

# 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.

[The New York State Banking Department maintains regional offices as listed below:]

*The offices of the New York State Banking Department are located at:*  
*New York State Banking Department*  
*One State Street*  
*New York, NY 10004-1417*  
*(212) 709-5470*  
 New York State Banking Department  
 One State Street  
 New York, NY 10004-1417  
 (212) 709-5470  
 New York State Banking Department  
 5 Empire State Plaza  
 Suite 2310  
 Albany, NY 12223  
 (518) 473-6160  
 New York State Banking Department  
 333 East Washington Street  
 Syracuse, NY 13202  
 (315) 428-4049  
 New York State Banking Department  
 Sardinia House  
 52 Lincoln's Inn Fields  
 London, England WC2A 3LZ  
 011 44-207-405-5474  
 New York State Banking Department  
 ARK Mori Building  
 P.O. Box 510 1-12-32 Akasaka 1-CHOME, Minato-Ku  
 Tokyo, 107-6090, Japan  
 011 81-3-5570-8350  
 § 1.2 Schedule of Fees

## Banking Department

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

#### Principal Office Location; Schedule of Fees

I.D. No. BNK-32-03-00003-P

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

**Proposed action:** This is a consensus rule making to amend Supervisory Policy G 1 of Title 3 NYCRR.

**Statutory authority:** Banking Law, section 12

**Subject:** Principal office location and schedule of fees.

**Purpose:** To reflect the fact that the Albany office of the Banking Department is the principal office and add a schedule of fees to Supervisory Policy G 1.

#### Text of proposed rule:

#### SUPERVISORY POLICY G 1 SCHEDULE OF ADDRESSES AND FEES

§ 1.1 Addresses of the New York State Banking Department  
 [The headquarters of the New York State Banking Department is:]  
 [One State Street  
 New York, NY 10004-1417  
 (212) 709-5470]  
 The website for the New York State Banking Department is:  
 www.banking.state.ny.us

Description of Fee	Amount Charged	Banking Law Authorization	NYCRR Authorization
<i>GRBB – General Regulations of Banking Board</i>			
<i>SR – Superintendent's Regulations</i>			
<i>SP – Supervisory Procedures</i>			
<i>Investigation Fees - New Organizations</i>			
<i>Banks</i>	\$2,500	§ 23	
<i>Trust Companies</i>	\$2,500	§ 23	
<i>Private Bankers</i>	\$2,500	§ 23	
<i>Savings Banks (Stock form)</i>	\$5,000	§ 14-e(2)	
<i>Savings Banks</i>	\$2,500	§ 23	
<i>Savings &amp; Loans (Stock form)</i>	\$5,000	§ 14-e(2)	
<i>Savings &amp; Loans</i>	\$2,500	§ 23	
<i>Safe Deposit Companies</i>	\$2,500	§ 23	
<i>Investment Companies</i>	\$2,500	§ 23	
<i>Bank Holding Companies</i>	\$2,500	§ 143.a	SP – CB 105
<i>Bank Holding Companies</i>	\$5,000	§ 142	SP – CB 105
<i>Budget Planners</i>	\$100	§ 580.3	
<i>Check Cashers - Regular</i>	\$250	§ 367.3	SR – Part 400
<i>Check Cashers - Mobile</i>	\$250	§ 367.3	SR – Part 400
<i>Check Cashers - Limited</i>	\$10	§ 370.2	SR – Part 400
<i>Premium Finance - Regular</i>	\$150/450 max	§ 555.4(b)	SR – Part 405
<i>Premium Finance - Limited</i>	\$0	§ 566.1	SR – Part 405
<i>Sales Finance Companies</i>	\$150/450 max	§ 492.4(c)	SR – Part 403
<i>Foreign Agencies and Branches</i>	\$2,000	§ 201.4	SP – FB 101
<i>Foreign Representative Offices</i>	\$250	§ 221-c	
<i>Licensed Lenders</i>	\$1000/250	§ 341	SR – Part 401

