and storage of medical records for each patient, including documentation of any diagnoses or treatments;

(ii) handling and storage of drugs in accordance with state law and regulation;

(iii) provision and storage of sterile supplies including plans for sterilization or disposal of contaminated supplies and equipment;

(iv) disposal of solid wastes and sharps;

(v) handling of patient emergencies, including written transfer agreements with hospitals within the service area;

(vi) a fire plan consistent with local laws;

(vii) credentialing of staff by the governing authority of the operator and assurance that only appropriately licensed and/or certified staff perform functions that require such licensure or certification;

(viii) quality assurance/improvement initiatives coordinated with such activities at the operator's primary delivery site(s);

(ix) utilization review;

(x) community outreach efforts designed to ensure that community members are aware of the availability of and the range of clinic services and hours of operation; and

(xi) assurance that patients can access necessary services without regard to source of payment.

(2) The following services shall not be provided at a part-time clinic site:

(i) services that require specialized equipment such as radiographic equipment, computerized axial tomography, magnetic resonance imaging or that required for renal dialysis;

(ii) services that involve invasion or invasive treatment procedures or disruption of the integrity of the body that normally require a surgical operative environment; and

(iii) services other than those available at the primary delivery site(s) listed on the primary facility's operating certificate.

(d) Services and personnel. The operator shall ensure that all health care services and personnel provided at the part-time clinic site shall conform with generally accepted standards of care and practice and with the following:

(1) Part-time clinics operated by hospitals shall comply with pertinent standards established in Part 405 of this Title including, but not limited to, sections 405.7 (Patients' rights) and 405.20 (Outpatient services), which cross-references the outpatient care provisions of sections 752.1 and 753.1 of this Title.

(2) Part-time clinics operated by diagnostic and treatment centers shall comply with the pertinent provisions of Parts 750, 751, 752 and 753 of this Title including, but not limited to, section 751.9 (Patients' rights).

(e) Environmental health. The operator shall ensure that:

(1) exits and access to exits are clearly marked;

(2) lighting is provided for exit signs and access ways when located in dark areas and/or during night hours or power interruptions;

(3) passageways, corridors, doorways and other means of exit are kept unobstructed;

(4) the part-time clinic site is kept clean and free of safety hazards;

(5) all water used at the part-time clinic site is provided from a water supply which meets all applicable standards set forth in Part 5 of this Title;

(6) equipment to control a limited fire is available; and

(7) smoking is prohibited within patient care areas.

(f) Waivers. The Commissioner, upon a request from the operator, may waive one or more provisions of this section upon a finding that such waiver would:

(1) enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access;

(2) contribute to attaining a generally recognized public health goal;

(3) not jeopardize the health or safety of patients or clinic staff; and

(4) not conflict with existing federal or state law or regulation.

Section 710.1(c)(1)(i) is hereby amended to read as follows:

(i) the *requirements relating to the* addition, modification or decertification of a licensed service other than the addition of a service or decertification of a facility's services as provided for in paragraph (6) of this subdivision or the addition or deletion of approval to operate part-time clinics, regardless of cost [;]. *The addition or deletion of approval to operate part-time clinics shall not be applicable to the State Department of Health (other than for the addition or deletion of approval to operate part-time clinics as an extension of an Article 28 hospital operated by the State Department of Health) or to the health department of a city or county as such terms are defined in section 614 of the Public Health Law*;

Section 710.1(c)(4)(ii) is hereby amended to read as follows:

(4) Proposals not requiring an application.

(ii) Any proposal to [add,] discontinue [or relocate] a part-time clinic site of a medical facility already authorized to operate part-time clinics pursuant to this Part shall not require the submission of an application pursuant to this Part, but compliance is required with the applicable notice provisions of Parts 405 and 703 of this Title.

Paragraph (6) of subdivision (c) of section 710.1 is hereby amended by the addition of a new subparagraph (v) to read as follows:

710.1(c)(6) Proposals requiring a prior review.

* * *

(v) Any proposal to operate, change services offered or relocate a part-time clinic site shall be subject to a prior limited review under Article 28 of the Public Health Law.

(a) Requests for approval under the prior limited review process shall be consistent with the provisions of section 703.6(b) of this Title.

(b) Requests for approval to operate, change a category of service offered or relocate a part-time clinic site in accordance with section 703.6(b) of this Title shall be made directly to the Division of Health Facility Planning.

(c) If the proposal is acceptable to the department, the applicant shall be notified in writing within 45 days of acknowledgement of receipt of the request. If the proposal is not acceptable, the applicant shall be notified in writing within 45 days of such determination and the bases thereof, and the proposal shall be deemed an application subject to full review, including a recommendation by the State Hospital Review and Planning Council, pursuant to section 2802 of the Public Health Law.

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 April 18, 2004.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. This section also grants authority to establish requirements for projects subject to Certificate of Need review and other Department approvals.

Legislative Objectives:

Article 28 of the PHL seeks to ensure that hospitals and related services are of the highest quality, efficiently provided and properly utilized at a reasonable cost. Consistent with this legislative intent, the proposed amendments would update standards under which part-time clinics are permitted to operate and establish new procedures for the process by which clinics are approved to provide services. These changes will promote improved quality and appropriateness of care at a reasonable cost to payors.

Needs and Benefits:

Part-time clinics provide low-risk procedures and examinations which do not normally require back-up and support from the hospitals and diagnostic and treatment centers that sponsor them. Typical of such services are well-child care, immunization and screening for chronic and communicable conditions treatable or preventable by early detection. Part-time clinics may not deliver services which require specialized equipment, such as magnetic resonance imaging or dialysis, nor may they provide invasive treatment procedures which normally require a surgical environment. Once approved, part-time clinics may operate on either a short-term or permanent basis but may not offer services for more than a total of 60 hours per month.

