RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency

01 -the *State Register* issue number

96 -the year

00001 -the Department of State number, assigned upon receipt of notice

E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-15-05-00013-A
Filing No. 836
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-15-05-00013-P, Issue of April 13, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00002-A
Filing No. 840
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00002-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00003-A
Filing No. 843
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00003-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00004-A
Filing No. 844
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00004-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00005-A
Filing No. 835
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Law.

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00005-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00006-A
Filing No. 839
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00006-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00007-A
Filing No. 837
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the State University of New York.

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00007-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00008-A
Filing No. 845
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00008-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00009-A
Filing No. 846
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00009-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00010-A
Filing No. 847
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00010-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00011-A
Filing No. 850
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00011-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00012-A
Filing No. 842
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00012-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00013-A
Filing No. 841
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00013-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00014-A
Filing No. 838
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00014-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00015-A
Filing No. 848
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-15-00015-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00016-A
Filing No. 849
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Banking Department, Department of Correctional Services, Executive Department and Department of Labor.

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00016-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-05-00017-A
Filing No. 851
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-20-05-00017-P, Issue of May 18, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

Education Department

NOTICE OF CONTINUATION
NO HEARING(S) SCHEDULED

Examination and Residency Program Requirements for Dental Licensure

I.D. No. EDU-09-05-00013-C

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

The notice of proposed rule making, I.D. No. EDU-09-05-00013-P was published in the *State Register* on March 2, 2005.

Subject: Examination and Residency Program requirements for dental licensure.

Purpose: To implement the requirements of section 6604(3) and (4) of the Education Law by requiring applicants for dental licensure to complete an accredited dental residency program and eliminating the option of their completing a clinical examination in dentistry instead of a residency program, effective Jan. 1, 2007, and to establish a definition for an acceptable national accrediting body for dental residency programs.

Substance of rule: The proposed rule making is an amendment to sections 61.2 and 61.18 of the Regulations of the Commissioner of Education. In accordance with requirements in the Education Law, the amendment requires applicants for dental licensure to complete an accredited dental residency program and eliminates the clinical examination in dentistry, effective January 1, 2007. At present, the examination for dental licensure consists of three parts, two parts are written examinations, and the third part is an examination in clinical dentistry. As authorized by the Education Law, the existing regulation permits the applicant for dental licensure to complete an acceptable dental residency program in lieu of the examination in clinical dentistry. The change in the Education Law, effective January 1, 2007, eliminates the clinical examination in dentistry and requires the applicant to complete an accredited residency program acceptable to the State Education Department. The amendment implements this new requirement.

The amendment establishes in regulation a definition for an "acceptable national accrediting body" for dental residency programs. The amendment does not change the existing requirements that accredited dental residency programs must meet in order for them to be acceptable for purposes of dental licensure.

Changes to rule: No substantive changes.

Expiration date: March 2, 2006.

Text of proposed rule and changes, if any, may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Monetary Assessments of Schools

I.D. No. EDU-33-05-00014-P

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

Proposed action: Amendment of sections 126.10(j)(2)(i)(a), (j)(11) and 126.17(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 5001(1), (4)(e) and (f) and (9); and 5007(10) and (12)

Subject: Monetary assessments of licensed private schools, registered business schools/computer training facilities, and for-profit English as a Second Language (ESL) schools.

Purpose: To clarify the requirements for the monetary assessment of new schools and for-profit English as a Second Language (ESL) schools for the tuition reimbursement account and the proprietary vocational school supervision account.

Text of proposed rule: 1. Clause (a) of subparagraph (i) of paragraph (2) of subdivision (j) of section 126.10 of the Regulations of the Commissioner of Education is amended effective November 24, 2005, as follows:

(a) Schools shall apply for initial certification on an application form prescribed by the commissioner and shall submit with such application a nonrefundable and nontransferable $250 certificate fee [and a nonrefundable and nontransferable initial certification assessment for the tuition reimbursement fund as prescribed in paragraph (11) of this subdivision].

2. Paragraph (11) of subdivision (j) of section 126.10 of the Regulations of the Commissioner of Education is amended effective November 24, 2005, as follows:

(11) Supervision *account* and tuition reimbursement account assessments.

(i) The commissioner shall annually assess each school an assessment equal to [two-tenths] *five-tenths* of one percent of its gross tuition, as determined by the audited statement of revenue or unaudited statement of revenue, as required by this subdivision, [which] *of which three-tenths of one percent shall accrue to the benefit of the tuition reimbursement account and two-tenths of one percent* shall accrue to the benefit of the proprietary vocational school supervision account.

(ii) . . .

(iii) For ESL schools in operation in the year prior to the issuance of their [license or registration] *certification*, such annual assessments prescribed in this paragraph shall begin in their initial year of [licensure or registration] *certification*, based on the schools' gross tuition from such previous year. *For new ESL schools, the commissioner shall base the assessments prescribed in this paragraph on the annualized gross tuition of the school computed by the department from financial reports from the school as required by the department, and the assessments shall be prorated based upon the number of quarters that the school has operated in the assessment year.*

(iv) . . .

3. Subdivision (c) of section 126.17 of the Regulations of the Commissioner of Education is repealed and a new subdivision (c) of section 126.17 is added, effective November 24, 2005, as follows:

(c) New schools. For new schools, the commissioner shall base the assessments for the tuition reimbursement account and the proprietary vocational school supervision account, pursuant to sections 5001(9) and 5007(10) of the Education Law, on the annualized gross tuition of the school computed by the department from financial reports from the school as required by the department, and the assessments shall be prorated based upon the number of quarters that the school has operated in the assessment year.

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 5001 of the Education Law requires private schools, registered business schools, or computer training facilities which charge tuition or fees for instruction and are not exempt by Article 101 of the Education Law to be licensed or registered by the State Education Department.

Paragraph (e) of subdivision (4) of section 5001 of the Education Law requires private schools and registered business schools to submit such certified statistical reports and annual financial statements as required by the Commissioner of Education.

Paragraph (f) of subdivision (4) of section 5001 of the Education Law authorizes the Commissioner of Education to issue regulations which define alternative licensing requirements for for-profit English as a Second Language Schools.

Subdivision (9) of section 5001 of the Education Law authorizes the Commissioner of Education to annually assess each school a total percentage of that school's gross tuition, as determined by the annual financial statement or annual audited financial statement, for the supervision fund and the tuition reimbursement fund.

Subdivision (10) of section 5007 of the Education Law establishes additional requirements for the management of the tuition reimbursement account, including additional assessments for the tuition reimbursement account and additional requirements for the transfer and deposit of funds in the proprietary vocational school supervision account.

Subdivision (12) of section 5007 of the Education Law authorizes the Commissioner of Education to assess new schools for the tuition reimbursement fund in an amount to be determined by the Commissioner.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by setting forth requirements for the monetary assessment of new schools for the tuition reimbursement account and the proprietary vocational school supervision account and requirements for the assessment applicable to for-profit English as a Second Language (ESL) Schools.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to clarify the requirements for the monetary assessment of new schools and for-profit English as a Second Language (ESL) Schools for the tuition reimbursement account and the proprietary vocational school supervision account.

The amendment specifies in regulation the existing method that the State Education Department uses for assessing new schools for the tuition reimbursement account and the proprietary vocational school supervision account. It provides that new schools will be assessed based upon the annualized gross tuition of the school computed by the State Education Department from financial reports from the schools as required by the Department. It also provides that the assessment will be prorated based upon the number quarters that the school has operated in the assessment year. The amendment clarifies the existing requirement and represents no change from current practice.

The amendment is also needed to clarify the regulation requirements for the annual assessment of for-profit ESL schools. It clarifies the existing assessment requirement by specifying the specific percentage of gross tuition for each account. Specifically, the regulation provides that each school will be annually assessed an assessment equal to five-tenths of one percent of its gross tuition, of which three-tenths of one percent shall accrue to the benefit of the tuition reimbursement account and two-tenths of one percent shall accrue to the benefit of the proprietary vocational school supervision account. This amendment represents no change in current practice for the assessment of for-profit ESL schools.

4. COSTS:

(a) Costs to State government: It is not expected that the proposed amendment will impose any additional costs on State government.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments.

(c) Costs to private regulated parties. The amendment is clarifying in nature and specifies existing procedures for the monetary assessment of new schools and ESL schools for the tuition reimbursement account and the proprietary vocational school supervision account.

(d) Costs to the regulatory agency: As stated above, the proposed amendment will not impose any additional costs on State government, including the State Education Department. The amendment specifies existing requirements for the assessment of new schools and ESL schools.

5. LOCAL GOVERNMENT MANDATES:

The amendment will not impose any program, service, duty, or responsibility upon local government.

6. PAPERWORK:

The proposed amendment does not impose any additional recordkeeping or reporting requirements on schools.

7. DUPLICATION:

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

8. ALTERNATIVES:

The amendment clarifies the regulation in conformance with existing procedures for the monetary assessment of schools for the tuition reimbursement account and the proprietary vocational school supervision account. Because of the nature of the proposed amendment, no alternatives were available and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the assessment of schools for the tuition reimbursement account and the proprietary vocational school supervision account.

10. COMPLIANCE SCHEDULE:

The proposed amendment will be effective on its effective date. No additional period of time is needed to enable regulated parties to meet the requirements.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF THE RULE:

This rule may affect all new schools that seek to be registered or licensed under Article 101 of the Education Law. Each year, approximately, 40 new schools are registered or licensed. Almost all are expected to be small businesses. In addition, the rule will affect all for-profit English as a Second Language (ESL) Schools. They number 41 of which the Department estimates all are small businesses.

2. COMPLIANCE REQUIREMENTS:

The amendment specifies in regulation the existing method that the State Education Department uses for assessing new schools for the tuition reimbursement account and the proprietary vocational school supervision account. It provides that new schools will be assessed based upon the annualized gross tuition of the school computed by the State Education Department from financial reports from the schools as required by the Department. It also provides that the assessment will be prorated based

upon the number of quarters that the school has operated in the assessment year. The amendment clarifies the existing requirement and represents no change from current practice.

The amendment also clarifies the requirements for the assessment of for-profit English as a Second Language (ESL) Schools and all new schools for the tuition reimbursement account and the proprietary vocational school supervision account. The amendment clarifies the existing assessment requirement for ESL schools by specifying the specific percentage of gross tuition for each account. Specifically, the regulation provides that each school will be annually assessed an assessment equal to five-tenths of one percent of its gross tuition, of which three-tenths of one percent shall accrue to the benefit of the tuition reimbursement account and two-tenths of one percent shall accrue to the benefit of the proprietary vocational school supervision account. This amendment represents no change in current practice for the assessment of for-profit ESL schools.

The amendment imposes no additional recordkeeping or reporting requirements on schools.

3. PROFESSIONAL SERVICES:

The proposed amendment will not require schools to obtain professional services in order to comply.

4. COMPLIANCE COSTS:

The amendment will not impose any additional initial capital costs. The proposed change represents a clarification of existing procedures. It will not impose any additional operating costs on schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on small businesses. As stated above, the amendment will not impose any additional costs. Therefore, implementation of the amendment is economically feasible.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment sets forth in regulation the methodology for the monetary assessment of new schools and for-profit ESL schools for the tuition reimbursement account and the proprietary vocational school supervision account. The proposal makes no exception for schools that are classified as small businesses. The State Education Department believes that uniform procedures are required, regardless of the size of the school, to ensure that each school is fairly assessed in accordance with statutory requirements.

7. SMALL BUSINESS PARTICIPATION:

The State Education Department posted the proposed regulation on its web site and asked for comments from all interested parties including those that may represent small businesses. The Department sent the proposed amendment to the Proprietary School Advisory Council, which is a group the advises the State Education Department regarding issues relating to private schools, registered business schools/computer training facilities, and ESL schools. The Council includes membership that owns or manages proprietary schools that are small businesses. In addition, the Department sent the proposal to professional school associations that represent among others proprietary schools that are small businesses. Each group was given an opportunity to comment on the proposed regulation.

(b) Local Governments:

The proposed amendment relates to assessments for licensed private schools, registered business schools, computer training facilities and for-profit ESL schools. It is clear from the nature of the proposed amendment that it does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on local governments. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The rule will apply to all rural areas, including the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. This rule will affect all new schools that seek to be registered or licensed under Article 101 of the Education Law. Each year, approximately 40 new schools are registered or licensed. Of these, the Department estimates that about five will be located in a rural area of the State. In addition, the rule will affect all for-profit English as a Second Language (ESL) Schools, which number 41. Of these, one is located in a rural area of New York State.