Transmitters of Money	\$1,000	§ 641.3	SR – Part 406
Licensed Mortgage Bankers	\$1000/500	§ 591.2	SR – Part 410
Mortgage Brokers	\$500/250	§ 591-a	SR – Part 410
<b>Investigation Fees - Change of Location</b>			
Banks	\$150/450	§ 28.a & § 113	
Trust Companies	\$150/450	§ 28.a & § 113	
Savings Banks	\$150/450	§ 28.a & § 241.1	
Savings & Loans	\$150/450	§ 28.a & § 396.1	
Investment Companies	\$150/450	§ 28.a & § 511	
Foreign Agencies	\$150/450	§ 28.a & § 203.2	
Foreign Branches	\$150/450	§ 28.a & § 203.2	
Licensed Lenders	\$150	§ 343.3(a)	SR – Part 401
Check Cashers	\$100	§ 367.3	SR – Part 400
<b>Investigation Fees - Mergers, Conversions, etc.</b>			
Conversion, Nat'l Org to State Org	\$250	§ 136.5	SP – CB 101
Merger, Nat'l Org to State Org	\$3,000	§ 136.5	SP – CB 105
Purchase of Assets-by State Org from Nat'l Org	\$3,000	§ 136.a	SP – CB 105
Merger/Acquisition-Stock Form Savings Banks/ Savings & Loans	\$5,000	§ 14-e(2)	SP – SB 110 SP – SL 110
Merger-Fee not required for Credit Union	\$3,000	§ 601.1	SP – CB 105
Purchase of Assets	\$3,000	§ 601.a	SP – CB 105
Sale of Assets (more than 50% of assets)	\$250	§ 605.8	
Acquisition of Business-Licensed Lenders (by unlicensed person or entity)	\$1,000	§ 344.1	
(by person or entity already licensed)	\$250		
Acquisition of Control of Licensed Lenders by Purchase of Stock (by unlicensed person or entity)	\$1,000	§ 345.1	
(by person or entity already licensed)	\$250		
Acquisition by Companies of control of Banking Institutions (capital less than \$15 million)	\$5000	§ 143.b.2	SP – CB 117
Acquisition of control of Investment Companies	\$1,000	§ 519	
Conversion-From Mutual to Stock Form Ownership	\$5,000	§ 14-e(2)	
Change of Control-Mortgage Bankers/Brokers	\$1,000	§ 594.b	SP – MB 104
<b>Investigation Fees - Branch</b>			
Banking Organizations	\$650	§ 29	SP – CB 103
Public Accommodation Offices	\$650	§ 29(191)	
<b>License Fees *</b>			
Check Cashers-Regular	\$350/175	§ 367.3	SR – Part 400
Mobile	\$400/200	§ 367.3	SR – Part 400
Limited	\$20	§ 370.2	SR – Part 400
Premium Finance-Regular	\$300/150	§ 555.4(a)	SR – Part 405
Premium Finance-Limited (insurance agent or broker holding less than \$15,000 of premium finance agreements)	\$20	§ 566.1	SR – Part 405
Sales Finance Companies	\$300/150	§ 492.4	SR – Part 403
Licensed Lenders	\$1000/500	§ 341	SR – Part 401
Transmitters of Money	\$500	§ 641.3	SR – Part 401
Licensed Mortgage Bankers	\$1000/500	§ 594-a	SP – MB 101
Mortgage Brokers (Registration Fee)	\$500/250	§ 594-a	SP – MB 102

\* New license fees collected by occurrence, renewal license fees collected annually.

**Text of proposed rule and any required statements and analyses may be obtained from:** Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.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.

**Consensus Rule Making Determination**

Since proposed Amendment to Supervisory Policy G 1 is merely technical in nature, the Banking Department has determined that the promulgation of the Supervisory Policy is properly handled as a consensus rule making.

**Job Impact Statement**

The purpose of the proposed rule is to amend Banking Department Supervisory Policy G-1 to set forth the schedule of fees charged by the New York State Banking Department pursuant to Banking Law and Title 3 of the Official Compilation of the Codes, Rules and Regulations. Accordingly, a job impact statement is not submitted because it is apparent from the nature and purpose of the rule that it will not have an appreciable and/or substantive adverse impact on jobs and employment opportunities.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

**Commercial Lawn Application of Pesticides**

**I.D. No.** ENV-10-02-00001-A

**Filing No.** 789

**Filing date:** July 24, 2003

**Effective date:** Jan. 1, 2004

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

**Action taken:** Amendment of section 325.1 and addition of section 325.40 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, art. 33, title 10 and section 33-0905.5

**Subject:** Commercial lawn care pesticide applications.

**Purpose:** To implement commercial lawn application of pesticides requirements and address general notification requirements as they apply to lawn care.

**Text of final rule:** (Subdivisions 325.1(a) through (r) remain unchanged.)

Subdivision 325.1(s) is revised to read as follows:

325.1(s) "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. The following pesticide applications will not be considered commercial lawn application:

- (1) the application of pesticide for the purpose of producing an agricultural commodity;
- (2) residential application of pesticides;
- (3) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- (4) the application of pesticides by or on behalf of agencies except that agencies are subject to commercial lawn application visual notification requirements [of this Part, once promulgated] pursuant to subdivisions 325.40(f), (g) and (h) of this Part where such application is within one-hundred feet of a dwelling, multiple dwelling, public building or public park; or
- (5) the application of pesticides on golf courses or turf farms.

(Subdivisions 325.1(t) through (bd) remain unchanged.)

Subdivision 325.1(be) is revised to read as follows:

325.1(be) "Residential lawn application" means the application of general use pesticides to ground, trees or shrubs on outdoor property owned, leased or rented by the individual making such application. The following pesticide applications are not considered residential lawn applications:

- (1) the application of pesticides for the purpose of producing an agricultural commodity;
- (2) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- (3) the application of pesticides by or on behalf of agencies except that agencies [shall] *must* be subject to commercial lawn application visual notification requirements [of this Part, once promulgated] pursuant to subdivisions 325.40(f), (g) and (h) of this Part where such application is within one-hundred feet of a dwelling, multiple dwelling, public building or public park; or
- (4) the application of pesticides on golf courses or turf farms.

(Subdivision 325.1(bf) through section 325.39 remain unchanged.)