Part-time clinics were established as a separate category of service to encourage the provision of basic preventive health care in community-based settings easily accessible to the general public and to groups targeted for particular services (*e.g.*, senior citizens). Consequently, the approval process for these clinics is simpler than that for extension clinics of hospitals and diagnostic and treatment centers, whose services are more elaborate and hours of operation less restricted. The initial authority for a hospital or diagnostic and treatment center to operate part-time clinics requires administrative approval under the Certificate of Need (CON) process. However, the subsequent opening of individual clinic sites previously required only a letter of notification to the appropriate area office of the Department of Health, submitted a minimum 15 business days in advance of the proposed commencement of service. Environmental requirements for part-time clinics are minimal, calling only for compliance with prevailing standards for life safety, sanitation and infection control. Some 300 hospitals and diagnostic and treatment centers are authorized to operate part-time clinics.

The leniency of regulation which has encouraged the provision of needed services has also led to the delivery of services in locations and on a scale not intended for part-time clinics. Some providers, for example, have set up part-time clinics in sites such as an adult home and patients' private residences and in other settings not sanctioned under the current regulations. Other operators of part-time clinics have offered services far more elaborate than the low-risk screening and basic care procedures to which part-time clinics are restricted. Still others have engaged in questionable billing practices, submitting claims to the Medicaid program at rates approved only for the broader array of services offered at diagnostic and treatment centers and hospital-based clinics.

With large part-time clinic networks (one network has over 600 sites), there are the issues of service quality and patient safety in settings that lack appropriate medical supervision and staff support and which do not meet operational and environmental requirements. The delivery of services under these circumstances can pose a threat to patient safety and demands the issuance of the new rules on an emergency basis.

An emergency regulation addressing part-time clinics was adopted effective August 15, 2000. Additional emergency regulations were adopted effective on November 13, 2000, February 12, 2001, May 14, 2001, August 10, 2001, November 8, 2001, February 7, 2002, May 6, 2002, August 1, 2002, October 29, 2002, January 27, 2003, April 25, 2003, July 24, 2003 and October 22, 2003. The last emergency adoption is scheduled to expire on January 20, 2004. This new emergency regulation will repeal and/or amend the regulations which would have gone back into effect upon the expiration of the October 22, 2003 emergency regulation.

The proposed emergency regulations will repeal the existing 10 NYCRR section 703.6 and replace it with a new section 703.6 more explicit in the requirements and prohibitions that apply to part-time clinics. They further amend section 710.1 to require a formal approval process for individual clinic sites. The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
- A requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic and treatment center to ensure adequate supervision.
- Enhanced operational standards, including requirements for quality assurance and improvement and for credentialing of staff.
- A requirement for prior limited review of new part-time clinic sites and proposed relocations of existing clinics. Requests for prior limited review must be submitted to the Department's central office at least 45 days in advance of the proposed commencement of service, instead of the 15 business days required for notification to the appropriate Department regional office.
- Recognition that part-time clinics which are operated by city and county health departments are governed by Section 614 of the Public Health Law.

The proposed rules apply to all existing part-time clinics as well as to all future sites. To ensure that the new regulations do not impede access to care by patients currently receiving services or penalize providers operating bona fide clinics, the proposed rules allow existing sites to continue in operation while their operators' applications for prior limited review of current services and sites are under review by the Department. The rules allowed operators 90 days from the effective date of the original emergency regulation, which was August 15, 2000, to submit such applications, which may include proposals to relocate noncompliant clinics to sites that are in compliance with the proposed regulations. For clinics that failed to submit such timely applications, the rules establish a deadline for submission of a closure plan.

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

Both part-time clinics in existence at the time of the original emergency regulations and any new part-time clinics will be subject to the prior limited review process as set forth in the proposed amendments to section 710.1. The collection and submission of information for the prior limited review process will represent a new cost to the facility, but the Department has minimized that cost through issuance of a standardized form which can be filed electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Cost to State and Local Government:

There will be no additional cost to State or local governments. If inappropriate or duplicative Medicaid billings are reduced, or if sites providing unsafe or inappropriate services discontinue operations, State and local governments will realize a share of the Medicaid savings. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Cost to the Department of Health:

Additional costs related to the processing of prior limited review applications and stricter programmatic oversight of part-time clinics will be absorbed within existing resources.

Local Government Mandates:

This regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Paperwork:

The governing body will be responsible for filing requests for approval to operate specific sites under the limited prior review process. DOH will attempt to limit the paperwork burden by developing a standardized format for such submissions which may be filed electronically. DOH also considered requiring that each site maintain a patient log with numerous data elements. It was decided not to include this requirement in the operating standards because many of the data elements duplicated information in the medical record, and some could interpret the requirement as an unnecessary paperwork burden unrelated to patient care. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Duplication:

The regulations will not duplicate, overlap or conflict with federal or state statutes or regulations.

Alternative Approaches:

The alternative of taking no regulatory action was rejected because of the ongoing potential for questionable quality of care provided at inappropriate sites and because of fiscal irregularities at part-time clinics under current regulations. DOH also considered subjecting all current and proposed part-time clinics to the administrative review process rather than to the prior limited review process. That option was rejected in order to promote a streamlined review process for clinics and DOH and to avoid imposing on facilities the $1,250 filing fee required for administrative reviews.