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

The amendment specifies in regulation the existing method that the State Education Department uses for assessing new schools for the tuition reimbursement account and the proprietary vocational school supervision account. It provides that new schools will be assessed based upon the annualized gross tuition of the school computed by the State Education Department from financial reports from the schools as required by the Department. It also provides that the assessment will be prorated based upon the number quarters that the school has operated in the assessment year. The amendment clarifies the existing requirement and represents no change from current practice.

The amendment also clarifies the requirements for the assessment of for-profit English as a Second Language (ESL) Schools and all new schools for the tuition reimbursement account and the proprietary vocational school supervision account. The amendment clarifies the existing assessment requirement for ESL schools by specifying the specific percentage of gross tuition for each account. Specifically, the regulation provides that each school will be annually assessed an assessment equal to five-tenths of one percent of its gross tuition, of which three-tenths of one percent shall accrue to the benefit of the tuition reimbursement account and two-tenths of one percent shall accrue to the benefit of the proprietary vocational school supervision account. This amendment represents no change in current practice for the assessment of for-profit ESL schools.

The amendment does not impose additional recordkeeping or reporting requirements on schools beyond those already in place, and does not require schools to hire professional services in order to comply.

3. COSTS:

The proposed amendment does not impose any initial capital costs or any additional annual costs on any public or private entities located in rural areas, including schools.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment sets forth in regulation the methodology for the assessment of new schools and for-profit ESL schools for the tuition reimbursement account and the proprietary vocational school supervision account. The proposal makes no exception for schools that are located in rural areas of the State. The State Education Department believes that uniform procedures are required, regardless of the location of the school, to ensure that each school is fairly assessed in accordance with statutory requirements. Because of the nature of the proposed rule, alternative approaches for schools located in rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Education Department posted the proposed regulation on its web site and asked for comments from all interested parties, including those that are located in rural areas of New York State. The Department sent the proposed amendment to the Proprietary School Advisory Council, which is a group the advises the State Education Department regarding issues relating to private schools, registered business schools/computer training facilities, and for-profit ESL schools. The Council includes membership that owns or manages proprietary schools that are located in all areas of the State, including rural areas. In addition, the Department sent the proposal to professional school associations that represent among others proprietary schools that are located in rural areas of New York State. Each group was given an opportunity to comment on the proposed regulation.

Job Impact Statement

The proposed amendment clarifies the requirements in Commissioner's regulations for the monetary assessment of new schools and for-profit English as a Second Language (ESL) Schools for the tuition reimbursement account and the proprietary vocational school supervision account. The amendment sets forth in regulation the existing method that the State Education Department uses for assessing new schools for the tuition reimbursement account and the proprietary vocational school supervision account. For for-profit ESL schools, it clarifies the existing requirement by specifying the percentage of gross tuition applicable for each account. The proposal does not change existing requirements or procedures.

Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Evaluation of a Prior Disciplinary History

I.D. No. EDU-33-05-00015-P

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

Proposed action: Amendment of section 24.6 and Part 28 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6504 (not subdivided); 6506(1), (6)(h) and (10); and 6507(5)

Subject: Procedures for the evaluation of a prior disciplinary history for authorization to practice a licensed profession.

Purpose: To establish procedures for the State Education Department's evaluation of an applicant's prior disciplinary history in another jurisdiction to determine whether the applicant is qualified to practice a licensed profession in New York State under title VIII of the Education Law.

Text of proposed rule: 1. Section 24.6 of the Rules of the Board of Regents is amended, effective November 24, 2005, as follows:

24.6 Review of questions of moral character *and evaluation of prior disciplinary history.*

The Committee on the Professions shall review and determine questions of moral character, *and evaluate and determine an applicant's qualifications to practice the licensed professions based upon a prior disciplinary history,* in accordance with the provisions of Part 28 of this Title.

2. Part 28 of the Rules of the Board of Regents is amended, effective November 24, 2005, as follows:

PART 28

[DETERMINATION OF GOOD MORAL CHARACTER IN THE PROFESSIONS]

PROCEEDINGS TO DETERMINE GOOD MORAL CHARACTER AND TO EVALUATE PRIOR DISCIPLINARY HISTORY FOR AUTHORIZATION TO PRACTICE THE LICENSED PROFESSIONS

SUBPART 28-1

DETERMINATION OF GOOD MORAL CHARACTER FOR AUTHORIZATION TO PRACTICE THE LICENSED PROFESSIONS

[28.1] *28-1.1* . . .
[28.2] *28-1.2* . . .
[28.3] *28-1.3* . . .
[28.4] *28-1.4* . . .
[28.5] *28-1.5* . . .
[28.6] *28-1.6* . . .
[28.7] *28-1.7* . . .
[28.8] *28-1.8* . . .

SUBPART 28-2

EVALUATION OF PRIOR DISCIPLINARY HISTORY FOR AUTHORIZATION TO PRACTICE THE LICENSED PROFESSIONS

28-2.1 Prior Disciplinary History. For purpose of this Subpart, prior disciplinary history means:

(a) While engaged in practice in another jurisdiction, the applicant has been subject to disciplinary action by a duly authorized professional disciplinary agency of such other jurisdiction, where the conduct upon which the disciplinary action was based would, if committed in New York State, constitute practicing the profession beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion under the laws of New York State; or

(b) While engaged in practice in another jurisdiction, the applicant has voluntarily or otherwise surrendered his or her professional license in another jurisdiction after a disciplinary action was instituted by a duly authorized professional disciplinary agency of such other jurisdiction, based on conduct that would, if committed in New York State, constitute practicing the profession beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion under the laws of New York State.

28-2.2 Purpose.

The purpose of this Subpart is to establish procedures by which the department shall evaluate the prior disciplinary history, as defined in section 28-2.1 of this Subpart, of an applicant in order to determine whether the applicant is qualified to practice a licensed profession under Title VIII of the Education Law.

28-2.3 Information.

All information indicating that an applicant has a prior disciplinary history shall be referred to the director of the Office of Professional Discipline or his or her designee.

28-2.4 Investigation.

The director of the Office of Professional Discipline, or his or her designee, shall arrange for a full and complete investigation of the circumstances surrounding a prior disciplinary history. If it is determined that a reasonable question exists as to the applicant's qualifications to practice a licensed profession based upon the applicant's prior disciplinary history, then the director, or his or her designee, shall submit the results of the investigation, including any letters of reference from peers or others which may have been submitted by the applicant, to a panel of the appropriate professional State Board for its review. The panel shall consist of three or more members of the State Board.

28-2.5 Review.

Upon such review, the panel, by majority vote, may conclude in favor of the applicant to the effect that the applicant's qualifications to practice a licensed profession based upon a prior disciplinary history are adequate, thereby fulfilling the licensure, endorsement, or permit requirement, and the applicant and the director of the Division of Professional Licensing Services shall be notified of such conclusion by the Office of Professional Discipline. If, upon such review, the panel concludes, by a majority vote, that a substantial question exists as to the applicant's qualifications to practice a licensed profession based upon his or her prior disciplinary history, the applicant shall be notified thereof. Upon the written request of the applicant, within 30 days after receipt of such notice, the department shall schedule a hearing on such question.

28-2.6 Hearing.

(a) The applicant shall be given 15 days notice, by mail, of the time and place of the hearing and a statement of the matters asserted which raised the question of the applicant's qualifications to practice a licensed profession based upon his or her prior disciplinary history.

(b) The applicant may be represented at the hearing by an attorney, may cross-examine witnesses, may produce witnesses, and except as limited in this subdivision may present evidence on the conduct underlying the applicant's prior disciplinary history. In cases in which the applicant in his or her prior disciplinary history has been found guilty of professional misconduct, or has admitted such guilt, and has had an opportunity for a hearing in the other jurisdiction, the evidence in the hearing in this proceeding shall be limited to a consideration of whether the conduct for which the applicant has been found guilty or admitted guilt is sufficiently egregious to result in a denial of authorization to practice the licensed profession in New York State, and whether the prior disciplinary action constitutes a prior disciplinary history as defined in section 28-2.1 of this Subpart.

(c) The hearing, at which a verbatim record shall be taken, shall take place before a panel consisting of three or more members of the appropriate professional State Board, and before an administrative officer admitted to practice as an attorney in the State of New York, designated by the department. Such administrative officer shall have authority to rule on all motions, procedures and other legal objections, but shall not be entitled to vote in the determination of the panel.

(d) The determination of the panel shall be made by a majority vote of the panel and shall be rendered in a written report which shall be drafted by the administrative officer, shall reflect the determination and recommendations of the panel, and shall be subject to the approval of and signature by the panel chairperson on behalf of the panel. Copies of the report shall be forwarded to the director of the Division of Professional Licensing Services and to the applicant.

28-2.7 Appeal.

The applicant or the director of the Office of Professional Discipline may appeal the determination of the panel relating to the applicant's qualifications to practice a license profession based upon his or her prior disciplinary history by filing a written notice of appeal therefrom with the Committee on the Professions within 30 days after service of the report of the panel upon the party taking the appeal. In the event no appeal is taken from the determination of the panel, the determination of the panel shall be final. In the event either party appeals from the determination of the panel, the appellant may submit a brief to the Committee on the Professions and the opposing party within 30 days after filing the notice of appeal. An answering brief may be filed by the opposing party with the Committee on the Professions within 20 days after the receipt by the opposing party of the brief submitted by the appellant. The Committee on the Professions may affirm, reverse or modify the determination of the panel and/or make such other determination as it may deem just and proper under the circumstances. The determination of the Committee on the Professions shall be final and copies thereof shall be forwarded to the applicant and to the director of the Office of Professional Discipline.

28-2.8 Reapplication.

Whether or not the applicant appeals from the determination of the panel, the applicant may reapply for licensure, endorsement, or permit to the director of the Division of Professional Licensing Services after the expiration of 18 months from the date of service of the report of the panel.

28-2.9 Proficiency examination.

If the Committee on the Professions determines that the applicant is otherwise qualified to practice a licensed profession based upon his or her prior disciplinary history, but has failed to remain current with developments in the profession, and a substantial question is presented as to the applicant's current fitness to enter into the active practice of the profession, the Committee on the Professions may require that the applicant take and obtain satisfactory grades on a proficiency examination satisfactory to the department prior to the issuance of a license, endorsement, or limited permit.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules in the supervision of the admission and practice of the professions.

Paragraph (h) of subdivision (6) of section 6506 of the Education Law, as added by Chapter 239 of the Laws of 2004, requires the Board of Regents to evaluate the prior disciplinary history of an applicant seeking the endorsement of a license of another jurisdiction to practice in New York State.

Subdivision (10) of section 6506 of the Education Law authorizes the Board of Regents to delegate to State Education Department officers the disposition of any licensing matters pursuant to rules.

Subdivision (5) of section 6507 of the Education Law, as added by Chapter 239 of the Laws of 2004, requires the State Education Department to evaluate the prior disciplinary history of an applicant for a license or limited permit in the licensed professions and authorizes the Department to deny licensure or the issuance of a limited permit based upon the applicant's prior disciplinary history.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statutes in that it implements the statutory requirement that the State Education Department must evaluate the prior disciplinary history of the applicant for admission to practice a licensed profession under Title VIII of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish the procedures for the State Education Department's evaluation of an applicant's prior disciplinary history in another jurisdiction to determine whether the applicant is qualified to practice a licensed profession in New York State under Title VIII of the Education Law. The amendment is needed to implement the requirement of sections 6506(6)(g) and 6507(5), as added by Chapter 239 of the Laws of 2004. These statutory provisions require the State Education Department to evaluate an applicant's prior disciplinary history in another jurisdiction, as such history is defined in statute, and authorizes the Department to deny licensure, endorsement of a license, or the issuance of a limited permit based upon the applicant's prior disciplinary history.

The amendment is needed to establish procedures the Department will use to evaluate an applicant's prior disciplinary history in another jurisdiction. It establishes due process procedures, including a hearing and appeal process, that would be available to the applicant when the Department determines that there is a substantial question as to the applicant's qualifications for licensure based upon his or her prior disciplinary history.