New Section 325.40 is adopted to read as follows:

**325.40 Commercial Lawn Applications.** *This section shall be effective on January 1, 2004. The requirements of this section pertain to any commercial lawn application of a pesticide except for the application of a pesticide to a right-of-way (unless required pursuant to paragraph 325.1(s)(4)).*

(a) **Written Contracts.** *Prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must:*

(1) *specify the approximate date or dates of application or applications; if requested by the property owner or owner's agent, the specific date or dates of the application(s) must be provided by the pesticide applicator or business and that date must be stated in the contract. The following statement must be prominently displayed in the contract: "The property owner or owner's agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract."*

(2) *state the total number of commercial lawn applications to be provided; and*

(3) *state the total cost of the commercial lawn application service to be provided; and*

(4) *include a written copy, in at least 12-point type of:*

(i) *a list of pesticides to be applied including brand names and generic names of active ingredients; and*

(ii) *any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment; and,*

(iii) *the name, address, telephone number and pesticide business registration number of the pesticide business providing the commercial lawn application service and the pesticide applicator certification identification card number of the person employed by the pesticide business who will provide or supervise the commercial lawn application service; and*

(5) *state the name of the property owner or owner's agent and the address of the premises to be treated; and*

(6) *be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract, such as a copy of a prepayment check, in the exact amount specified in the written contract for the agreed-upon services;*

(7) *be amended, if changes are made to any of the elements of the contract required by this section, including, but not limited to the elements listed in Paragraphs 325.40(a)(1) through (6); a contract renewal; or a multi-year contract. The pesticide applicator or business must obtain written proof of acceptance of the owner or owner's agent of such contract amendments prior to applying pesticides.*

(b) **Contract transfer.** *Written contracts may be transferred from one pesticide business providing a commercial lawn application service to another such business if the successor business provides the contract holder, prior to any commercial lawn application by such business, with written notice of the contract transfer which includes the name, address, telephone number and pesticide business registration number of the successor pesticide business and the pesticide applicator certification identification card number of a person employed by such pesticide business who will provide or supervise the commercial lawn application service.*

(c) **Alternate date or dates.** *In the event that the commercial lawn application on the date or dates specified in the contract becomes infeasible, the pesticide applicator or business must provide the owner or owner's agent oral or written notice of any proposed alternate date or dates. The pesticide applicator or business must obtain acceptance from the owner or owner's agent of such alternate date or dates prior to initiating any commercial lawn application.*

(d) **Specific pesticide notification.** *If the contract does not state which pesticide(s) of a group of pesticides will be applied on a proposed date, or if the pesticide applicator or business has not advised the owner or owner's agent of this information, the pesticide applicator or business*

*must, prior to application, provide to the owner or owner's agent a written notice which indicates the specific pesticide(s) to be used.*

(e) **Copies of contracts.** *The pesticide applicator or pesticide business making a commercial lawn application must retain a complete copy of each written contract for a minimum of three years following the expiration of the contract and must make such copies available for inspection upon request by the department.*

(f) **Visual notification.** *Visual notification markers must be posted by any pesticide applicator or business performing a commercial lawn application described in this section. Such markers must be at least four inches by five inches in size and letters on the markers must be at least three-eighths of an inch in height. Such markers must, by January 1, 2005, be yellow in color, have lettering which is black in color and be constructed of rigid material. All such markers must include on the front of the marker:*

(1) *the phrase "PESTICIDE APPLICATION," or "PESTICIDE TREATMENT," or "PESTICIDES APPLIED";*

(2) *the specific date and time of the actual commercial lawn application, unless the date and time are provided to the property owner or owner's agent immediately following application and prior to leaving the premises;*

(3) *the phrase "DO NOT ENTER"; and*

(4) *the phrase "DO NOT REMOVE SIGN FOR 24 HOURS"; and*

(5) *a prominent visual warning symbol, at least 1.5 inches in diameter, such as a person walking a dog with a slash through the symbol or a stern face with an outward facing raised open hand.*

(g) **Other information.** *The only text and image allowed on the front of the marker are those required by this regulation and the name and telephone number of the applicator business. Any other text and/or images must be placed on the back of the marker.*

(h) **Visual notification marker posting.** *Visual notification markers:*

(1) *must be placed such that the top of the marker is at least twelve inches above the ground; and*

(2) *must be placed by the pesticide applicator or business making the commercial lawn application prior to the application and remain posted for a period of not less than 24 hours following the application; and*

(3) *must be placed such that the front of the marker is clearly visible from outside the treated area; and*

(4) *must be placed not more than fifty (50) feet apart along the perimeter of the treated area in the event that markers used are between four inches by five inches in size and five inches by five inches in size; or not more than one-hundred (100) feet apart along the perimeter of the treated area in the event that markers used are at least five inches by six inches in size; and*

(5) *must also be placed at common points of entry adjacent to the treated areas including, but not limited to, driveways and walkways; and*

(6) *need not be placed at any portion of the perimeter of the treated premises or treated area which is rendered impassible by a fence, wall, hedge or similar device or natural topographic feature; provided, however, every treated premises or treated area must be marked by at least two visual notification markers, except only one visual notification marker is required when an individual tree or shrub is treated which can only be approached from one direction.*

(i) **Pesticide Product Labels.** *As provided in Environmental Conservation Law Section 33-0905, every certified applicator must, prior to application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a written copy of the information, including any warnings, contained on the label(s) of the pesticide(s) to be applied.*

(1) *Every certified applicator must, prior to the application of a pesticide within or on the premises of a multiple dwelling, building, or structure other than a dwelling, supply the owner or the owner's agent, with a written copy of the information, including all warnings, contained on the label(s) of the pesticide(s) to be applied. The owner or owner's agent must make available upon request at reasonable times the written copy of the information contained on the label to the occupants or residents of such multiple dwelling, building, or structure.*

(2) *The certified applicator may exclude from the written copy of the information on the label(s) instructions that do not pertain to the commercial lawn application. If such information is excluded, the applicator or business must note on the label that it is an amended label and the applicator and business must provide the complete label, if requested by the owner or owner's agent.*

(Section 325.41 to end remain unchanged.)