Federal Requirements:

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

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. Part-time clinics in operation at that time must have submitted requests to continue operating within 90 days of the effective date of the adoption of the first emergency regulation (issued August 15, 2000) but may continue to operate until and unless DOH issues a written denial of approval to operate. If the governing body of a primary delivery site wishes to open a new part-time clinic site after the effective date of the regulation, it must submit an application. If the proposal is acceptable, DOH will so notify the applicant within 45 days of acknowledgement of receipt of the request.

Regulatory Flexibility Analysis

Effect of Rule:

New York State has 9 hospitals, 167 diagnostic and treatment centers and approximately 455 adult homes and 53 congregate living centers that could be considered small businesses affected by this rule. Physician offices, of which the Department has no statistics on how many there are, also could be considered small businesses and impacted by this regulation. The Office of Mental Health approved approximately 980 outpatient mental health programs, the majority of which are small businesses. The Office of Mental Retardation and Developmental Disabilities approves Intermediate Care Facilities (ICFs) many of which would be considered small businesses and which also could be impacted by the regulation. With respect to local governments, to the extent the New York City Department of Health and 57 county health departments operate or propose to operate part-time clinics, they would be impacted by this regulation.

Compliance Requirements:

In order to comply with these requirements, an operator/applicant will need to determine that the services to be provided at the part-time clinic(s) are limited to low-risk procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility as described in section 703.6(a)(1), be located at a site as described in 703.6(a)(2) and not be located at one of the sites as described in 703.6(a)(3). In addition, the operator/applicant must obtain written approval pursuant to the Department's prior limited review process set forth in section 710.1(c)(6)(v).

Professional Services:

There should be no additional professional services required that a small business or local government is likely to need to comply with the proposed rule. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, adequate administrative mechanisms already should be in place to comply with any reporting and recordkeeping requirements.

Compliance Costs:

The collection and submission of information for the prior limited review process will represent a new cost to the facility, including facilities operated by a small business or local government. The Department has attempted to minimize that cost through the issuance of a standardized form, which may be obtained and submitted electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses and local governments to comply with the regulations. Providers should not need to hire additional professional or administrative staff to comply with the requirements of the regulations. Due to the nature of the services provided at part time clinics, such sites should not involve significant capital expenditures. Also, applicants under the prior limited review process for reviewing part time clinic proposals are not required to pay the $1,250 fee applicable to full review and administrative review applications. Therefore, overall costs of compliance should be minimal. The Department of Health also has developed a standardized electronic application form that applicants may use by accessing the Department's "web" page. This is technologically feasible using readily available, standard personal computers and internet access programs.

Minimizing Adverse Impact:

In developing the regulation, the Department considered the approaches set forth in section 202-b(1) of the State Administrative Procedure Act. The Department considered requiring all current and proposed part-time clinics to undergo the full administrative review process rather than the prior limited review process. That option was rejected in order to permit a streamlined review process for part-time clinics and to permit facilities to avoid the $1,250 filing fee required for full or administrative

reviews. The Department also has developed a standardized electronic form to minimize the paperwork burden for requests for approval to operate specific sites under the prior limited review process. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at-risk or medically underserved patients to obtain needed care and services which would be otherwise unavailable or difficult to access.

Language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised." In order to allow providers flexibility in bringing needed services to patients, the Department has refrained from specifying a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgement of receipt of the request.

Small Business and Local Government Participation:

Interested parties were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Rural Area Flexibility Analysis

Effect on Rural Areas

This rule applies uniformly throughout the State including all rural areas. Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements

This regulation should not adversely affect current rural part-time clinics that are providing quality services in appropriate settings. The new regulations will provide facilities with clarified operating standards that will enable them to operate in conformance with the law and meet generally accepted standards for quality care and safety of patients. Operators of part-time clinics in the State (including rural areas) must obtain written approval from the Department to continue operation, relocate, or open new part-time clinics in accordance with the Department's prior limited review process as outlined in section 710.1(c)(6)(v) of 10 NYCRR.

Professional Services

Hospitals should not need to hire additional professional or other staff to comply with the requirements of the new regulation. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, additional staff should not need to be hired, as administrative mechanisms should already be in place to comply with any reporting and recordkeeping requirements.

Compliance Costs

Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations. It is impossible to quantify such costs because the Department lacks the data on the number of part-time clinics currently out of compliance with the proposed standards and on the cost of bringing such facilities into conformity with the proposed rules. In general, however, establishment of part-time clinics will not require significant capital expenditures because such clinics are intended to be limited to low risk procedures and examinations that normally do not require backup and support from the primary delivery site of the operator or other medical facilities.

Minimizing Adverse Impact

In developing the regulation, the Department considered the approaches set forth in section 202-bb(2) of the State Administrative Procedure Act.

To minimize the paperwork and reporting requirements, the Department has developed a standardized application form which may be obtained and submitted electronically. Because the approval process is a limited review, the $1,250 filing fee required for full or administrative reviews will not be imposed. The Department recognizes that part-time clinics can provide valuable sources of primary care in rural areas. These regulations will help to assure rural residents that such care meets appropriate quality and safety standards. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access. While language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised." The Department recognized that rural part-time clinics could serve a wide geographical area and did not specify a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgement of receipt of the request. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record.