The amendment also authorizes the Committee on the Professions to participate in the process for determining an applicant's qualifications to practice the licensed professions based upon a prior disciplinary history. The Committee on the Professions would be the appeal entity to which the applicant or the Director of the Office of Professional Discipline may appeal the determination of the hearing panel, in accordance with the provisions of Part 28 of the Regents Rules. This is the same function the Committee on the Professions serves in good moral character proceedings for the licensed professions.

4. COSTS:

(a) Costs to State government. The amendment establishes due process procedures when a substantial question exists as to the applicant's qualifications for licensure based upon his or her prior disciplinary history, including hearing and appeal procedures. There will be additional costs to the State Education Department for proceedings that result in a hearing. Based upon State Education Department's experience with good moral character proceedings in the professions, which are similar, the Department estimates that the cost of each hearing will be about $5,000 to cover the costs of panel member participation as well as stenographic costs and State Education Department staff costs. The Department expects that no more than three hearings per year will have to be conducted, for a total additional cost of about $15,000 per year. The State Education Department expects that the additional costs for the hearings will be absorbed by existing resources of the Department. In addition, the Department expects that existing staff and resources will be used to implement the other procedural provisions of the regulation.

(b) Cost to local government. None.

(c) Cost to private regulated parties. The proposed regulation does not impose additional costs on applicants for licensure or limited permits. The amendment does not require such applicants to pay any additional fees.

(d) Cost to the regulatory agency. The additional costs to the State Education Department associated with the proposed amendment are stated above in Costs to State government.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns the qualifications for authorization to practice a licensed profession under Title VIII of the Education Law and does not impose any program, service, duty, or responsibly upon local governments.

6. PAPERWORK:

The amendment establishes a number of paperwork requirements in the proceedings to evaluate the prior disciplinary history of an applicant for licensure. It requires the applicant to request in writing a hearing within 30 days after receipt of a notice that a substantial question exists as to the applicant's qualifications to practice a licensed profession based upon his or her prior disciplinary history. It also provides that the applicant may appeal the determination of the hearing panel by filing a written notice of appeal with the Committee on the Professions within 30 days after service of the report of the panel upon the applicant.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered. The Department modeled these proceedings on the good moral character proceedings for the professions.

9. FEDERAL STANDARDS:

There are no Federal standards for evaluating prior disciplinary history for authorization to practice a licensed profession, the subject matter of this regulation.

10. COMPLIANCE SCHEDULE:

The proposed amendment implements statutory requirements. It is effective on the amendment's effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment establishes due process procedures for the State Education Department's evaluation of an applicant's prior disciplinary history in another jurisdiction to determine whether the applicant is qualified to practice a licensed profession in New York State under Title VIII of the Education Law. The amendment is applicable to individuals who are seeking licensure in all professions regulated under Title VIII of the Education Law. It establishes due process procedures, including a hearing and appeal process, that would be available to the applicant when the Department determines that there is a substantial question as to the applicant's qualifications for licensure based upon his or her prior disciplinary history. It will not impose any reporting, recordkeeping, or other compliance requirements, or any adverse economic impact on small businesses or local governments.

Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The rule will apply to all applicants for authorization to practice a licensed profession in New York State who have a prior disciplinary history in another jurisdiction, including those who live in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties of New York State with a population density of 150 per square mile or less.

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

The amendment is needed to implement the requirements of sections 6506(6)(g) and 6507(5) of the Education Law, which require the State Education Department to evaluate the prior disciplinary history in another jurisdiction of an applicant seeking authorization to practice a licensed profession, and authorizes the Department to deny such authorization based upon the applicant's prior disciplinary history. The amendment establishes due process procedures, including a hearing and appeal process, that would be available to the applicant when the Department determines that there is a substantial question as to the applicant's qualifications to practice a licensed profession based upon his or her prior disciplinary history.

Specifically, the amendment establishes deadlines and procedures for an applicant to request a hearing if the State Education Department determines that a substantial question exists as to the applicant's qualifications for licensure based upon his or her prior disciplinary history. The applicant must request the hearing in writing within 30 days after receipt of the notice of the substantial question. The amendment also establishes procedures for the hearing and requirements for the evidence that may be presented at the hearing.

The amendment establishes procedures for an appeal of the hearing panel decision to the Committee on the Professions. The applicant or the Director of the Office of Professional Discipline may appeal the determination of the panel by filing a written notice of appeal with the Committee on the Professions within 30 days after service of the report of the panel upon the party taking the appeal. It also establishes timeframes for the submission of briefs to the Committee.

The amendment provides that an applicant may reapply for licensure to the Director of the Division of Professional Licensing Services after the expiration of 18 months from the date of service of the report of the hearing panel, whether or not the applicant appeals from the determination of the panel. In addition, in prescribed cases, the amendment permits the Committee on the Professions to require the applicant to pass a proficiency examination prior to the issuance of a license or a limited permit.

The proposed amendment does not impose additional reporting requirements other than those relating to the due process provisions described above, and does not impose any recordkeeping requirements. The proposed amendment does not impose a need for professional services.

3. COSTS:

The proposed regulation does not impose additional costs on applicants for licensure or limited permits. The amendment does not require such applicants to pay any additional fees.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements statutory requirements that make no exception for individuals who live in rural areas. The Department has determined that the requirements should apply to all individuals seeking to practice a licensed profession who have a disciplinary history in another jurisdiction, no matter their geographic location in New York State, to help to ensure that all applicants are qualified for professional licensure. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing parties having an interest in professional licensure. Included in this group were the Executive Secretaries of all of the State Boards for the professions licensed under Title VIII of the Education Law and approximately 50 professional associations whose members are licensees in these professions. These entities have members who live or work in rural areas. Each entity has been provided notice of the proposed rule making and opportunity to comment.

Job Impact Statement

The proposed amendment establishes procedures for the State Education Department's evaluation of an applicant's prior disciplinary history in another jurisdiction to determine whether the applicant is qualified to practice a licensed profession in New York State under Title VIII of the Education Law. The amendment implements statutory provisions that require the State Education Department to evaluate the applicant's prior disciplinary history in another jurisdiction. The amendment will have no effect on the number of jobs and employment opportunities in the licensed professionals because it simply establishes a procedure for evaluating an applicant's prior disciplinary history.

Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Managed Harvest for Beaver, River Otter, Mink and Muskrat

I.D. No. ENV-33-05-00016-P

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

Proposed action: Amendment of sections 6.1 and 6.2 of Title 6 NYCRR.

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

Subject: Managed harvest for beaver, river otter, mink and muskrat.

Purpose: To establish beaver, river otter, mink and muskrat trapping seasons.

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

(1) Beaver.

Open season	*Wildlife management units*
Closed	*1A, 1C, 2A*
November 25 to December 31	*3R, 3S*
November 25 to March 15	*3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4A, 4B, 4C, 4F, 4G, 4H, 4J, 4K, 4L, 4M, 4N, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4X, 4Y, 4Z, 5K, 5N, 5P, 5R, 6R, 6S*
Last Saturday in October to March 31	*5A, 5C, 5F, 5G, 5H, 5J, 6F, 6J, 6N*
Last Saturday in October to April 15	*6A, 6C, 6H*
Second Saturday in November to March 31	*6G, 6K*
November 25 to third Sunday in April	*6P, 7A, 7F, 7H, 7J, 7M, 7R, 7S*
Third Saturday in January to February 15	*8T, 8W, 8X, 8Y*
Third Saturday in December to January 1	*8A, 8C, 8F, 8G, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 9A, 9C, 9F, 9G, 9H*
Third Saturday in December to second Sunday in March	*9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, 9Y*

(2) Otter.

Open season	*Wildlife management units*
November 25 to December 31	*3R, 3S*
November 25 to March 15	*3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4B, 4C, 4J, 4K, 4L, 4M, 4S, 4T, 4U, 4Y, 4Z, 5N, 5P*
Last Saturday in October to March 31	*5A, 5C, 5F, 5G, 5H, 5J, 6F, 6J, 6N*
Last Saturday in October to April 15	*6A, 6C, 6H*
Second Saturday in November to March 31	*6G, 6K*
Closed	*1A, 1C, 2A, 3A, 4A, 4F, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 5K, 5R, 6P, 6R, 6S, 7A, 7F, 7H, 7J, 7M, 7R, 7S, 8A, 8C, 8F, 8G, 8H, 8J, 8K, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9A, 9C, 9F, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, 9Y*

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

Paragraph 6.2(a)(1) is REPEALED and new Paragraph 6.2(a)(1) is adopted to read as follows:

(1) Mink and muskrat.

Open season	*Wildlife management units*
December 15 to February 25	*1A, 1C, 2A*

November 25 to March 15	*3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4A, 4B, 4C, 4F, 4G, 4H, 4J, 4K, 4L, 4M, 4N, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4X, 4Y, 4Z, 5K, 5N, 5P, 5R, 6R, 6S*
November 25 to February 15	*6P, 7F, 7H, 7J, 7M, 7R, 7S, 8A, 8C, 8F, 8G, 8H, 8J, 8K, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9A, 9C, 9F, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, 9Y*
October 25 to April 15	*5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K, 6N, 7A*

Paragraph 6.1(a)(2) to end remain unchanged.

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

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

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

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

Regulatory Impact Statement

1. Statutory Authority

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

2. Legislative Objectives

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

3. Needs and Benefits

Beaver and otter season changes are made to facilitate desirable harvest levels. The Department annually estimates the beaver harvest needed to meet beaver population objectives for each wildlife management unit (WMU). The population objectives are based on: (1) the benefits derived from wetland habitat created by beaver, and (2) an assessment of public tolerance for beaver activities. The remaining criteria for season setting include considerations of fur harvester preferences, pelt value, recreational opportunity, and trapping conditions within each WMU. The specified opening and closing dates established for the 2005-2006 seasons address those considerations.

The proposed seasons will maintain beaver population levels at or close to desirable levels. In establishing dates for the 2005-2006 trapping season, the Department consolidated opening and closing dates whenever possible, especially in contiguous wildlife management units. The consolidation of seasons will enhance both compliance with and enforcement of beaver and otter trapping regulations.

In some areas of New York State, the 2005-2006 beaver seasons are nearly identical to the 2004-2005 seasons, including the Great Lakes Plain of western New York, Hudson River Valley, Catskills, and the St. Lawrence Valley of northern New York. (Minor calendar date adjustments have been made in season dates to adopt weekend opening/closing date conventions.) In northern New York, proposed season changes reflect an attempt to balance two objectives: 1) to consolidate seasons in contiguous and ecologically similar WMUs and 2) to provide additional trapping opportunity during open water conditions in an area of the state with long winters. In order to meet both objectives, the proposed changes include an additional 19 days of trapping in the Central Adirondacks (WMU 6J, 5F, and 5H) and Tug Hill (WMU 6N), an additional 5 days of trapping in the Champlain Valley (WMU 5A, 5G, and 5J), and a 14 day reduction in the trapping season in the Northern Adirondacks (WMU 6F and 5C). (Uniform closing dates are proposed whenever practical as an aid in the Department's law enforcement activities.)

Because beaver populations are expected to exceed the management objective in the fall of 2005, the trapping seasons are proposed to be lengthened (number of additional season-days in parentheses) in the following 4 areas of the state: (1) the Oswego Lowlands, Oneida Lake Plains, and East Appalachian Plateau of central New York (WMU 7A, 7F, 7J, 7H, 7M, 7R, 7S, and 6P), including parts of Oswego, Onondaga, Oneida, Cayuga, Madison, Chenango, Cortland, Tompkins, Tioga, and Broome counties (32 days), (2) the Northern Taconic Highlands of eastern New York (WMU 5N, 5P, 4C, 4L, and 4M), including parts of Washington and Rensselaer counties (93 days), (3) the East Ontario Plain and Tug Hill Transition (WMU 6G and 6K), including parts of Jefferson, Oneida, Oswego, and Lewis counties (19 days), and (4) the Central Appalachian Plateau (WMU 8T, 8W, 8X, and 8Y), including parts of Allegany, Steuben, Schuyler, and Chemung counties (10 days). These changes are supported by reports of beaver damage, or aerial surveys of beaver colonies, or both. In the case of the longer beaver trapping season in Washington and Rensselaer counties, aerial surveys conducted during the fall of 2005 showed populations substantially higher than the management objective (0.41 beaver colonies per square mile versus the management objective of 0.20 colonies per square mile). A longer trapping season is needed to stabilize this population.