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 325.40.

**Revised rule making(s) were previously published in the State Register on May 28, 2003.**

**Text of rule and any required statements and analyses may be obtained from:** Mary A. Roy, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7254, (518) 402-8781, e-mail: maroy@gw.dec.state.ny.us

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

Changes made to the last published rule do not necessitate revision to the previously published summary of Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

**Assessment of Public Comment**

**325.40(a)(1) - Approximate Date(s) & Request for Specific Date**

1. Comment: A number of people believe it satisfies the intent of the law, as a matter of "right-to-know", to include in the regulation the requirement that lawn care contracts contain a statement that consumers must, if requested, be advised of the specific date on which the pesticide application is to occur. They commented that, if the consumer bypasses the right-to-know the date, it is appropriate for the licensed lawn care professional to determine the approximate date(s) of application ". . . and specify those dates in the contract, without the need for further definition by DEC."

DEC Response: DEC understands this comment to mean no further regulatory revisions are requested by these commentators and that they are relying upon the professional nature of the lawn care industry to determine the date and state it in the contract, for advisement of the property owner.

2. Comment: One commentator was concerned about the impact on integrated pest management (IPM) if customers request a specific date of application and the commentator believes calls to customers would make more sense than to put specific dates in contract.

DEC Response: DEC encourages IPM and believes the regulation will enable the regulated community to better utilize it. The regulation is not designed to impede IPM. It is a customer's right to request a specific date and it is up to applicators to discuss IPM implementation with customers.

**325.40(a)(7) - Contract Amendments**

3. Comment: One commentator expressed concerns about the potential interplay of 325.40(a)(4)(i), (a)(7), and (d). They believe requiring written acceptance of a change to the contract regarding the pesticides to be used prohibits applicators from making pesticide treatment modifications based on pest conditions and it would have unintended consequences of encouraging blanket pesticide spraying or increasing risk of property damage, if pests are not managed because the property owner can not be reached quickly to sign the contract amendment. This commentator recommended DEC clarify, in Paragraph 325.40(a)(7), that changes to subparagraphs 325.40(a)(4)(i) and (ii) do not constitute an amendment to the contract, and written proof of acceptance is not required. In similar comments, another person recommended the regulation allow oral approval of contract amendments and notice of pesticides used to be left after treatment.

DEC Response: DEC does not believe it necessary to make changes to 325.40(a)(7). That paragraph and Subdivision (d) stand alone and should be read separately. The latter applies to pesticides already listed in the contract and the former applies if the pesticide to be used is not listed in the contract. DEC offers these examples: If the contract lists a group of pesticides, but does not specify which from that group will be used, under Subdivision 325.40(d), the applicator must provide written notice of which pesticide(s) will actually be used from among those listed in the contract. This does not constitute a change to the contract and written proof of acceptance is not required. If a pesticide is to be used that is not listed in the contract and, therefore, warnings have not been provided for that pesticide, under Paragraph 325.40(a)(7), this would be considered an amendment to the contract and written acceptance must be obtained.

All regulatory contract elements are treated equally under the regulation - if any of them are changed, written acceptance must be obtained. The list of pesticides and related warnings go to the heart of the right-to-know intent. It would be essential to ensure the property owner agrees to a pesticide change, so they are aware of the products/warnings to be used on their property.

**325.40(c) - Approximate & Alternate Date(s)**

4. Comment: Several people questioned how DEC will interpret "approximate date" of pesticide application and whether it will cover a wide period of time. One person commented that the regulation would allow businesses and the property owner to determine stated intervals, (eg. early spring service) and/or open-ended service treatment intervals or non-dated times to provide treatments. One person comment the alternate date lan-

guage in the regulation is OK, only if approximate dates can be ". . . wide-ranging and only if those requesting specific dates are affected."

DEC Response: The term "approximate date" comes from the statute. DEC will provide compliance assistance as needed. The regulation allows oral or written notice of proposed alternate date or dates and does not reference open-ended time intervals. Applicator should determine the appropriate alternate date(s), inform the customer and obtain their acceptance. Alternate dates can be provided for any contracted application for which the approximate date can not be met, not just for "those requesting specific dates."

5. Comment: A commentator urged DEC to clarify in the regulation that acceptance of alternate date(s) can be "oral or written acceptance." They commented that Section 325.40 lacks cohesion on the issue of when written acceptance. They reference the requirement for written acceptance of changes to the contract and allowance for oral or written notice of alternate dates. They note that oral notice is consistent with DEC's analysis of time necessary for applicators to reschedule applications, set forth in its "Revised Summary of Regulatory Impact Statement (RRIS)" and "Revised Regulatory Flexibility Analysis (RRFA)," as well as with statutory provisions.

DEC Response: The language of subdivision (c) reflects the statutory language for "oral or written" notification of alternate date(s) and does not specify the type of acceptance to be obtained. That statutory language was included in the regulation to provide increased flexibility to the regulated community. It is the applicator company's responsibility to provide appropriate notice of alternate dates and obtain acceptance in a manner which may be verified. The regulatory language referred to in the comment about cohesion are not intended to have the same requirement regarding obtaining acceptance of the property owner; they are separate requirements. Only changes to certain elements of the contract require "written proof of acceptance" of the property owner/owner's agent. Regarding references to the revised RIS and RFA, those documents refer to costs of verifying an application can be made as scheduled and rescheduling, if necessary.