Opportunity for Rural Area Participation

Rural areas were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a(2) of the State Administrative Procedure Act, because it is apparent from the nature and purpose of these proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities for those part-time clinics which provide appropriate services in appropriate locations. Those clinics which provide services in locations the Department deems unacceptable will be given an opportunity to relocate to an appropriate setting. The proposed amendments will help to ensure that qualified people provide clinical care and services. Appropriately operat-

ing part-time clinics will be allowed to continue providing care and services and newly-proposed sites will be permitted to open provided they can meet the standards established in the regulation. Thus, the jobs of people qualified to provide services, and currently doing so, will not be negatively impacted.

NOTICE OF ADOPTION

Fluoroscopic X-Ray Equipment

I.D. No. HLT-37-03-00005-A
Filing No. 69
Filing date: Jan. 16, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of section 16.58 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225(5)(p) and (q)

Subject: Update protocol and quality control testing tool for fluoroscopic x-ray equipment.

Purpose: To assure uniformity in testing and compliance with standards for image quality and patient doses.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-37-03-00005-P, Issue of September 17, 2003.

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

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

Assessment of Public Comment

The Department did not receive any comments on the proposed amendment. This revision is highly technical in nature and was written in conjunction with the diagnostic medical physicist community, the group most impacted by the content.

Insurance Department

NOTICE OF ADOPTION

Comprehensive Motor Vehicle Insurance Reparations Act

I.D. No. INS-43-03-00003-A
Filing No. 62
Filing date: Jan. 14, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of Subpart 65-4 (Regulation 68-D) of Title 11 NYCRR.

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

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

Purpose: To correct an obviously erroneous cross-reference.

Text or summary was published in the notice of proposed rule making, I'd. No. INS-43-03-00003-P, Issue of October 29, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Address Updates

I.D. No. INS-43-03-00004-A
Filing No. 60
Filing date: Jan. 14, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of Part 4 (Regulations 3 and 97) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

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

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

Text or summary was published in the notice of proposed rule making, I.D. No. INS-43-03-00004-P, Issue of October 29, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Comprehensive Motor Vehicle Insurance Reparations Act

I.D. No. INS-43-03-00005-A
Filing No. 59
Filing date: Jan. 14, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of Subpart 65-4 (Regulation 68-D) of Title 11 NYCRR.

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

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

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

Text or summary was published in the notice of proposed rule making, I.D. No. INS-43-03-00005-P, Issue of October 29, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Distribution and Sale of Publications and Forms

I.D. No. INS-43-03-00032-A
Filing No. 61
Filing date: Jan. 14, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of Part 9 and Appendix 6 (Regulation 46) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Distribution and sale of publications and forms.

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

Text or summary was published in the notice of proposed rule making, I.D. No. INS-43-03-00032-P, Issue of October 29, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Minimum Standards for Producer-Controlled Insurers

I.D. No. INS-44-03-00004-A
Filing No. 63
Filing date: Jan. 14, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of Subpart 80-2 (Regulation 52-A) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Minimum standards for producer-controlled insurers.

Purpose: To repeal an obsolete rule.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-44-03-00004-P, Issue of November 5, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Private Passenger and Commercial Automobile Statistical Plans

I.D. No. INS-47-03-00006-A
Filing No. 71
Filing date: Jan. 20, 2004
Effective date: Feb. 4, 2004

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

Action taken: Amendment of Parts 140, 141, 142, 143 and 144 (Regulation 32-A) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2304, 2315, 2331, 2332, 2333 and 2334

Subject: Private passenger and commercial automobile statistical plans.

Purpose: To update and simplify requirements for the submission of statistical plans and modifications of statistical plans for private passenger and commercial automobile and with respect to the reporting of statistical data to the department or to officially designated statistical agents of the department.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-47-03-00006-P, Issue of November 26, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Anna Lemecha, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5128, e-mail: alemecha@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

New York State 911 Board

INFORMATION NOTICE
NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Amendments to Minimum Standards Regarding Call-Taker/Dispatcher Training, Staffing of Public Safety Answering Points, and Equipment, Facilities and Security for Public Safety Answering Points.

Summary. At its meeting of October 28, 2003, the Board proposed amendments to the minimum training requirements for call-takers/dispatchers who receive wireless 911 calls, minimum staffing requirements for public safety answering points, and minimum requirements for the equipment as well as the general building and security provisions at public safety answering point locations. The amendments authorize the Board to grant variances from these minimum standards, upon a sufficient showing of hardship, provided an alternative method of compliance is shown to be acceptable to the Board. The Notice of Proposed Standards was published in the November 12, 2003 issue of the *Register*. Following a period of public comment, the Board at its meeting of January 13, 2004, adopted the amendments as the final standards which appear in this Notice. These final standards are identical to the standards as originally proposed.

For further information, contact: Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: 518-474-6746.

The amendments are as follows:

21 NYCRR Part 5201
Minimum Standards Regarding Call-Taker/Dispatcher Training
(Statutory Authority: County Law § 328)

A new Section 5201.6 is added to read as follows:

5201.6. Variances.

(a) The Board shall have authority to grant variances from the strict provisions of this Part, upon application therefor and upon a showing of:

(1) unnecessary hardship; and

(2) that an alternative measure or method to be adopted will meet the objectives of the standards.

(b) In granting such variance, the Board shall provide that such variance shall be for a stated period of time.

21 NYCRR Part 5202
Minimum Standards Regarding Staffing of Public Safety Answering Points
(Statutory Authority: County Law § 328)

A new Section 5202.3 is added to read as follows:

5202.3. Variances.

(a) The Board shall have authority to grant variances from the strict provisions of this Part, upon application therefor and upon a showing of:

(1) unnecessary hardship; and

(2) that an alternative measure or method to be adopted will meet the objectives of the standards.