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

Otter occur in similar habitats as beaver. Where otter numbers are adequate to sustain harvest, their seasons are set concurrent with the beaver season because they may be taken in a trap set for beaver. Concurrent season dates also facilitate law enforcement activities. The areas open for otter trapping include all of northern New York, and parts of eastern New York, including the Hudson River Valley, the Taconics, and the southern portion of the Department's Region 3. In areas closed to otter trapping in the Southern Zone, beaver trappers using "330-sized" body-gripping traps are now required to use traps equipped with a tension adjustable/parallel trigger, thereby reducing the incidental taking of otter in areas where their populations are inadequate to sustain harvest.

Finally, a simplification of the mink and muskrat trapping seasons is proposed. At the present time, the trapping season in WMUs 5H, 5F, 5C, 6F, and 6J is October 25-April 10. The trapping season in all adjoining units is October 25-April 15. This rulemaking would change the dates to October 25-April 15 in all Northern Zone WMUs, a gain of five days of trapping opportunity. Trappers in the affected WMUs traditionally favor later spring trapping seasons for aquatic animals, such as mink and muskrat. Because of typical winter conditions, much of the mink and muskrat trapping season occurs when it is very difficult to gain access to mink and muskrat habitat. The proposed change will give trappers five days of opportunity under favorable trapping conditions.

4. Costs

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

5. Local Government Mandates

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

6. Paperwork

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

7. Duplication

There are no other local, state or federal regulations concerning the taking, possession, transporting, or disposal of furbearing animals.

8. Alternatives

An alternative to making the proposed changes is to leave the regulations intact. However, this would make it more difficult to appropriately manage beaver and river otter populations. It would perpetuate an unnecessarily complicated season structure for mink and muskrat in the Northern Zone.

9. Federal Standards

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

10. Compliance Schedule

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

Regulatory Flexibility Analysis

This proposed rulemaking will revise regulations concerning beaver, river otter, mink and muskrat trapping seasons. The Department of Environmental Conservation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on small businesses or local governments. The proposed regulations do not apply directly to local governments. Few, if any, persons actually trap as a means of employment; therefore the regulations do not directly apply to small businesses. However, even for a trapper who does pursue trapping as a means of income, the proposed regulations will benefit any such small business by helping to ensure that the beaver and otter populations in New York remain healthy. The proposed regulations are not expected to significantly change the number of participants or the frequency of participation in the regulated activities.

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

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

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

This proposed rulemaking will revise regulations concerning beaver, river otter, mink and muskrat trapping regulations for the 2005-06 trapping season. The Department of Environmental Conservation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually trap as a means of employment. Trappers will not suffer any substantial adverse impact as a result of this proposed rulemaking because it is not expected to significantly change the number of participants or the frequency of participation in the regulated activities. For this reason, the Department anticipates that this rulemaking will have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

Department of Health

EMERGENCY RULE MAKING

Laboratory Confirmed Influenza

I.D. No. HLT-33-05-00003-E
Filing No. 832
Filing date: July 29, 2005
Effective date: July 29, 2005

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

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

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

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

Specific reasons underlying the finding of necessity: Influenza causes respiratory illness affecting 5% to 20% of the U.S. population each year. Complications of influenza can be severe and lead to pneumonia, exacerbation of chronic medical conditions or death. The incidence of influenza is typically reduced by the widespread availability of influenza vaccine. The U.S. influenza vaccine supply for the 2004-05 influenza season has been reduced by half due to manufacturing problems. This season's shortage of influenza vaccine underscores the urgent need for public health officials to track the disease.

The typical New York State influenza season runs from October to March. As of January 7, 2005, 8 hospitals and 165 nursing home nosocomial outbreaks of influenza in the state have already been reported to the New York State Department of Health. The Centers for Disease Control and Prevention (CDC) monitors state influenza activity levels based on CDC defined criteria. Since December 11, 2004, influenza activity in New York State has been "widespread," meaning there is increased influenza-like illness (ILI) and/or institutional outbreaks (ILI or laboratory-confirmed) reported in at least half of the regions. New York State was the first state in the nation to report widespread activity this season.

The new reporting requirements will enable the NYSDOH to have more comprehensive and complete information on influenza cases and will permit the NYSDOH to systematically monitor influenza activity. This finer level of detail will enable us to detect earlier the geographic and temporal occurrence of influenza cases throughout the state. With time, we will be able to do season-to-season comparisons of the number of cases reported, by county and statewide, which will improve assessments of yearly variations in influenza activity. Moreover, if there is a pandemic or a novel or severe strain of influenza is detected, the enhanced data will permit decisions about disease control efforts to be made on a timely and more accurate basis. All of this information is of critical public health importance and will permit the State and local health departments to channel limited vaccines, anti-viral agents, and public health resources to those in greatest need during an influenza outbreak.

By adopting this rule, laboratory-confirmed influenza will be added to the list of communicable diseases. Immediate adoption of this rule is necessary for accurate identification and monitoring of laboratory-confirmed influenza.

Subject: Addition of laboratory-confirmed influenza to the communicable disease reporting list.

Purpose: To have more comprehensive and complete information on influenza cases and permit the State and local health departments to channel limited vaccines, anti-viral agents and public health resources to those in greatest need during an influenza outbreak.

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

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

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commis-

sioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

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

* * *

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 October 26, 2005.

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:

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

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding laboratory-confirmed influenza to reportable disease requirements, thereby permitting enhanced monitoring of disease, prompt identification of unusual strains of influenza or dramatic increases in disease reporting that might indicate an influenza pandemic, and authorizing isolation and quarantine measures, if necessary, to prevent further transmission.

Needs and Benefits:

A. Background

Influenza is an orthomyxovirus causing respiratory illness affecting 5% to 20% of the U.S. population each year. It is readily transmitted from person to person via respiratory droplets and contaminated surfaces. Persons may be able to infect others beginning one day before developing symptoms and up to seven days after onset of symptoms. Influenza can lead to severe complications including bacterial pneumonia, dehydration and worsening of chronic medical conditions, such as congestive heart failure, asthma or diabetes.

It is estimated that 1 to 3.8 million New York State residents are infected with influenza annually, resulting in approximately 13,000 hospitalizations and 2,350 deaths among New York State residents each year. During the 2003-2004 influenza season, there were reports from other states of increased pediatric deaths due to influenza. In New York State, reporting of pediatric deaths began mid-season and eight pediatric deaths were reported.

The New York State influenza season typically runs from October through March and as of January 7, 2005, 8 hospitals and 165 nursing homes in the state have reported nosocomial outbreaks of laboratory-confirmed influenza and 56 counties have indicated there is influenza in the community.

The spread of influenza may be prevented or significantly slowed by timely vaccination with the influenza vaccine. New York State, like the nation, has been faced with a severe vaccine shortage this year due to manufacturing problems. Approximately 6.5 million New Yorkers (2.7 million in New York City and 3.8 million in New York State, exclusive of New York City) have been identified as high priority for influenza vaccination this season according to October 5, 2004, national guidelines (these individuals include adults 65 years old and above, children 6 to 23 months old, pregnant women, persons with certain chronic diseases, caregivers of children less than 6 months old, and health care workers with direct patient contact). As a result of the vaccine shortage, more New York State residents than usual will not receive the vaccine and will be more likely to be susceptible to infection and illness, including hospitalization and death, and potentially transmit influenza to others who will be similarly susceptible.

In addition to the need to detect and target limited vaccine supplies and antiviral agents to those most at risk from an outbreak of influenza, public health officials are concerned about the growing potential for an international influenza pandemic and are particularly alarmed by the growing number of Asian countries that have reported outbreaks of highly pathogenic avian influenza in chickens and ducks, which has the capacity to jump the species barrier and cause severe disease, with high mortality, in humans.

Historically, influenza surveillance in New York State has relied on a variety of disparate, predominantly voluntary, reporting systems. These

systems include: voluntary reporting by 13 virology labs in the state (because the patient's county of residence is not reported, information on geographic areas impacted in the state is lacking); voluntary weekly reporting of influenza-like illness, by age group, by 77 upstate and 45 New York City providers through the Sentinel Physician Influenza Surveillance (because other respiratory viruses are circulating and reports are not laboratory-confirmed, this system lacks specificity for influenza); and nosocomial outbreak reporting by hospitals and nursing homes as required by public health regulations.

The addition of laboratory-confirmed influenza to the State Sanitary Code will greatly enhance influenza reporting and surveillance efforts and enhance State and local health department abilities to target vaccine supplies and anti-viral agents when necessary. This regulation will permit the Department to require reporting from all disease reporters subject to Part 2 of the Sanitary Code. It is our intent to implement it by requiring reporting from a subset of these reporters unless disease outbreak conditions indicate the need for widespread reporting. This will permit adequate disease monitoring under current conditions without unnecessarily burdening the disease reporting system.

B. Reporting of Laboratory-Confirmed Influenza: Rationale for a Targeted Implementation Approach

Estimated Number of Laboratory-Confirmed Influenza Reports

As previously mentioned, approximately 1 million to 3.8 million New York State residents contract influenza annually. Not all persons with influenza seek medical attention, and not all persons with influenza who seek medical attention are tested for influenza. Given this reality, if it is conservatively assumed that 1 million New Yorkers will contract influenza and it is further assumed that only 5% of New Yorkers infected with influenza in a given year are tested and have positive results, approximately 50,000 laboratory and subsequent communicable disease reports would be generated yearly in New York State, including New York City. Clearly the estimate would be much higher, if the upper estimate of 4 million residents contracting influenza were used.

An alternative approach is to base New York's expected experience on Colorado which implemented influenza reporting in 2001 and received about 13,000 influenza laboratory reports annually.

Extrapolating Colorado's experience to New York, it is estimated that New York State, including New York City, would receive approximately 55,000 reports annually.

Based on these calculations, it seems reasonable to assume that approximately 50-55,000 cases of laboratory-confirmed influenza cases are possible in a given year in New York State.

Impact on Providers, Laboratories and Local Health Department (LHDs).

If reporting of laboratory-confirmed influenza is fully implemented, health care providers and laboratories will have to report the cases to the LHD, and the LHD, in turn, will have to report them to the New York State Department of Health (NYSDOH). All positive results reported to the LHD will be investigated, as is done with the other diseases on the communicable disease list in 10 New York Codes, Rules and Regulations (NYCRR) Section 2.1. The total number of communicable disease reports investigated would more than double from 30,000 statewide to the 80-85,000 reports, based on estimates in the previous section. The sheer volume of reports, during the six-month influenza season, and especially during periods of widespread influenza activity, would place an undue burden on providers, LHDs and the NYSDOH. Extra staff may have to be hired in order to generate, transmit, receive, and manage the tens of thousands of reports. While full reporting may be needed under certain conditions, *e.g.*, if there is an avian influenza outbreak, the Department is presently planning on using a more targeted implementation.

At present, there are 219 laboratories currently offering influenza rapid testing and/or viral culture in New York State. Required laboratory data can be transmitted to the NYSDOH and LHDs through hard copy reports or, more recently, through an electronic clinical laboratory reporting system (ECLRS). ECLRS was implemented in New York State in 2001 on a voluntary basis and currently 94 out of the 219 laboratories offering influenza testing participate.

The objective of ECLRS is to automate the laboratory reporting process and, thereby, decrease the staff time required to submit the information and also improve the timeliness of reports. The ECLRS system automatically sorts the data by program area and disease and then routes the data to the proper local health department for follow-up. The NYSDOH provides laboratories with access to the ECLRS system at no cost. There are initial costs to laboratories such as internet access, Laboratory Information System (LIS) vendor support for possible file creation, and information technology at the laboratory. Minimal costs are incurred by NYSDOH.

Laboratories that are most efficiently and economically equipped to report influenza results are those that not only participate in ECLRS but also electronically upload daily test results (versus manual entry), and use a coding schema called Logical Observation Identifiers Names and Codes (LOINC). LOINC utilizes universal identifiers for laboratory and other clinical observations and automatically routes the test results to the appropriate disease control program. Twenty-five out of the 94 laboratories participating in ECLRS meet these criteria. Limiting the implementation of laboratory-confirmed influenza reporting to these 25 laboratories, at this time, maximizes the number of reports the NYSDOH will receive, while significantly diminishing the burden this requirement places on all providers, other laboratories, local health departments, and the NYSDOH. It should be noted that two of the 25 laboratories are large commercial laboratories that report 76% of all electronically reported communicable diseases; it is estimated that these two laboratories would report 42,000 influenza results with limited fiscal impact. The large sample of laboratory-confirmed influenza cases is sufficient for determining geographic and temporal trends.