**325.40(d) - Specific Pesticide Notification**

6. Comment: One person commented it is not possible to provide written notice of pesticides to be used prior to application and carry out IPM. Another person recommended the regulation allow notice of pesticides to be left after treatment. Another commentator was concerned that, by specifying pesticides when using IPM, customers will think their lawns are not being properly treated.

DEC Response: DEC encourages IPM and does not believe it will be hindered by identifying pesticides to be used prior to applying pesticides. Once preliminary IPM steps are taken, the applicator can provide the owner with written notice of any pesticides from the contract list. This is consistent with the statutory intent to inform the property owner of pesticides to be used and any associated warnings. IPM activities can be carried out and any pesticide applied in accordance with IPM scouting results. If the applicator is concerned about customers and IPM, they can provide information on IPM with the contract or discuss it with customers.

Under the statute, the contract is required to include ". . . a list of pesticides to be [emphasis added] applied. . . ." The regulation is in keeping with that future tense. Under ECL subdivision 33-0905.5(a), and under 325 (i), the applicator must, prior to application, supply the occupants of a dwelling or the property owner of a multiple dwelling, with a written copy of the pesticide label.

**325.40(f) - Visual Notification**

7. Comment: Many people stated appreciation for DEC's flexibility in providing a January 1, 2005 effective date for the requirement for the new features on the markers, as a means of industry exhausting their supply of existing markers. One commentator requested that "subparagraph" (h) be effective January 1, 2005.

DEC Response: DEC appreciates this comment. The January 1, 2005 effective date applies to the physical and text features of the markers themselves (subdivisions 325.40(f) and (g)).

**325.40(h)(2) & (4) - Posting Markers**

8. Comment: Three people commented placing markers every 50 or 100 feet along the perimeter will increase business costs, as applicators will spend additional time writing the date and time on markers and posting markers prior to application (increases walking distance). Roadside signs suffice. One person commented that, if markers are placed prior to application, markers would be sprayed with pesticide, posing a problem for removing markers. One person commented that the markers would be litter and visual pollution.

DEC Response: Roadside signs would not suffice. The statute requires markers to be ". . . clearly visible to persons immediately outside the

perimeter of [the] property.” To ensure consistency, DEC is requiring the same placement by all lawn care companies - at least every 50 or 100 feet. Markers can be placed along the perimeter as the perimeter is serviced, if the applicator puts the markers in the ground just before applying the treatment, thereby minimizing additional time and walking. Date and time of application are not required to be on markers, if date and time are provided to property owners prior to leaving the premises. The regulations follow the statute in requiring placement prior to application. DEC does not control individual disposal of markers. Hopefully, everyone will be responsible for their part in making this system work.

325.40(h)(5) - Points of Entry

9. Comment: Many people commented that the requirement to post markers at common points of entry would eliminate time and cost savings from using markers posted at least every 100 feet and some raised concern about small applicator business costs. Some recommended that “must also” be replaced with “or” in Paragraph 325.40(h)(5), because they believe that if a common point of entry is adjacent to a perimeter, the marker should be posted at the common point of entry, not in addition to another marker (at the perimeter). Some commentators requested DEC clarify or completely reconsider the common point marker requirement to decrease costs.

DEC Response: Perimeter posting is required by statute and, therefore, “or” could not be used. DEC believes costs associated with common entry point markers are warranted, to notify property owners and the public. Applicators should use common sense in placing markers. For example, if a point of entry is at the perimeter, placement of markers could begin at the point of entry and then be posted at least every 50 or 100 feet apart. Common points of entry vary with the property and it is the responsibility of the applicator to determine where they are adjacent to treated areas.

325.40(i) - Pesticide Product Labels

10. Comment: Several comments were made about pesticide product label information required to be provided to customers.

DEC Response: Subdivision 325.40(i) requires applicators to, prior to application, supply the occupant (or owner/owner’s agent, if a multiple dwelling) with a written copy of information contained on the label of pesticides to be used (not just the warnings). The only information excluded from this, under the regulation, is label instructions not pertaining to commercial lawn application. Paragraph 325.40(a)(4) requires the contract contain “a list of pesticides to be applied, including brand names and generic names of active ingredients. . . .” and certain warnings on product labels.

Waiver

11. Comment: One commentator believes consumers have an inherent right to waive notice of a date of application in the event an application can not be administered and is rescheduled. They state it makes sense from a consumer standpoint, since the consumer may un-tether him or herself from further undesired contact [with the applicator] and, from the industry perspective, vis-à-vis incurring fewer financial burdens associated with the notice process. The commentator urges DEC to “reinstate”, in the final regulation, waiver provisions that had been in the proposed rule.

DEC Response: Upon reviewing the proposed regulation and underlying statute, DEC deleted all provisions from the regulation regarding waivers and will not be including them in the final regulation.

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

**Managed Harvest of Big Game Animals and Game Birds**

**I.D. No.** ENV-32-03-00008-P

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

**Proposed action:** Amendment of sections 1.18, 1.21, 1.22, 1.31 and 1.40 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-0903, 11-0905, 11-0907, 11-0911 and 11-0913

**Subject:** Managed harvest of big game animals and game birds.

**Purpose:** To change muzzleloading hunting regulations in the Northern Zone in response to the severe winter of 2002-2003, create consistent and user-friendly requirements for tagging hunter-harvested bear, deer, and turkeys, and clear up minor regulatory inconsistencies that emerged subsequent to the implementation of the department’s automated licensing system (DECALS).