(b) In granting such variance, the Board shall provide that such variance shall be for a stated period of time.

21 NYCRR Part 5203
Minimum Standards Regarding Equipment, Facilities and Security for Public Safety Answering Points
(Statutory Authority: County Law § 328)

A new Section 5203.6 is added to read as follows:

5203.6. Variances.

(a) The Board shall have authority to grant variances from the strict provisions of this Part, upon application therefor and upon a showing of:

(1) unnecessary hardship; and

(2) that an alternative measure or method to be adopted will meet the objectives of the standards.

(b) In granting such variance, the Board shall provide that such variance shall be for a stated period of time.

INFORMATION NOTICE
NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agen-

cies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Minimum Standards Relating to Expedited Deployment Funding. Summary. At its meeting of October 28, 2003, the Board proposed these minimum standards relating to expedited deployment funding. The standards provide for a ten percent local match for all grants of State funds, authorize the Board to establish a timeframe for the submission of expedited deployment funding plans, establish the criteria for approval of plans, set forth the minimum requirements for contents of plans, set forth the standards for eligible costs to be funded, and establish standards governing documentation of expenditure as well as repayment provisions. The Notice of Proposed Standards was published in the November 12, 2003 issue of the *Register*. Following a period of public comment, the Board at its meeting of January 13, 2004, adopted the final standards which appear in this Notice. These final standards are identical to the standards as originally proposed.

For further information, contact: Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: 518-474-6746.

The Minimum Standards are as follows:

21 NYCRR Part 5204

Minimum Standards Regarding Expedited Deployment Funding

(Statutory Authority: County Law § 328)

Sec.

5204.1 Definitions

5204.2 State Assistance

5204.3 Time Frame for Submission of Plans

5204.4 Criteria for Approval of Plans

5204.5 Contents of Plans

5204.6 Standards Governing Reasonable Eligible Wireless 911 Service Costs

5204.7 Standards Governing Repayment Provisions

§ 5204.1. Definitions.

(a) "Board" means the New York State 911 Board.

(b) "PSAP" means public safety answering point, a site designated and operated by a local governmental entity for the purpose of receiving emergency calls from customers of a wireless telephone service supplier.

(c) "Expedited Deployment Funding" means the State assistance provided pursuant to this Part to local public safety answering points for eligible wireless 911 costs.

(d) "Plan" or "Plans" means a priority enhanced wireless 911 plan or plans.

§ 5204.2. State Assistance.

Subject to the appropriation of funds, the Department of State shall provide State assistance to local PSAPs for eligible wireless 911 costs. Such State assistance may be up to ninety (90) percent of the total amount of eligible costs to implement the enhanced wireless 911 plan approved pursuant to this Part. This funding is provided to encourage the rapid deployment of enhanced wireless 911. Expedited deployment funding will be provided to PSAPs for reasonable enhanced wireless 911 costs which conform to the FCC order. Funding will be provided to PSAPs based on need and readiness to receive and utilize enhanced wireless 911 information within 180 days of submission of the plan. Funding may be provided prospectively.

§ 5204.3. Time Frame for Submission of Plans.

The Board shall administratively establish and publicize a time frame for submission of plans, which shall be subsequent to its adoption of this Part.

§ 5204.4 Criteria for Approval of Plans.

(a) To be eligible for expedited deployment funding, a PSAP must:

(1) be operated by a local governmental entity other than the State Police; and

(2) be designated by resolution of a county governing board pursuant to County Law § 330(1)(b) to receive all wireless 911 calls within the county.

(b) Priority in approving plans will be given to those PSAPs which had not attained enhanced wireless 911 capability as of May 15, 2003.

§ 5204.5. Contents of Plans.

All plans submitted for expedited funding approval shall set forth the following:

(a) a timeframe for planned enhanced wireless 911 implementation;

(b) a list of all wireless service suppliers licensed to provide service in the county;

(c) a financial plan, including a summary of projected costs related to equipment purchase, installation and maintenance necessary to provide enhanced wireless 911 service;

(d) a list of specific projects eligible for expedited deployment funding contained in the financial plan;

(e) a description of technologies to be used to provide enhanced wireless 911 service;

(f) documentation supporting the PSAP's ability to receive and utilize enhanced wireless 911 information within one hundred eighty days of the submission of the plan;

(g) a resolution from the governmental entity supporting the local PSAP's request for expedited deployment funding;

(h) an inventory of the names and ages of all existing items of wireless equipment at the PSAP; and

(i) a statement setting forth the existing numerical volume of both hardwire and wireless 911 calls received during both the immediately preceding 12 months and the next preceding 12 months; and

(j) documentation sufficient to establish that at least ten (10) percent of eligible costs shall be funded and provided by the PSAP. Such local share may include in-kind costs.

§ 5204.6. Standards Governing Reasonable Eligible Wireless 911 Service Costs.

Items are eligible only insofar as they relate to the provision of enhanced wireless service.

(a) Eligible items:

(1) computer equipment;

(2) software;

(3) connection equipment (ANI & ALI);

(4) on-site equipment.

(b) Funding shall not be awarded for any items purchased prior to May 15, 2003.

(c) Funding shall not be awarded for:

(1) capital construction, other than costs incidental to the installation of eligible items;

(2) personal services; or

(3) training of personnel.

§ 5204.7. Standards Governing Repayment Provisions.