C. Summary Description of Targeted Implementation Approach:

1) Laboratory-Confirmed Influenza Reporting through ECLRS using LOINCS Coding. At least during the current influenza season, data reporting efforts will focus on laboratories that are reporting through the NYSDOH ELCRS using the file upload method and necessary LOINC coding system. At this time, medical providers do not need to report individual cases of influenza or submit a confidential case report (DOH-389) to the local health department except for pediatric influenza-related deaths (see #2 below). The data obtained will be useful for determining geographic and temporal trends.

The following two surveillance systems will assist in determining the severity of disease.

2) Pediatric deaths due to suspected or confirmed influenza: Medical providers shall report suspect or confirmed cases of fatal influenza in patients less than 18 years of age by telephone to the local health department.

3) Weekly Reporting of the number of patients hospitalized with laboratory-confirmed influenza: Hospitals shall report the number of confirmed influenza cases by age group among hospitalized patients. Reporting is to occur electronically via the Health Emergency Response Data System (HERDS) each Wednesday for the previous week ending Saturday midnight. This should include both community-acquired and nosocomial cases of influenza. The age groups are aggregated into the following categories: 0-23 months, 2 to 18 years, 19 to 64 years and greater than 64 years.

Costs:

Costs to Regulated Parties:

The addition of all laboratory-confirmed influenza to the listing of reportable diseases could result in approximately 50-55,000 laboratory-confirmed influenza reports in New York State, including New York City. If fully implemented, the cost of this requirement will be moderate to significant, depending on the extent of each year's outbreak and the need to hire additional staff.

At this time, the Department plans to require reports of laboratory-confirmed influenza cases from (1) clinical laboratories that participate in ECLRS, electronically upload data and use LOINC coding; (2) clinicians who diagnose pediatric deaths, and (3) hospitals (most likely the infection control staff) that will report the number of persons with laboratory-confirmed influenza each week. The justification and cost analysis for each is discussed below.

1. Clinical laboratories will be required to report if they are enrolled in ECLRS, electronically upload data files and use LOINC coding. Limiting this reporting requirement to the 25 such laboratories maximizes the number of reports the NYSDOH will receive (at least 48,000), while significantly diminishing the burden this requirement places on laboratories, local health departments and the NYSDOH. Because these laboratories already report through this existing electronic system, the cost will be minimal to the laboratories to make the modest programming changes required.

2. Providers will be required to report suspected or confirmed influenza-associated pediatric deaths. Influenza-associated pediatric deaths received considerable attention last year, prompting the federal Centers for Disease Control and Prevention to request state and local health departments to report influenza-associated death in persons less than 18 years of age. Most of the children who died last year were less than 5 years of age.

Because no similar national data were collected previously, any change in the number of pediatric deaths is unknown. With the increased reports of pediatric deaths in 2003, the Council of State and Territorial Epidemiologists approved a resolution to add pediatric influenza-associated deaths to the list of nationally notifiable conditions in June 2004.

Since only eight pediatric deaths were reported in NYS, including NYC, in 2003-2004, it is not anticipated that this reporting requirement will place an undue burden on providers.

3. Hospitals will be required to report the number of hospital admissions related to laboratory-confirmed influenza using the Health Emergency Response Data System (HERDS). HERDS is a secure data system designed to allow the NYSDOH to identify and monitor select public health incidents as they occur in hospitals. The NYSDOH used HERDS for disease surveillance and control for the first time last year to monitor pediatric influenza morbidity and mortality. HERDS is provided free of charge to hospitals by NYSDOH. All hospitals have access to HERDS and experience using it. It is anticipated that reporting of influenza confirmed hospital admissions through HERDS will have a negligible impact on hospitals. Only weekly reporting of aggregate data by age groups will be requested from hospital infection control practitioners, i.e., individual case reports are not being requested.

Costs to Local and State Governments:

The staff who will be involved in reporting and tracking influenza at the State and local health departments are the same as those currently involved with other communicable diseases listed in 10 NYCRR Section 2.1. If reporting requirements were implemented across all providers, additional staff would need to be hired. The time expended by a local health department to investigate an influenza case is estimated to be at least 15 minutes to receive the report, obtain any missing information, and enter the report into the surveillance data system. Based on this estimate, it would add 18,000 person-hours to complete the additional reports. The equivalent of a public health representative (grade 16) would be needed to complete the investigation (90% of the estimated time 16,200 hours) and a keyboard specialist (grade 6-9) would be needed to data enter the report (10% of the estimated time 1,800 hours).

Targeted implementation should have a minimal impact on local and state governments associated with these requirements since the reports submitted through ECLRS are automatically generated into reports, hospital admissions are reported electronically through HERDS, and pediatric deaths are few in number. Case investigations would be done on pediatric deaths only, which are anticipated to be very low in number. Hospitalizations and laboratory-positive reports would not have case investigations conducted by the LHD.

By monitoring and preventing the spread of influenza, savings may include reducing costs associated with public health control activities, morbidity, treatment and premature death.

Costs to the Department of Health:

The NYSDOH already checks communicable disease reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of laboratory-confirmed influenza to the list of communicable diseases should not lead to substantial additional costs. Even if fully implemented across all providers, existing staff should be able to handle the workload. Targeted implementation will require some modifications by the NYSDOH to the electronic database querying systems, but the work required should be limited in scope and time required and will be handled by existing staff.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to and is already used by regulated parties. The DOH-389 and an approximately 2-page supplemental CDC form will be used only on pediatric deaths. Reporting of hospitalizations will use an electronic data entry screen on HERDS for aggregate reporting.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports of laboratory-confirmed influenza will be required to immediately forward such reports to the State Health Commissioner. Targeted implementation will require the local health officer to forward only reports received from physicians in attendance on cases of pediatric death associated with laboratory-confirmed influenza.

Duplication:

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

Alternatives:

Voluntary reporting is existing practice in New York State. However, recent experience during the influenza vaccine shortage and concern about an influenza pandemic make reporting of cases of laboratory-confirmed influenza of critical importance to public health. Laboratories in twenty-eight states are legally required to report influenza. In addition, 16 states currently require reporting of pediatric deaths and 3 states mandate reporting of hospital admissions with laboratory-confirmed influenza.

Federal Standards:

Currently there are no federal standards requiring the reporting of all influenza. The Centers for Disease Control and Prevention (CDC), and the Council of State and Territorial Epidemiologists (CSTE) recommend the reporting of pediatric deaths caused by influenza.

Compliance Schedule:

Reporting of laboratory-confirmed influenza will be mandated upon filing of a Notice of Emergency Adoption of this regulation with the Secretary of State and made permanent by publication of a Notice of Adoption of this regulation in the New York *State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

This proposed rule will apply to physicians, hospitals, nursing homes, diagnostic and treatment centers and clinical laboratories. There are approximately 65,000 licensed and registered physicians in New York State; it is not known how many of them practice in small businesses. There are 219 laboratories currently offering influenza rapid testing and/or viral culture in New York State. Three hospitals, 100 nursing homes, 237 diagnostic and treatment centers, and 25 or fewer laboratories offering influenza testing employ less than 100 persons and qualify as small businesses.

Full implementation would require reporting of laboratory confirmed influenza by all such entities to the local health department in New York City and in the other 57 counties of the State.

Targeted implementation will minimally impact clinical laboratories since, at this time, it would be limited to laboratories that participate in ECLRS, electronically upload data files and use LOINC coding. The effect of targeted implementation on other small businesses (hospitals, clinics, nursing homes, and physicians) should be moderate given that hospitals will need to report weekly through HERDS. There should be little impact on small businesses and local governments from reporting pediatric deaths since they are very limited in number.

Compliance Requirements:

Existing reporting forms will be revised. Clinical laboratories that are small businesses will utilize the revised NYSDOH electronic reporting format.

Professional Services:

If this requirement is fully implemented, additional professional staff might be required on a seasonal basis to complete the required forms manually and mail to the local health department. The need for additional staff would be dependent on the extent of each year's outbreak.

No additional professional services will be required for targeted implementation since certified laboratories participating in ECLRS, electronically uploading data files, and using LOINC codes are expected to be able to utilize existing staff to report laboratory-confirmed influenza.

Compliance Costs:

No initial capital costs of compliance are anticipated.

If fully implemented, the cost of complying with required reporting will be dependent on the extent of the outbreak and include staff time to complete the necessary forms and mail to the respective local health department.

The reporting of laboratory-confirmed influenza by certified laboratories that already participate in ECLRS and electronically upload data files will not result in significant compliance costs.

Reporting of pediatric deaths or influenza hospital admissions should have a negligible to modest effect on the estimated cost of disease reporting by hospitals.

The annual cost of compliance will be determined by the extent of any outbreak.

Minimizing Adverse Impact:

The NYSDOH recognizes the workload and cost involved if all aspects of the requirement to report laboratory confirmed influenza were implemented because of the potential volume of reports.

Use of existing data collection and reporting systems (hardware and staff) will minimize adverse impact. In addition, targeted implementation will also minimize adverse impacts by limiting the reporting of laboratory-confirmed influenza cases to clinical laboratories that currently participate in ECLRS, electronically upload data files and use LOINC coding, providers reporting pediatric deaths, and hospitals reporting the number of hospital admissions for laboratory-confirmed influenza.

The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

Economic and Technological Feasibility:

Use of existing reporting systems makes this proposal technologically feasible. Targeted implementation at this time, will ensure economic feasibility. It is anticipated that the reporting requirement will be fully implemented only if disease conditions require it.

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

The proposed rule will apply statewide. It is assumed that the distribution of laboratory-confirmed influenza will be approximately the same across the state (proportional to the population density), although outbreaks do occur at varying times and in differing locations throughout the state throughout the influenza season of October to March.

Compliance Requirements:

Compliance requirements are the same in rural areas as those in all other areas of the state. Existing reporting forms will be revised. Clinical laboratories will use the revised NYSDOH electronic reporting format.

Professional Services:

If this requirement is fully implemented, additional professional staff may need to be hired on a seasonal basis to complete the required forms and mail to the county health department. The targeted implementation of this requirement should not result in the need for additional professional services; rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information. The annual cost of compliance will be determined by the extent of any outbreak.

Minimizing Adverse Impact:

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

Rural Area Input:

The New York State Association of County Health Officers (NYSACHO), including representatives of rural counties, has been informed about this change and has voiced no objections.

Job Impact Statement

This regulation adds laboratory-confirmed influenza to the list of diseases that clinical laboratories, clinicians, and hospitals must report to public health authorities. If fully implemented, these facilities may need to increase staff on a seasonal basis. Targeted implementation should not significantly increase the demands on existing staff nor increase the need to hire additional staff for laboratories, hospitals, and providers. The NYSDOH has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Part-Time Clinics

I.D. No. HLT-32-04-00007-RXC

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

Revised action: Amendment of sections 703.6 and 710.1 of Title 10 NYCRR.

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

Subject: Part-time clinics.

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

Expiration date: November 9, 2005.

Text of revised rule: Section 703.6 is repealed and a new section 703.6 is added to read 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 and HIV screening), preventive health care and other public health initiatives (such as HIV services), 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, an individualized residential alternative, congregate living arrangements, (not including 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 such part-time clinic is operated as part of an approved State Department of Health public health initiative. A part-time clinic also shall not be located in space which is part of another facility licensed under Article 28 of the Public Health Law, unless such part-time clinic is operated as part of an approved State Department of Health public health initiative, or in space which is part of the private office of a health care practitioner or group of practitioners licensed by the State Education Department.

(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;

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

(vii) the annual aggregate number of part-time clinic services (based on the number of visits) already provided by the applicant and the percentage such visits represent of all outpatient visits provided by the applicant, the number of visits anticipated to be provided at the new part-time clinic and the impact such new site will have on the percentage of the applicant's total annual outpatient visits that will be part-time clinic visits.

(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. To request approval, the operator shall submit to the department, for the site of relocation, change in hours of operation 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);

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

(iv) the type of information concerning the volume of visits as required under subparagraph (1)(vii) of this subdivision.