**Text of proposed rule:** Section 1.18 through subdivision 1.18(b) remains unchanged.

Subdivision 1.18(c) is amended to read as follows:

(c) Types of deer hunting tags.

(1) A deer hunting tag includes the following types of tags: regular season *deer* tag, [special] *bow/mz* season *either sex* tag, or [second special] *bow/mz* season *antlerless* tag.

(2) A regular season *deer* tag will be issued to any hunter authorized to hunt big game.

(3) A [special] *bow/mz* season *either sex* tag will be issued to a hunter holding a license authorizing the hunting of big game and holding additional licenses or stamps authorizing big game hunting in either a special archery season or a special muzzleloader season.

(4) A [second special] *bow/mz* season *antlerless* tag will be issued to a hunter holding a license authorizing the hunting of big game and holding additional licenses or stamps authorizing hunting in both special archery seasons and special muzzleloader seasons.

Subdivision 1.18(d) is amended to read as follows:

(d) Use of Deer Hunting Tags

(1) A regular season *deer* tag is valid for use only during the regular big game seasons and is valid for the taking of an antlered deer only, except:

(i) During the regular seasons in Westchester and Suffolk Counties or in areas restricted to bow only hunting, regular season *deer* tags may be used for a deer of either sex.

(ii) During the late archery or late muzzleloading seasons hunters authorized to hunt in those seasons may use a regular season *deer* tag for a deer of either sex.

(2) A [special] *bow/mz* season *either sex* tag is valid for the taking of a deer of either sex and is valid only for the special implement season for which the hunter is licensed. [Special] *bow/mz* season *either sex* tags are not valid for use during the regular seasons, except in Westchester and Suffolk Counties or by Junior Archers hunting during regular seasons.

(3) A [second special] *bow/mz* season *antlerless* tag is valid for the taking of antlerless deer only, in any special season and with any legal implement. [Second special] *Bow/mz* season *antlerless* tags are not valid for use during the regular seasons, except in Westchester and Suffolk Counties.

Subdivision 1.18(e) is amended to read as follows:

(e) Manner of Taking

(1) The manner of taking, tagging and reporting requirements provided in Environmental Conservation Law § 11-0907 for hunting under a big game license shall apply to all tags used for deer hunting.

(2) Hunters holding both a [special] *bow/mz* season *either sex* and a [second special] *bow/mz* season *antlerless* tag may use either tag during any special season for which they hold a license or stamp.

(3) A regular season *deer* tag may be used during the late special archery season [and], the late muzzleloader season and the *September portion of the northern zone early archery season* by hunters holding licenses or stamps authorizing big game hunting during those seasons.

Subdivision 1.18(f) remains unchanged.

Title 6 NYCRR Section 1.21, entitled “Hunting under deer management permits.” is amended as follows:

Section 1.21 through subdivision 1.21(a) remains unchanged.

Subdivision 1.21(b) is amended to read as follows:

(b) Open season. Southern Zone DMPs are valid during any Southern Zone deer hunting season. Northern Zone DMPs are valid [beginning November 1st] *during the Northern Zone regular big game season* and during the Northern Zone muzzleloader season following the Northern Zone regular big game season. Use of DMPs during the muzzleloader season requires possession of a valid big game license granting special muzzleloading season privileges.

Subdivision 1.21(c) through subparagraph 1.21(2)(iii) remains unchanged.

Paragraph 1.21(c)(3) is amended to read as follows:

(3) Immediately upon taking the DMP deer, the taker must separate the permit and carcass tag from each other and fill in the information requested, using indelible ink or indelible pencil. The taker must also immediately remove from the carcass tag *or mark with indelible ink* the month and date of kill where printed along its edges. The carcass tag must be attached to the deer as described on the permit before the deer is moved, except that the carcass tag need not be attached to the deer while it is being dragged or physically carried to a camp, dwelling, or point where other transportation is available. The carcass tag must not be removed until the deer is prepared for consumption. A DMP is void if the carcass tag is detached from the report tag prior to taking a deer.

Paragraph 1.21(c)(4) through subdivision 1.21(d) remains unchanged.

Paragraph 1.21(d)(1) is REPEALED and paragraphs 1.21(d)(2) and (3) are renumbered as paragraphs 1.21(d)(1) and (2).

Title 6 NYCRR Section 1.22, entitled "Muzzleloading firearm deer season," is amended as follows:

Subdivision 1.22(a) is amended to read as follows:

(a) "Northern Zone." The types of deer that may be legally harvested, the open Wildlife Management Units (WMUs) as described in section 4.1 of this Title and the open season dates (First and Second splits) for muzzleloading in the Northern Zone are set forth below.

"Open WMUs for harvest of deer of either sex"	"Open WMUs for harvest of antlerless deer or deer having both antlers less than three inches in length"	"Open WMUs for harvest of antlered deer only"
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FIRST SPLIT of the muzzle-loading season for deer shall be the seven days immediately preceding the Northern Zone regular big game season:

5A, 5C, [5G, 5F, 5H, 5J,] 6F, 6J, 6K [ 5A,] 6A, 6C, 6G, 6H 5F, 5G, 5H, 5J, 6N

SECOND SPLIT of the muzzle-loading season for deer shall be the seven days immediately following the Northern Zone regular big game season:

[5A, 5G, 5J,] 6A, 6C, 6G, 6H 5G, 5J

Subdivision 1.22(b) through end of Section 1.22 remains unchanged.