Within six months following receipt of funding, the local governmental entity operating the PSAP shall submit to the Board all receipts documenting approved expenditures, in a single package. Immediately upon receipt of notice by the Board of any unauthorized expenditure or undocumented funds, the entity operating the PSAP shall cease making unauthorized expenditures. Within 30 days following the Board's final determination that any expenditure is unauthorized or is not sufficiently documented, the PSAP shall refund such amount.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York Independent System Operator (NYISO) Procedures by Central Hudson Gas & Electric Corporation

I.D. No. PSC-05-04-00006-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, or modify, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 15—Electricity, to become effective April 15, 2004.

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

Subject: New York Independent System Operator (NYISO) procedures.

Purpose: To incorporate references to the NYISO and its established procedures.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson or the company) filed proposed revisions to P.S.C. No. 15—Electricity to become effective April 15, 2004. Central Hudson proposes to incorporate references to the New York Independent System Operator (NYISO) and its established procedures, particularly with respect to remedial measures required to be taken by the company, at the direction of the NYISO, for the security of the integrated power systems of the transmission owners.

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

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

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

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

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

(04-E-0028SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Future Role of Regulated Gas and Electric Utilities in Developing Energy Markets

I.D. No. PSC-05-04-00007-P

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

Proposed action: The commission intends to develop policies regarding: the future role of the regulated gas and electric utilities in developing energy markets, including provider of last resort responsibilities and the design of future rates; the future provision of low-income, research and development, energy efficiency and related public benefit programs; and, the removal of obstacles to the further development of competitive gas and electric markets.

Statutory authority: Public Service Law, sections 4, 5; art. 4, including sections 65, 65a, 65b, 66, 66a-66g, 69, 69a, 71-72a, 75-76; art. 6 including sections 106-108, 117-118

Subject: The commission intends to develop policies regarding: the future role of the regulated gas and electric utilities in developing energy markets, including provider of last resort responsibilities and the design of future rates; the future provision of low-income, research and development, energy efficiency and related public benefit programs; and, the removal of obstacles to the further development of competitive gas and electric markets.

Purpose: To define the services, products, and rate design for future offerings of the regulated utilities and establish or amend rules and procedures regarding the development of retail competition in the gas and electric markets.

Substance of proposed rule: Case 00-M-0504, Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, is intended to develop policies regarding the future role of the regulated gas and electric utilities in developing energy markets, including provider of last resort responsibilities and the design of future rates; the future provision of low-income, research and development, energy efficient and related public benefits programs, and the removal of obstacles to the development of competitive gas and electric markets.

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

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

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

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

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

(00-M-0504SA6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Property Tax Refunds by United Water New Rochelle, Inc.

I.D. No. PSC-05-04-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of United Water New Rochelle Inc. for treatment of excess of property tax refunds.

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

Subject: Property tax refunds.

Purpose: To resolve the treatment for excess property tax refunds.

Substance of proposed rule: The Commission is considering the petition of United Water New Rochelle Inc. for treatment of excess property tax refund. The company states that certain 2002 balances were netted to produce $753,272 to be refunded to customers through a credit on bills for the months of February, March, and April 2003. With the interest, the total refund amounted to $767,456. The company claims that its contractor for billing services mistakenly continued to apply the credit after April 30, 2003 until August 28, 2003. As a result, the company credited customers a total of $1,605,924.51 or $838,469 in excess of that intended.

To correct this error, the company proposes that the excess credit of $838,469 be applied to its second and third year property tax reconciliations. The Commission may approve, modify, or reject, in whole or in part the request of United Water New Rochelle Inc.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0001SA1)

Office of Real Property Services

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Assessors' Reports and Equalization Rates

I.D. No. RPS-05-04-00005-P

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

Proposed action: Amendment of Parts 186 and 193 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l), 575, 1314(2) and 1200

Subject: Assessors' reports and State equalization rates.

Purpose: To revise the assessors' report requirements, the definition of isolated properties for equalization studies and the standard for establishing segment equalization rates.

Public hearing(s) will be held at: 1:30 p.m., March 2, 2004 at Office of Real Property Services, 16 Sheridan Ave., Albany, NY.

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

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

Text of proposed rule: Section 1. Paragraph 126 of subdivision a of section 185-1.1 is amended to read as follows:

(126) Isolated property means [special franchise property, railroad ceiling property and taxable State land with the exception of special assessing units, beginning with the State equalization rates for the 1997 assessment roll of cities, towns and village assessing units whose boundaries are coterminous with the boundaries of a union free school district, and beginning with the State equalization rates for the 1998 assessment roll of all other villages, special franchise and ceiling railroad property shall not be isolated properties, and all additional] properties to be isolated [shall be] *in the particular market value surveys as* provided in the procedures established for the *market value* survey or surveys used for *the calculation of* State equalization rates, *class equalization rates or class ratios*.

Section 2. Subdivision a of section 186-5.5 is amended to read as follows:

§ 186-5.5 Limitations. (a) A segment special equalization rate shall not be established for the purposes of this Subpart if there would not be at least a 10 percent change in the share of the levy of at least one segment of the taxing jurisdiction as the result of the use of the segment special equalization rate in place of the equalization rate which would otherwise be used for purposes of apportionment. The change in shares will be determined by comparing the shares computed using the prior year assessed values and State equalization rates against the shares computed by substituting the segment special equalization rate at the prior year's level of assessment. Provided, however, this limitation shall not apply where a special equalization rate is determined for another segment within the same assessing unit or taxing jurisdiction pursuant to this subpart *or where a special equalization rate was established for that segment in the prior year and a change of 5 percent would occur for any segment in the taxing jurisdiction.*

Section 3. Section 193-4.1 is amended to read as follows:

Parts of the assessor's report.