(3) After initiating patient care services, the operator shall give written notification, including a closure plan acceptable to the department, to the Director of the Bureau of Hospital and Primary Care Services 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 (1) 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 August 15, 2000, 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 requirements in effect at that time 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, within 30 days of receipt of such denial submit to the department and obtain written approval of a closure plan consistent with the provisions of paragraph (3) of this subdivision for the expeditious termination of services at the site. Notwithstanding any other provision of this section, the operator of such part-time clinic site shall cease providing services at and close such site within 60 days of receipt of the notice of denial to continue operation regardless of whether a plan of closure has been approved by the department.

(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 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) standards for maintaining asceptic conditions including the provision and storage of sterile supplies; sterilization equipment as necessary; disposal of contaminated supplies, equipment and medical waste; sharps disposal; and hand washing;

(iv) the prohibition of smoking within the facility;

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

(vi) a fire plan consistent with local laws;

(vii) training and education of staff in fire safety, evacuation and emergency procedures specific to each site, including those policies established by the building owner or operator;

(viii) 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;

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

(x) utilization review;

(xi) 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

(xii) 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; and

(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) Environment. The operator shall ensure that:

(1) the site is located in a building that complies with all applicable building construction and fire safety regulations and is acceptable to the local authority having jurisdiction, as evidenced by a valid Certificate of Occupancy or other written documentation;

(2) exits and access routes to exits are readily identified and accessible to patients and staff during all hours of occupancy or operation;

(3) continuous lighting, including provisions for emergency lighting in the event of electrical power interruptions, is provided for all exit route components and signage, during all hours of occupancy or operation;

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

(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.

(f) Limitation on the size of part-time clinic programs. An operator of part-time clinic sites shall limit the size and scope of its total part-time clinic program and operations so that the annual aggregate number or amount of outpatient services (based on the number of visits) provided by an operator at all of its part-time clinic sites in the aggregate does not exceed 20 percent of all outpatient services visits provided by such operator at all of its Article 28 sites, so that at least 80 percent of all outpatient visit services provided by such operator must be provided at its main site of operation and/or approved extension clinics. Operators of part-time clinics who are not in compliance with the requirements of this subdivision on the effective date of this subdivision shall have ninety days from such effective date within which to come into full compliance with such requirements.

(g) 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] *section 703.6* 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:

(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, change hours of operation 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. If a proposal requests approval for an arrangement or services that are not permissible for a part-time clinic, the proposal will not be accepted for processing under this section.

Revised rule compared with proposed rule: Substantial revisions were made in section 703.6.

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised 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 payers.

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 that require specialized equipment, such as magnetic resonance imaging or dialysis, nor may they provide invasive treatment procedures that 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, until the issuance of emergency regulations in August 2000, the subsequent opening of individual clinic sites 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 minimal requirements in section 703.6, which were in effect prior to the adoption of the emergency regulations in August 2000, which encouraged the provision of needed services, also led, unfortunately, to the delivery of services in locations and on a scale not intended for part-time clinics. Some providers, for example, set up part-time clinics in sites such as adult homes and patients' private residences and in other settings not sanctioned under the current emergency and proposed permanent regulations. Other operators of part-time clinics offered services far more elaborate than the low-risk screening and basic care procedures to which part-time clinics are restricted. For other clinics, the billing of large volumes of less costly therapy services at part-time sites may have resulted in payments to some operators that exceeded costs.

With large part-time clinic networks (one network had over 600 sites), there were issues of service quality and patient safety in settings that lacked appropriate medical supervision and staff support and which did not meet operational and environmental requirements. The delivery of services under these circumstances posed a threat to patient safety and demanded the issuance of new rules on an emergency basis. The regulations proposed here are intended to make permanent the stricter oversight of part-time clinics afforded by the emergency regulations currently in effect.

Emergency regulations addressing part-time clinics were first adopted effective August 15, 2000. A series of emergency adoptions have retained these regulations in effect subsequent to this date.

The proposed permanent rules would 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 set forth 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, including private residences and apartments, adult homes, community residences, individualized residential alternatives, and offices of private physicians;
- 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 for part-time clinics, including requirements for quality assurance and improvement and for credentialing of staff;
- a limitation on the volume of services that an operator may provide through part-time clinics;
- a requirement for prior limited review of new part-time clinic sites and proposed relocations of existing clinics;
- recognition that part-time clinics operated by city and county health departments are governed by Section 614 of the Public Health Law.

The proposed rules will apply to all existing part-time clinics as well as to all future sites.

The Department acknowledges that the exclusion of certain categories of sites for the delivery of part-time services may appear unduly restrictive to providers who wish to make services accessible to populations that lack access to conventional health care settings (for example, the homeless). However, the Department notes that the proposed rules allow the Commissioner of Health to waive one or more provisions of section 703.6 if the granting of a waiver would enable at-risk or medically underserved patients to obtain needed care and services that would otherwise be unavailable or difficult to access. Because of this waiver provision, the Department does not anticipate that the restrictions on acceptable sites set forth in the proposed permanent section 703.6 will impede access to needed care for underserved or at-risk groups.

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.

Costs to State and Local Government:

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 the location, hours of operation and services offered at any part-time clinic operated by the city or county health department in the previous calendar year. This information would be only a minor update to the Municipal Public Health Services Plan submitted by the city or county pursuant to section 602 of the Public Health Law.

Costs 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 Department 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 of the operator of the part-time clinic will be responsible for filing requests for approval to operate specific sites under the limited prior review process. The Department has attempted to limit the paperwork burden of this requirement by developing a standardized format for such submissions, which may be filed electronically. The Department 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.

City and county health departments will experience a minimal amount of additional paperwork in submitting annually to the Department information on the location, hours of operation and services offered of any part-time clinic they have operated in the preceding calendar year.

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 the prior permanent 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-review CON applications.

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 proposed regulations will go into effect upon publication of a Notice of Adoption in the New York *State Register*.

Revised Regulatory Flexibility Analysis

Although the regulation has been changed since it was published in the *State Register* on August 11, 2004, the changes do not necessitate any changes to the Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Although the regulation has been changed since it was published in the *State Register* on August 11, 2004, the changes do not necessitate any changes to the Rural Area Flexibility Analysis.

Revised Job Impact Statement

Although the regulation has been changed since it was published in the *State Register* on August 11, 2004, the changes do not necessitate any changes to the Job Impact Statement.

Assessment of Public Comment

Overall, the comments on the proposed permanent version of the part-time clinic regulation related to the differences between it and the emergency version of the part-time clinic regulation that was adopted initially in 2000. A total of 581 written comments were received from individuals and organizations during the 45-day public comment period which expired on September 27, 2004. A majority of the comments were submitted on behalf of individuals with developmental disabilities. Some individuals and organizations commented on issues associated with the use of the part-time clinic designation for the provision of services in private practitioners' offices.

As a majority of the comments were submitted on behalf of individuals with developmental disabilities, the issues and responses to those issues follow.

Issue:

The part-time clinic regulations discriminate against individuals with developmental disabilities. Specifically, the provision which cites the elimination of physical therapy, occupational therapy, speech therapy, audiology and prenatal care as well as the limitation of visits to one or two in this setting was cited as restricting access to health care services for this population.

Response:

The overall intent of the revision of the emergency part-time clinic regulations was to stress the original intent of the part-time clinic regulations, neither to discriminate against any group of individuals nor to eliminate access to necessary services. The original intent was to provide a way for all Article 28 providers to offer services related to specific, time-limited public health initiatives. However, the issues associated with licensure and certificate for therapy services for individuals with developmental disabilities has not yet been resolved. Therefore, the section referenced above has been deleted to allow the Department of Health additional time to resolve those issues.

Issue:

The availability of full-time clinics to provide needed services was cited as a concern.

Response:

There seems to be a misconception among Article 28 providers that the extension clinic designation requires full-time operation. That designation does not mandate a minimum or maximum number of hours of operation. Therefore, many of the clinics currently designated as part-time clinics may be eligible for conversion to extension clinics.

Issue:

If existing sites are required to close, the cost to the Medicaid program will increase due to loss of preventative health care and an increase in Medicaid transportation costs as individuals seek alternatives.

Response:

The regulations require the submission of a closure plan, to be reviewed by the Department of Health to ensure that patients are appropriately referred to other providers. If the Article 28 provider fails to comply with that requirement, it may be subject to enforcement sanctions.

Also, the Medicaid program currently pays for costs of appropriate and medically necessary transportation to clinics. There is no change as a result of the adoption of this regulation. However, the Department does acknowledge there may be some additional costs of transporting patients to another clinic site if the provider chooses not to seek the extension clinic designation. In addition, many part-time clinics have had a history of providing services in excess of medical need. When these clinics closed, the additional transportation cost associated with getting services at another site,

may be more than offset by a reduction in the amount of unnecessary care provided.

Issue:

The elimination of part-time clinics is inconsistent with the Olmstead decision.

Response:

The Olmstead decision indicates that care should be provided in the most integrated setting consistent with their needs. That does not require care be provided regardless of other rules and regulations. A clinic is supposed to provide an opportunity for all patients that wish to receive care to receive that care in an appropriately designed space for the category of service that is offered; further, those services should be open to the public. Many of the part-time clinics do not meet these requirements. There are no services that can be provided in part-time clinics, that cannot be provided in other clinic settings.

Issue:

The elimination of part-time clinics in the rural or semi-rural areas has a negative impact on access to services.

Response:

As previously indicated, the Article 28 provider may be eligible for designation as an extension clinic, if they qualify for that status. Many part-time clinics were set up in private practitioners offices in order for those providers to access the clinic rate (usually well over $100 per visit) instead of the lower private office visit fee.

In addition to those commenting on behalf of individuals with developmental disabilities, others expressed the following concerns:

Issue:

The elimination of the part-time clinic designation for services provided in physician offices would limit access to needed health care services.

Response:

This should not limit access to needed health care, since the private physicians may pursue enrollment as a Medicaid provider or Article 28 approval may be sought to provide necessary services in a different, but appropriate location.

Issue:

The limitation on the volume of services that can be provided under this designation was questioned.

Response:

The intent is to prevent a provider from using this part-time clinic designation to inappropriately offer a high volume of such services without providing the overall nature and mix of services that resulted in the original approval of the provider. If appropriate justification is provided, the Department has the option of waiving this requirement.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-52-04-00009-P	December 29, 2004
PSC-12-05-00006-P	March 23, 2005
PSC-16-05-00007-P	April 20, 2005
PSC-16-05-00008-P	April 20, 2005
PSC-16-05-00009-P	April 20, 2005
PSC-16-05-00010-P	April 20, 2005
PSC-17-05-00009-P	April 27, 2005
PSC-17-05-00010-P	April 27, 2005
PSC-21-05-00011-P	May 25, 2005
PSC-21-05-00012-P	May 25, 2005

NOTICE OF ADOPTION

Water Rates and Charges by High Meadows Water Company, Inc.

I.D. No. PSC-15-04-00032-A
Filing date: July 29, 2005
Effective date: July 29, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order in Case 04-W-0414 approving High Meadows Water Company, Inc.'s (High Meadows) request to revise its tariff schedule, P.S.C. No. 2—Water.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues.

Substance of final rule: The Commission approved the High Meadows Water Company, Inc.'s (High Meadows) request to increase its annual revenues by $21,504, or 50%, for the period August 1, 2005 through July 31, 2006 and directed the company to file revisions to implement the changes, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-W-0414SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Arbor Hills Waterworks, Inc.

I.D. No. PSC-34-04-00032-A
Filing date: July 27, 2005
Effective date: July 27, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order approving, with modifications, the petition of Arbor Hills Waterworks, Inc. to revise its tariff schedule, P.S.C. No. 3—Water.

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

Subject: Water rates and charges.

Purpose: To increase rates for water service.

Substance of final rule: The Commission authorized Arbor Hills Waterworks, Inc. (the company) to increase its annual revenues by $21,622 or 32.3%, and directed the company to file Third Revised Leaf No. 12 to its electronic tariff schedule, P.S.C. No. 3 – Water, to become effective August 1, 2005, and Escrow Statement No. 3 to P.S.C. No. 3 – Water which would raise its maximum quarterly replenishment of its escrow account to $100, to become effective August 1, 2005, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-W-0935SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Knolls Water Co., Inc.