Title 6 NYCRR Section 1.31, entitled "Hunting black bear," is amended as follows:

Section 1.31 through paragraph 1.31(c)(10) remains unchanged.

Paragraph 1.31(d)(1) is amended to read as follows:

(d) Other regulations.

(1) Any person who takes a bear must *immediately* fill out completely, using indelible ink, [ballpoint pen or indelible pencil,] the bear carcass tag [upon taking a bear] *and cut out or mark with indelible ink the month and date of kill where printed along the edge of the carcass tag.* [and] *The taker must also attach the bear carcass tag securely to the bear, except that [such] the tag [need] does not [be so] need to be attached while the bear is being dragged or physically carried by the taker to a camp or point where other transportation is available. It is unlawful for any person to remove the tag until the bear is prepared for consumption. Any person who takes a bear must report as specified in Section 180.10 of this title.*

Paragraph 1.31(d)(2) through end of Section 1.31 remains unchanged.

Title 6 NYCRR Section 1.40, entitled "Hunting wild turkey," is amended as follows:

Section 1.40 through subdivision 1.40(f) remains unchanged.

Paragraph 1.40(g)(1) is amended to read as follows:

(g) "Tagging and possession."

(1) A permittee who [succeeds in taking] *takes* a turkey must immediately fill out the appropriate carcass tag, cut out *or mark with indelible ink* the month and date of kill printed along the edge of the carcass tag and affix the carcass tag to the carcass and report as specified in Section 180.10 of this title.

Paragraph 1.40(g)(2) through end of Section 1.40 remains unchanged.

**Text of proposed rule and any required statements and analyses may be obtained from:** Gordon Batcheller, Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatc@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, (Environmental Conservation Law, art. 8). Establishment of hunting seasons and thinning of wildlife surpluses 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 does not establish any new program or major reordering of priorities. It is therefore a "type II action" pursuant to the department's SEQR regulations (see 6 NYCRR § 618.2[d][5]).

**Regulatory Impact Statement**

1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (Department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL Section 11-0911 establishes the authority to regulate the reporting of deer and bear harvest. ECL Section 11-0907 governs open seasons and bag limits for deer and bear. ECL Section 11-0913 governs the issuance of deer management permits. ECL Section 11-0903 establishes the regulatory authority for hunting of wild turkeys.

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

The proposed amendments are needed to remove inconsistencies with the nomenclature of the deer hunting tags issued through the Department's Automated License Sales system (DECALS), and the existing regulations which describe license types and opportunities to use them. Late changes to the printed format of the licenses used during the 2002-2003 seasons meant that the terminology on licenses and tags was not consistent. The proposed regulatory changes will establish tag titles which are consistent with statutory references, as well as public informational materials and the actual tags provided for hunting pursuant to amendments to ECL 11-0907.

Currently the requirements for indicating the date of kill on carcass tags are not consistent for all tag types. The Department proposes to make the requirements for marking the date of kill the same for all tags and match those specified for regular season deer tags in ECL 11-0911. These are currently the most flexible requirements, allowing either cutting or marking the tag, and are proposed to be adopted for all deer, bear and turkey tags.

The Department also proposes to change the muzzleloading regulations for deer in WMU 5F, WMU 5H, WMU 5G and WMU 5J to an antlered-only hunting season, and to change the regulations in WMU 5A to a single either sex early hunting season. The late muzzleloading season in WMU 5A is proposed to be closed.

The winter of 2002-2003 was more severe than normal, with long periods of cold temperatures and extended periods with snow depths that greatly reduced deer mobility and survival. Field surveys in the spring of 2003 confirmed over-winter mortality in a number of areas, which will ultimately result in lower deer numbers this fall. Recent input from deer hunters and other concerned citizens has demonstrated that there is low public tolerance for antlerless hunting in these WMUs for the 2003-2004 hunting season.

In other areas of the Northern Zone where deer numbers are managed through the use of Deer Management Permits (DMPs) (WMUs 6A, 6C, 6G, 6H, and 6K), the proposed rule-making would change the valid date for Northern Zone DMPs. Instead of November 1st, DMPs in the Northern Zone would be valid on the opening day of the regular deer season (the next to last Saturday in October). This change would provide hunters with a greater opportunity to harvest an antlerless deer.

4. Costs

There are no costs associated with these regulatory changes beyond normal administrative costs.

5. Local Government Mandates

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

6. Paperwork

The proposed revisions do not require any new or additional paperwork from any regulated party.

7. Duplication

There are no other local, state or federal regulations concerning hunting season structure and license use. The Department is the primary government agency with regulatory authority for the managed harvest of game species in New York.

8. Alternatives

Failure to implement the changes will result in continued inconsistencies in the terminology of licenses and tags issued to hunters, and requirements for their use, and could lead to considerable hunter confusion and dissatisfaction. Failure to reduce deer harvest in areas that experienced severe winter conditions would likely cause dissatisfaction among deer hunters, landowners, and other stakeholders.

9. Federal Standards

There are no federal standards affecting this regulatory proposal.

10. Compliance Schedule

Hunters and trappers will be required to comply with the new regulations beginning with the 2003-2004 license year (October 1, 2003).