(a) Part 1. Report of Total Assessed Value of Locally Assessed Properties and Taxable State Land

(b) Part 2. Detail List of Changes

(c) [Part 4. Report of Local Options Adopted for Various Exemptions

(d)] Part 6. List of Court-ordered (other than Small Claims Court) Adjustments in Assessments

[(e)] *(d)* Part 7. List of Corrections of Errors and Small Claims Court Adjustments

[(f) Part 9. Special Report for Solvay School District].

Section 4. Section 193-4.2 is amended to read as follows: Filing of the assessor's report. (a) Each assessing unit shall annually file the assessor's report with the State Office using:

(1) forms prescribed by the State Office;

(2) computer [tape] files (RPS210T1 and RPS220T1) and accompanying paper reports (RPS215P1 and RPS220P2) of the New York State Real Property System (RPS).

(3) [upon written approval of the, an alternate reporting method. No approval shall be granted unless:

(i) the request to use an alternate reporting method is made at least 30 days prior to the filing of the tentative assessment roll; and

(ii) such other alternative reporting method provides for the satisfaction of all the requirements of section 193-4.4 of this Subpart.] *for assessing units, other than special assessing units, not using RPS, computer files in the most recent RPS format. These files must meet all the requirements of section 193-4.4 of this Subpart.*

(4) Computer files must be transmitted by Internet, CD, DVD, diskette, zip disk or such other format which has received prior annual approval of the State Office.

(b) The assessor's report shall be filed:

(1) by the [Commission] *Commissioner* of Finance for the City of New York, who shall file a separate report for each borough;

(2) by the Chairman of the Nassau County Board of Assessors, who shall file a separate report for each city, town and village for which the county assesses;

(3) by the Tompkins County Director of Assessment, who shall file a separate report for each city, town and village for which the county assesses;

(4) by the town assessor for each village within such town that has adopted a local law as provided in subdivision 3 of section 1402 of the Real Property Tax Law; provided, however, that such report shall be submitted as part of the assessor's report for the town, and no separate report for the village will be required;

(5) by the assessor for each consolidated or coordinated assessing unit, who shall file a separate report for each assessing unit;

(6) in all other cities, towns and villages by the sole assessor of the city, town or village, or the chairman of the board of assessors or other member of the board of assessors designated by a majority of such board to file the assessor's report [except that Part 4 may be filed by the County Director where the assessing unit has granted permission for such filing in accordance with subdivision (c) of this section]; or

(7) the chief executive officer of the assessing unit or chairperson of the Board of Directors of a consolidated assessing unit in the event there is no assessor.

(c) For each assessing unit located in a county which has a real property tax services agency, a copy of the assessor's report shall be filed with the county director of real property tax services at the time that it is filed with the State Office.

[(d) An assessing unit located in a county which has a real property tax service agency may authorize the county director of the county in which the assessing unit is located to provide the data required on part 4 of the assessor's report (as set forth in section 193-4.4(d) of this Subpart) by filing a written authorization with the State Board signed by both the assessor and the county director. The authorization to file part 4 shall be made in writing, signed by both the assessor (or a majority of the board of assessors) and the county director, and shall be filed with the State Board on or before the first day of December. In any subsequent year, either the assessor, or county director, or a successor in office, may file a written statement with the other officer and the State Board withdrawing the authorization. Where such authorization is withdrawn, the assessor shall resume the responsibility for filing part 4 as provided in this Subpart.]

Section 5. Section 193-4.3 is amended to read as follows:

Time of filing of the assessor's report. (a) Parts 1 and 2 of the assessor's report shall be filed annually not later than 30 days following the receipt by the assessor(s) of the verified statement of changes in assessments made by the county, city or town board of assessment review pursuant to section 525 of the Real Property Tax Law or by the village board of assessment review pursuant to section 1408 of the Real Property Tax Law; provided, however, for the City of New York, Parts 1 and 2 shall be filed annually not later than 30 days following the receipt by the Commissioner of Finance of the notice of corrections in assessments made by the Tax Commission. Where a supplemental roll is filed pursuant to section 1335 of the Real Property Tax Law, a Part 1 and Part 2 shall be filed not later than [30] *15* days following the receipt by the assessor(s) of the verified statement of changes in assessments made by the county, city or town board of assessment review pursuant to subdivision 5 of section 1335 of the Real Property Tax Law. Such report shall provide the data required in section 193-4.4(a)-(c) of this Subpart using as the prior roll the final assessment roll completed prior to the filing of the supplemental assessment roll and using as the current roll the supplemental assessment roll.

(b) [Part 4 of the assessor's report shall be filed annually not later than December 1 when either of the following conditions is met.

(1) the assessing unit was not an assessing unit for the prior year's assessment roll; or

(2) a change to any of the information required to be filed pursuant to paragraph (4) of section 193-4.4(d) of this Title has occurred subsequent to the last filing of Part 4.

(c)] Parts 6 and 7 of the assessor's report are to be filed for each affected parcel within 30 days of the receipt of such court order, correction of error or small claim court by the assessor(s).

[(d) For all assessing units containing a piece of the Solvay School District, Part 9, if necessary, shall be filed annually not later than December 1.]

[(e)] *(d)* Failure to file any part of the assessor's report completed in satisfactory compliance with the provisions of this Subpart and within the times prescribed herein may be deemed a refusal or neglect to perform a duty or to do an act required of an assessing official by the Real Property Tax Law as to subject the assessing official to the penalty provided by section 216 of such law, as well as any other penalties prescribed by law.