I.D. No. PSC-34-04-00034-A
Filing date: July 29, 2005
Effective date: July 29, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order in Case 04-W-0937 approving a request by Knolls Water Co., Inc. (Knolls) to revise its tariff schedule, P.S.C. No. 3—Water.

Statutory authority: Public Service Law, section 89-c(1)

Subject: Water rates and charges.

Purpose: To increase annual revenues for water.

Substance of final rule: The Commission approved, with modification, the petition of Knolls Water Company, Inc. (Knolls) to increase its annual revenues by $3,426 or 6.3%, and directed Knolls to file tariff revisions to implement the change, to become effective August 1, 2005, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-W-0937SA1)

NOTICE OF ADOPTION

Submetering of Natural Gas by Quaker Crossing, LLC

I.D. No. PSC-52-04-00004-A
Filing date: July 29, 2005
Effective date: July 29, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order in Case 04-G-1457 approving the petition of Quaker Crossing, LLC (Quaker Crossing) to submeter gas at Kohl's Department Store, Orchard Park, NY.

Statutory authority: Public Service Law, section 65(1), (2), (3), (4), (5), (8), (9), (10), (12) and (14)

Subject: Request to submeter gas.

Purpose: To submeter gas to a commercial customer.

Substance of final rule: The Commission approved a request by Quaker Crossing, LLC to submeter gas at Kohl's Department Store, Orchard Park, New York, in the territory of National Fuel Gas Distribution Corporation.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-G-1457SA1)

NOTICE OF ADOPTION

Surcharge by Aquarion Water Company of New York

I.D. No. PSC-03-05-00030-A
Filing date: July 27, 2005
Effective date: July 27, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order in Case 04-W-1628 approving the petition of Aquarion Water Company of New York to implement a surcharge to recover the increased costs of purchased water.

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

Subject: Implementation of a surcharge.

Purpose: To recover amounts associated with increased costs of purchased water.

Substance of final rule: The Commission authorized Aquarion Water Company of New York (Aquarion-NY) to implement a surcharge to recover increased purchased water costs and deferrals to recover purchased water rate increases by Westchester Joint Water Works and Aquarion Water Company of Connecticut, and directed Aquarion-NY to file Revenue True-Up Statement No. 6 containing the changes, to become effective August 1, 2005, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-W-1628SA1)

NOTICE OF ADOPTION

Foxboro Reduced Bore Vortex Meter by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-05-00015-A
Filing date: July 29, 2005
Effective date: July 29, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order in Case 05-S-0236 approving the petition of Consolidated Edison Company of New York, Inc. for use of the Foxboro reduced bore vortex meter product line.

Statutory authority: Public Service Law, section 80(10)

Subject: Invensys Foxboro reduced bore vortex meter produce line.

Purpose: To utilize the meter product line in New York State.

Substance of final rule: The Commission approved the petition of Consolidated Edison Company of New York, Inc. for approval to permit steam corporations in New York State to utilize the Invensys Foxboro Reduced Bore Vortex Meter to measure steam usage for billing purposes.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-S-0236SA1)

NOTICE OF ADOPTION

Waiver of Certain Franchising Procedures by the Town of Taghkanic

I.D. No. PSC-14-05-00010-A
Filing date: Aug. 1, 2005
Effective date: Aug. 1, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order in Case 05-V-0320 approving the petition of the Town of Taghkanic (Colum-

bia County) for a waiver of the commission's rules pertaining to the franchising process.

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

Subject: Waiver of certain franchising procedures by the Town of Taghkanic.

Purpose: To waive certain preliminary franchising procedures to expedite the franchising process.

Substance of final rule: The Commission approved the petition filed by the Town of Taghkanic (Columbia County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-V-0320SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreements between Verizon New York Inc., and AT&T Communications of New York, Inc., *et al.*

I.D. No. PSC-33-05-00004-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and AT&T Communications of New York, Inc. (AT&T), ACC National Telecom Corp. (ACC), and Teleport Communications Group Inc. (TCG) to revise the interconnection agreement effective on Aug. 2, 2002.

Statutory authority: Public Service Law, section 94(2)

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and AT&T Communications of New York, Inc. (AT&T), ACC National Telecom Corp. (ACC), and Teleport Communications Group Inc. (TCG) in August 2002. The companies subsequently have jointly filed amendments to clarify the percentage of maintenance service dispatches for UNE-P lines. The Commission is considering these changes.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(01-C-0095SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

RPS Program Funding of Maintenance Resources

I.D. No. PSC-33-05-00005-P

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

Proposed action: The commission is considering matters related to Renewable Portfolio Standard (RPS) Program maintenance resource funding described in the commission's Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program that was issued on April 14, 2005.

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

Subject: RPS Program funding of maintenance resources.

Purpose: To revise the RPS Program funding of maintenance resources.

Substance of proposed rule: In its Order Approving Implementation Plan, Adopting Clarifications, And Modifying Environmental Disclosure Program that was issued on April 14, 2005 (Implementation Plan Order), the Commission approved implementation measures pertinent to the maintenance resources category, which was established to provide RPS Program funding to certain existing facilities that were in danger of ceasing operation or abandonment for financial reasons. Based on Department of Public Service Staff's experience to date applying those implementation measures, the Commission is considering several revisions that would minimize ratepayer costs while at the same time continue to accomplish the goal of the Commission not to lose existing renewable facilities.

On such revision involves the analysis that is appropriate to determine the proper level of RPS Program support. If economic analysis indicates that an existing facility would cease operations without RPS Program support payments, but could continue operating if it received payments that were less than the costs of encouraging development of new facilities, then it may be in ratepayers' interests to support such a facility. To minimize ratepayer costs, the Commission is considering stating that the level of support should be no more than the amount necessary to encourage continued operation of the facility. That is, the level of support would at least need to be adequate to allow the facility to cover its future operating costs and any necessary future capital costs (sometimes referred to as "to go" costs), but need not cover all sunk costs. In short, it should be just enough to allow the owner, or its financial supporters, to continue to operate the facility. By no means should such support be any more (and, probably, should be somewhat less) than the level required to encourage new renewable facilities.

Another proposed revision would remove a discrepancy between the body of the Implementation Order and its Attachment A. The Implementation Order suggest on page 31 that a qualified maintenance resource facility could choose at its own volition to reject an offer of RPS Program funds and instead participate in general Main Tier procurements. The RPS Program Implementation Plan (Appendix A) does not offer that option. To better align ratepayer interests with the goal of the Commission mentioned resource facility to reject the offer of a maintenance resource funding award and instead bid in general procurements.

The Commission may accept, reject, or modify any proposals relating to these matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(03-E-0188SA9)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedure Used for Lost Revenues by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-33-05-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, changes, rules and regulations contained in its schedules for electric service—P.S.C. No. 9 to become effective Oct. 21, 2005.

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

Subject: Procedure used for lost revenues.

Purpose: To specify in the monthly adjustment clause the procedure for calculating the lost revenues associated with the company's Demand Management Program.

Substance of proposed rule: On July 22, 2005, Consolidated Edison Company of New York, Inc. (Con Edison) filed proposed tariff amendments to specify in the Monthly Adjustment Clause the procedure that will be used to calculate lost revenues associated with the targeted and system-wide demand management programs pursuant to Commission Order Adopting Three-Year Rate Plan, issued March 24, 2005 in Case 04-E-0572. The proposed effective date of Con Edison's filing is October 21, 2005. The Commission may approve, reject or modify, in whole or in part, Con Edison's proposed tariff revisions.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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-0572SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Certain Parcels of Vacant Real Property by Central Hudson Gas & Electric Corporation

I.D. No. PSC-33-05-00007-P

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

Proposed action: The Public Service Commission is considering, pursuant to an order issued July 22, 2005 in Case 05-E-0859, the approval of Central Hudson Gas & Electric Corporation's proposals to transfer to new owners certain parcels of vacant real property originally purchased in anticipation of future utility use but later transferred to non-utility accounts. The commission may adopt, modify or reject, in whole or in part, the relief proposed.

Statutory authority: Public Service Law, section 70

Subject: Central Hudson Gas & Electric Corporation's proposals to transfer to new owners certain parcels of vacant real property.

Purpose: To transfer to new owners certain parcels of vacant real property.

Substance of proposed rule: The Public Service Commission is considering, pursuant to an Order issued July 22, 2005 in Case 05-E-0859, the approval of Central Hudson Gas & Electric Corporation's proposals to transfer to new owners certain parcels of vacant real property originally purchased in anticipation of future utility use but later transferred to non-utility accounts. The Commission may adopt, modify or reject, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-E-0859SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Accurate Energy Group

I.D. No. PSC-33-05-00008-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 grant, deny or modify, in whole or part, the petition filed by Accurate Energy Group, on behalf of Trump Tower at City Center, to submeter electricity at 10 City Place, White Plains, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider a request by Accurate Energy Group, on behalf of Trump Tower at City Center, to submeter electricity at 10 City Place, White Plains, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Accurate Energy Group, on behalf of Trump Tower at City Center, to submeter electricity at 10 City Place, White Plains, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-E-0921SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Capacity Release Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-33-05-00009-P

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

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

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

Subject: Capacity release service.

Purpose: To continue capacity release service for an additional year and eliminate the current mechanism that provides for the company to credit or surcharge customers the difference between the average cost of capacity released to marketers and the company's weighted average cost of capacity used for purposes of capacity release service.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s request to extend its Capacity Release Service for an additional year and to eliminate the current mechanism that provides for the company to credit or surcharge customers the difference between the average cost of capacity released to Marketers (as agents for customers) and the company's weighted average cost of capacity used for purposes of Capacity Release Service.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-G-0918SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Capacity Release Service by Orange and Rockland Utilities, Inc.

I.D. No. PSC-33-05-00010-P

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

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

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

Subject: Capacity release service.

Purpose: To continue capacity release service for an additional year and eliminate the current mechanism that provides for the company to credit or surcharge customers the difference between the average cost of capacity released to sellers and the company's adjusted weighted average cost of transportation used for purposes of capacity release service.

Substance of proposed rule: The Commission is considering Orange and Rockland Utilities, Inc.'s request to extend its Capacity Release Service for an additional year and to eliminate the current mechanism that provides for the company to credit or surcharge customers the difference between the average cost of capacity released to Sellers (as agents for customers) and the company's adjusted weighted average cost of transportation used for purposes of Capacity Release Service.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-G-0919SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Non-Core Transportation Service for Electric Generation by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-33-05-00011-P

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

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

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

Subject: Service Classification No. 20—Non-core transportation service for electric generation.

Purpose: To revise the number of days of fuel inventory requirement that power generators must have to withstand interruptions of service.

Substance of proposed rule: The Commission is considering The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY's request to revise the number of days of fuel inventory requirement that power generators must have to withstand interruptions of service from three days to five days.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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-G-0996SA9)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electric Generation Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI

I.D. No. PSC-33-05-00012-P

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

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

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

Subject: Service Classification No. 14—Electric generation service.

Purpose: To revise the number of days of fuel inventory requirement that power generators must have to withstand interruptions of service.

Substance of proposed rule: The Commission is considering KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI's request to revise the number of days of fuel inventory requirement that power generators must have to withstand interruptions of service from three days to five days.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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-G-0996SA10)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Competitive Transition Charges by Niagara Mohawk Power Corporation

I.D. No. PSC-33-05-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedules for electric service—P.S.C. Nos. 207 and 214 to become effective Jan. 1, 2006.

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

Subject: Competitive transition charges.

Purpose: To reset competitive transition charges in retail delivery rates and adjust delivery rates associated with deferral recoveries for calendar years 2006 and 2007.

Substance of proposed rule: On July 29, 2005, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff amendments to reset its Competitive Transition Charges in retail delivery rates and to adjust rates associated with deferral recoveries for calendar years 2006 and 2007. Niagara Mohawk is also requesting a modification of the Memorandum of Agreement approved by the Commission on September 4, 2003 in Case 01-M-0075. Niagara Mohawk is seeking to change the provision of the agreement that requires recoveries of deferral balances to be used to fund pension and OPEB expenses to the extent they are tax deductible. The proposed effective date of Niagara Mohawk's filing is January 1, 2006. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk's proposed tariff revisions.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(01-M-0075SA25)

Department of State

NOTICE OF ADOPTION

Education Curriculum for Security and Fire Alarm Installers

I.D. No. DOS-23-05-00010-A
Filing No. 831
Filing date: July 28, 2005
Effective date: Aug. 17, 2005

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

Action taken: Repeal of section 196.8(b) and addition of new section 196.8(b) to Title 19 NYCRR.