Such a decision may be reached only after a hearing as prescribed in Part 187 of this Chapter.

Section 6. Subdivisions d and g of section 193-4 are repealed and subdivisions e and f are renumbered as d and e respectively.

Section 7. Paragraph 2 of subdivision e, renumbered subdivision d by section 6 of these amendments, of section 193-4, is amended as follows:

(2) a signed and dated [written] statement: "I (We) certify that the information contained in part 6 of this report constitutes a true statement of fact."

Section 8. Paragraph 2 of subdivision f of section 193-4, renumbered subdivision e by section 6 of these amendments, is amended to read as follows:

(2) a signed and dated [written] statement: "I(We) certify that the above changes were ordered by the Board of Assessment Review or Small Claims Court and that the changes so ordered were made to the final assessment roll."

Section 9. Section 193-4.5 is amended to read as follows:

Applicability. *The provisions of this Subpart shall apply to all assessor's reports filed for assessment rolls completed on or after January 1, 1996. The provisions of this Subpart, as revised by amendments approved by the State Board in 2003, shall apply to all assessment rolls completed on or after January 1, 2004.*

Text of proposed rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: jim.o'keeffe@orps.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory Authority: Section 202(1)(l) of the Real Property Tax Law (RPTL) authorizes the State Board of Real Property Services to adopt such rules "as may be necessary for the exercise of its powers and the performance of its duties."

Section 1206 of the RPTL allows for the filing of complaints by assessing units against tentative State equalization rates with the State Board.

Section 1208 of the RPTL provides for hearings on complaints against tentative State equalization rates.

2. Legislative Objectives: Timely and accurate State equalization rates and equitable apportionment of school taxes.

3. Needs and Benefits: Each year the State Board must establish over 1200 State equalization rates. A State equalization rate is the percentage of full value at which taxable real property is assessed on a particular municipal assessment roll (RPTL, § 102[19]). These rates are used to apportion taxes across municipal lines, such as where a school district is located in more than one city or town, and to measure relative municipal wealth for purposes such as State aid to education. State equalization rates must be established for each year's assessment roll of each assessing unit (RPTL, § 1202[1][a]).

In past years, tentative State equalization rates would be established in the fall of the year for assessment rolls completed that summer. Any complaints against those rates would be processed during the ensuing winter and spring. Final State equalization rates would then be available for the apportionment of school taxes on the next year's assessment roll in the succeeding August and September. This sequence is reflected in the provisions of Title 2 of Article 12 on special equalization rates and section 1314 on school tax apportionment.

Beginning with 1997 equalization rates, the Office of Real Property Services (NYSORPS) has implemented a series of improvements to the equalization program. The net result is that in August, 2003, final State equalization rates were available for those 2003 assessment rolls that were used in the apportionment and levy of 2003-2004 school taxes in August and September of 2003. Thus NYSORPS was able to provide timely accurate measurements of the level of assessment on current rolls. One aspect of this process is the statutory requirement that municipalities be given the opportunity to file complaints against tentative State equalization rates. Approximately 50 of the cities and towns whose 2003 assessment roll were used in the September levy of 2003-2004 school taxes filed such complaints and all were resolved in a timely manner. However, in prior years a much higher percentage of municipalities filed complaints. that provide

Thus each year assessors must provide the State with current assessment information (RPTL, § 575).

4. Costs: (a) To State Government: None. This amendment concerns existing State programs and does not expand their scope.

(b) To local governments: None. The requirements for submitting assessor's reports are in place. At present, 878 of the 992 assessing units affected by this proposal use RPS. Of the remaining 114, 74 use a private system (TSL) that is compatible with RPS. The remaining 40 assessing units have private systems with varying degrees of compatibility. Those assessing units that submit data in an electronic format other than RPS will have to either arrange with their vendors to use a different format or purchase the RPS software. The first alternative of arranging to change the existing format to be compatible would involve minimal, if any, expense. The second alternative of purchasing RPS would involve payment of the annual license fee provided in § 190-3, which currently ranges from $400 to $1,200, depending on the number of parcels in the municipality.

(c) To private regulated parties: None.

(d) Basis of cost estimates: The nature of the amendment.

5. Local Government Mandates: Submission of assessor's reports in the RPS format.

6. Paperwork: None. The filing requirements for these programs are contained in the existing rules. Deletion of part 4 of the assessor's report will reduce local "paperwork".

7. Duplication: There are no comparable State or Federal requirements.

8. Alternatives: Continuation of the filing of unnecessary information, inefficiencies at the State level due to multiple formats, and local tax shifts as segment rates are or are not issued from year to year.

9. Federal Standards: There are no Federal regulations concerning this subject.

10. Compliance Schedule: The changes to the assessor's report would first apply to 2004 assessment rolls.

Regulatory Flexibility Analysis

The amendments proposed would not impose any adverse economic conditions or any reporting, recordkeeping or other compliance requirements on small businesses. The rule imposes no additional recordkeeping or reporting requirements on local governments. The rule reduces some of the information required to be submitted by local governments. The rule does require use of particular formats for submitting material by local governments, which may require some expense for compliance.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this rule making because the amendments would not impose any adverse economic conditions, or any reporting, recordkeeping or compliance requirements on public or private entities in rural areas. It does require use of particular formats for existing reporting requirements by all local governments and reduces the amount of information to be submitted by all local governments.

Job Impact Statement

A job impact statement is not required for this rule making because the amendments only concern the internal operations of NYSORPS and existing filing requirements for local governments. The amendments thus have no impact on employment opportunities.