Statutory authority: General Business Law, section 69-n(5)

Subject: Education curriculum for security and fire alarm installers.

Purpose: To make the curriculum less rigid and less detailed.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-23-05-00010-P, Issue of June 8, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

Assessment of Public Comment

The agency received no public comment.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax

I.D. No. TAF-23-05-00016-A
Filing No. 829
Filing date: July 27, 2005
Effective date: July 27, 2005

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning July 1, 2005, and ending Sept. 30, 2005, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-23-05-00016-P, Issue of June 8, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Assessment of Public Comment:

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

NOTICE OF ADOPTION

Special Requirements for Vendors in New York County (Manhattan)

I.D. No. TAF-23-05-00017-A
Filing No. 830
Filing date: July 27, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of section 538.2(a) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 1142, subd. (1) and (8); 1142-A, subd. (a); 1250 (not subdivided); and L. 2005, ch. 61, part R

Subject: Special requirements for vendors making sales of the services of parking, garaging or storing motor vehicles in New York County (Manhattan).

Purpose: To make permanent the special requirements concerning Manhattan parking facility operators.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-23-05-00017-P, Issue of June 8, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-33-05-00001-P

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

Proposed action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Oct. 1, 2005, and ending Dec. 31, 2005, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xl) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xxxix) July - September 2005					
14.6	22.6	37.8	15.8	23.8	37.25
(xl) October - December 2005					
15.2	*23.2*	*38.4*	*16.5*	*24.5*	*37.95*

Text of proposed rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electronic Funds Transfer Program

I.D. No. TAF-33-05-00002-P

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

Proposed action: Amendment of Parts 2396 and 2397 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 9(b), (e), (i); 10(i); 171, subd. First; 289(f); 315(b); 658(a); 697(a); 1142(1), (8); and 1250

Subject: Electronic Funds Transfer Program.

Purpose: To reflect the department's enhanced electronic funds transfer system.

Substance of proposed rule (Full text is posted at the following State website: www.tax.state.ny.us): This proposal contains amendments to Parts 2396 (withholding tax-Article 22 of the Tax Law) and 2397 (Articles 12-A, 13-A, 28 and 29 of the Tax Law) of the regulations of the Department of Taxation and Finance concerning electronic funds transfer ("EFT"). The EFT system is used by taxpayers to remit payments of taxes due and is the required mode of payment for large payors. The primary purpose of the amendments is to update the regulations to reflect the Department's enhanced EFT system (under a new banking services contract) which is planned for implementation sometime in 2005.

Besides addressing the upcoming changes in the EFT program, the amendments include other updating changes. Also, some unnecessary provisions, and provisions which are better suited for inclusion in the program material which is sent to participants, have been deleted.

Some of the specific amendments contained in the proposal are the following:

- changing the definitions sections of both Parts 2396 and 2397 to remove those definitions already contained in the Tax Law and referring readers to the law for those terms;

- conforming the common definitions in the Parts to each other; for example, the term "business day" is defined to mean a day other than Saturday, Sunday or certain holidays, which is consistent with how the term has been defined in practice for the program for both withholding tax and the other taxes;

- allowing voluntary participants in the program to opt out of the program at a later date (10 days before the end of the program period, if done in writing, or the last day of the period, if done online) than is currently allowed;

- adding specific language providing that the Department may exercise its statutory authority and limit the selection of payment options available to voluntary participants; this is current Department policy (currently, only ACH credit and ACH debit are available to withholding tax voluntary participants) but was not addressed in the previous regulations;

- reflecting the current Department policy of keeping participants, whose status has changed and who are no longer required to participate, enrolled in the program unless they choose not to participate, instead of having a re-enrollment process;

- repealing the current provisions concerning the Department's mailing of advices of deposit or payment and substituting provisions reflecting the enhanced system's greater use of the program's web site; acknowledgement of payment will be provided by a record of deposits in a participant's online account but participants may also request that the Department mail an advice of deposit or payment to them;

- conforming the regulations to existing policy by providing that taxpayers in the program who pay by certified check can deliver their certified check to the Department by the due date instead of by the second business day prior to the due date (as provided in Part 2396); and

- repealing and replacing the provisions concerning changing payment options to reflect the greater flexibility allowed by the enhanced system; participants will be allowed to change their payment option at any time instead of at prescribed times.

Text of proposed rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections (9(b); 9(e); 9(i); 10(i); 171, subd. First; 289(f); 315(b); 658(a); 697(a); 1142(1); 1142((8); and 1250. Sections 9(b), 9(e), and 9(i) require the Commissioner of Taxation and Finance to promulgate regulations necessary for the implementation and administration of the electronic funds transfer program for withholding taxes. Section (10)(i) authorizes the Commissioner to promulgate regulations to implement the provisions regarding the electronic funds transfer program for sales and compensating use taxes, prepaid sales and compensating use tax on motor fuel and diesel motor fuel, and motor fuel and petroleum business taxes. Section 171, subdivision First, of Article 8, authorizes the Commissioner to promulgate regulations. Section 289(f) of

Article 12-A authorizes the Commissioner to make provisions pursuant to regulations for the joint administration of taxes on the sale of automotive fuel imposed by Article 12-A and the taxes imposed and authorized by Article 28 and Article 29. Section 315(b) of Article 13-A authorizes the Commissioner to make provisions for the joint administration of taxes imposed by Articles 12-A and 28 and authorized by Article 29 upon automotive fuel and the taxes imposed by Article 13-A. Section 658(a) provides that the Commissioner may prescribe regulations as to the content and form of returns and statements for personal income tax. Section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax. Sections 1142(1) and (8) of Article 28 and section 1250 of Article 29 provide for the adoption of rules and regulations that are appropriate for the joint administration of the state and local sales and compensating use taxes imposed by and pursuant to the authority of such Articles.

2. Legislative objectives: This regulation contains amendments which demonstrate the Commissioner's ability to take regulatory action when it is authorized and warranted. Regulatory action is necessary to update the regulations to reflect the Department's enhanced electronic funds transfer system. The electronic funds transfer system is used by taxpayers to remit payments of taxes due and is the required mode of payment for large payors.

3. Needs and benefits: The purpose of these amendments is to update the Department's Procedural Regulations concerning the electronic funds transfer program. Parts 2396 and Part 2397 of the Procedural Regulations were both originally adopted to implement and provide guidance on the electronic funds transfer program for withholding tax, sales and compensating use taxes, and motor fuel and petroleum business taxes. At the time these regulations were adopted, the processing of enrollments and distribution of program-related material had to be done using the paper mail system. Also, much of the bank-related information was only transmittable through the telephone system which was set up to process the taxpayers' payments. Now, program informational materials are available on the Department's website and, sometime in 2005, the Department will be implementing an enhanced system with greater utilization of the program's website to handle the transmission of the taxpayer's bank transactions. There will be less need for use of the paper mail system and participants in the program will benefit from quicker processing times. Also, participants will be allowed to change their payment option at any time instead of only at prescribed times. Voluntary participants in the program will be able to opt out of the program at a later date than is currently allowed. This proposal will update the regulations to reflect the new system, so the regulations and policy are in accord. The amendments will delete some unnecessary provisions and provisions which are better suited for inclusion in the program material which is sent to participants. The amendments will eliminate the confusion that would be caused by having outdated material remain in the regulations.

We requested comments about the amendments from various small business and local government organizations, the National Payroll Reporting Consortium, and various corporations that participate in the electronic funds transfer program (see Statement in Lieu of a Regulatory Flexibility Analysis for Small Businesses and Local Governments). We received several replies and all were complimentary about the amendments.

4. Costs: There are no fiscal or nonfiscal costs related to the promulgation of the regulation to the state, this agency, local governments, or regulated parties beyond those imposed by the statute. This analysis is based on a review of the statutory provisions and on discussions among personnel from the Department's Technical Services Division, Office of Counsel, Office of Tax Policy Analysis, Bureau of Fiscal Management, and Planning and Management Analysis Bureau.

5. Local government mandates: There are no mandates imposed on local governments by these amendments.

6. Paperwork: These amendments do not impose any new paperwork or reporting requirements and actually, the enhanced system reflected in the amendments will lessen the amount of paper mailings required of both the participants and the Department because of the greater use of the electronic funds transfer program's website.

7. Duplication: These amendments do not duplicate any other requirements.

8. Alternatives: The only alternative considered was to not amend the regulations and leave in place the regulations requiring the use of paper mailing instead of the use of Internet technologies. However, we have decided that this proposal is preferable in order to attain the benefits listed in section 3 above.

9. Federal standards: The rule does not exceed any minimum Federal standards for the same or similar subject area.

10. Compliance schedule: There is no time necessary for the program participants to achieve compliance with the rule because the rule continues to reflect time limits imposed by the statute. The rule also reflects the relaxation of administrative time limits set by regulation, including the times set for changing payment options and for voluntary participants to opt out of the program.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because this rule will not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The rule does not distinguish between different types and sizes of regulated parties other than to reflect the statutory thresholds for required participation in the Department's electronic funds transfer program. The rule does not distinguish between regulated parties located in different geographical areas.

This rule making updates Parts 2396 and 2397 of the Department's regulations to reflect the Department's enhanced electronic funds transfer system under a new banking services contract which is planned for implementation sometime in 2005. The electronic funds transfer system is used by taxpayers to remit payments of taxes due and is the required mode of payment for large payors. Some small businesses and local governments are already participants in the program. The rule continues to reflect the compliance requirements imposed by the statute.

The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the Small Business Council of the New York State Business Council, the Division of Small Business of Empire State Development, the National Federation of Independent Businesses, the Retail Council of New York State, the New York State Association of Counties, the Association of Towns of New York State, the New York Conference of Mayors, and the Office of Local Government and Community Services of the New York State Department of State. Also, industry comment as requested from the National Payroll Reporting Consortium and various corporations that participate in the electronic funds transfer program.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rule does not distinguish between regulated parties located in different geographical areas.

This rule making updates Parts 2396 and 2397 of the Department's regulations to reflect the Department's enhanced electronic funds transfer system under a new banking services contract which is planned for implementation sometime in 2005. The electronic funds transfer system is used by taxpayers to remit payments of taxes due and is the required mode of payment for large payors.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because the rule will have no adverse impact on jobs and employment opportunities. This rule making updates Parts 2396 and 2397 of the Department's regulations to reflect the Department's enhanced electronic funds transfer system under a new banking services contract which is planned for implementation sometime in 2005. The electronic funds transfer system is used by taxpayers to remit payments of taxes due and is the required mode of payment for large payors.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Section 8 Housing Vouchers

I.D. No. TDA-21-05-00002-A
Filing No. 834
Filing date: Aug. 1, 2005
Effective date: Aug. 17, 2005

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

Action taken: Amendment of sections 350.3(d)(2)(i), 352.5(b), (f)(2) and (5)(i); and addition of section 352.3(d)(2)(ii) to Title 18 NYCRR.

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

Subject: Section 8 housing vouchers.

Purpose: To establish a reasonable shelter schedule for persons and families receiving temporary assistance and rent subsidies under the Section 8 Voucher Program.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-21-05-00002-P, Issue of May 25, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

Temporary State Commission on Lobbying

NOTICE OF ADOPTION

Adjudicatory Hearing Procedures

I.D. No. TCL-19-05-00001-A
Filing No. 852
Filing date: Aug. 2, 2005
Effective date: Aug. 17, 2005

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

Action taken: Addition of Part 250 to Title 21 NYCRR.

Statutory authority: Legislative Law, chapter 32 of the Consolidated Laws, Article 1-A Lobbying Act, section 1-p, 1-q

Subject: Hearing procedures: For adjudicatory hearings held pursuant to the New York State Lobbying Act.

Purpose: To establish hearing procedures compatible with Federal and State constitutions and law for use in hearings held pursuant to the New York State Lobbying Act.

Text or summary was published in the notice of proposed rule making, I.D. No. TCL-19-05-00001-P, Issue of May 11, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Thompson, Public Information Officer, New York Temporary State Commission on Lobbying, Two Empire State Plaza, Suite 1701, Albany, NY 12223-1254, (518) 474-7126, e-mail: LOBCOM@attglobal.net

Assessment of Public Comment

The agency received no public comment.