**Regulatory Flexibility Analysis**

The proposed rule-making will revise regulations concerning the procedures for tagging legally harvested wildlife, nomenclature for the tags, and deer hunting in the Northern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting 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 rule-making, the Department has determined that this rule-making will not impose an adverse economic impact on small businesses or local governments. 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 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 hunting are administered by the Department.

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

**Rural Area Flexibility Analysis**

The proposed rule-making will revise regulations concerning the procedures for tagging legally harvested wildlife, nomenclature for the tags, and deer hunting in the Northern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting 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 rule-making, the Department has determined that this rule-making 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 hunting or trapping are administered by the Department.

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

**Job Impact Statement**

The proposed rule-making will revise regulations concerning the procedures for tagging legally harvested wildlife, nomenclature for the tags, and deer hunting in the Northern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting 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 rule-making, the Department has determined that this rule-making will not have a substantial adverse impact on jobs and employment opportunities.

Few, if any, persons actually hunt as a means of employment. Those few for whom hunting is an income source (e.g., professional guides) will not suffer any substantial adverse impact as a result of this proposed rule-making 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 rule-making will have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

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## Department of Health

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### EMERGENCY RULE MAKING

**Part-Time Clinics**

**I.D. No.** HLT-32-03-00001-E

**Filing No.** 792

**Filing date:** July 24, 2003

**Effective date:** July 24, 2003

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

**Action taken:** Repeal of section 703.6; addition of new section 703.6 and amendment of section 710.1(c) of Title 10 NYCRR.

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

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

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

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

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

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

The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.

- Addition of a requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic or treatment center to ensure adequate supervision.

- Enhanced operating standards, including requirements for quality assurance and improvement and for credentialing of staff.

- Addition of a requirement for prior limited review of all new part-time clinic sites and the continuation or proposed relocation of existing clinics.

- Recognition that part-time clinics which are operated by city and county health departments are governed by section 614 of the Public Health Law.

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

**Subject:** Part-time clinics.

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

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

*Section 703.6 Part-time clinics*

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

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

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

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

(b) *Department approval and/or notification.*

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

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

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

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

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

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

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

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

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

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

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

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

(3) After initiating patient care services, the operator shall give written notification, including a closure plan acceptable to the department, to the appropriate regional office of the department at least 15 days prior to the discontinuance of a part-time clinic site other than a scheduled discontinuance as indicated in accordance with subparagraph (i) of paragraph (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 the effective date of this paragraph, and in conformance with all pertinent statutes and regulations in effect prior to that date, and has submitted request(s) to the department for approval to continue providing services for each such site by November 13, 2000 in accordance with such requirements shall be permitted to operate until and unless the department issues a written denial of approval to continue operation. If a request to continue operation of a part-time clinic site is denied, the operator shall cease providing services at such site.

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

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

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

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

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

(iv) disposal of solid wastes and sharps;

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

(vi) a fire plan consistent with local laws;

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

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

(ix) utilization review;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) smoking is prohibited within patient care areas.

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

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

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

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

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

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

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

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

(4) Proposals not requiring an application.

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

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

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

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

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

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

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 21, 2003.

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

**Regulatory Impact Statement**

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

with prevailing standards for life safety, sanitation and infection control. Some 300 hospitals and diagnostic and treatment centers are authorized to operate part-time clinics.

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

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

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

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

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

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

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

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

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

**Cost to State and Local Government:**

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

**Cost to the Department of Health:**

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

**Local Government Mandates:**

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

**Paperwork:**

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

**Duplication:**

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

**Alternative Approaches:**

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

**Federal Requirements:**

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

**Compliance Schedule:**

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

**Regulatory Flexibility Analysis**

Effect of rule:

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

**Compliance requirements:**

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

**Professional services:**

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

**Compliance costs:**

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

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

**Economic and technological feasibility:**

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

**Minimizing adverse impact:**

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

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

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

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

**Small business and local government participation:**

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

**Rural Area Flexibility Analysis**

**Effect on Rural Areas**

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

**Compliance Requirements**

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

**Professional Services**

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

**Compliance Costs**

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

**Minimizing Adverse Impact**

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

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

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

**Opportunity for Rural Area Participation**

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

**Job Impact Statement**

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

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

**EMERGENCY  
RULE MAKING****Smallpox Vaccine**

**I.D. No.** HLT-32-03-00002-E

**Filing No.** 793

**Filing date:** July 25, 2003

**Effective date:** July 25, 2003

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

**Action taken:** Amendment of sections 2.1 and 2.2 of Title 10 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** Immediate adoption of this rule is necessary to accurately monitor the magnitude of adverse events among persons receiving smallpox vaccination, as well as the magnitude and scope of illness among their contacts. Smallpox vaccination of core hospital medical care teams and public health response teams began in February 2003. Expansion of this program to include voluntary vaccination of health care and public safety workers is under review. Monitoring vaccination complications is critical to evaluate appropriately a plan for continuation.

Complete and timely reporting by physicians to the city, county or district health officer of all cases of vaccinia complications will assist the Department of Health to achieve the earliest possible recognition of a problem, defining the incidence and clinical spectrum of illness, preparing an appropriate response to complications and obtaining necessary vaccinia immune globulin on a timely basis. Accurate reporting of complications of smallpox vaccinations will also assist in planning for future larger-scale programs. Planning for such programs needs to be based on epidemiologic and clinical information that can best be developed through the reportable disease system.

**Subject:** Communicable diseases, smallpox vaccine-adverse events.

**Purpose:** To monitor for complications associated with smallpox vaccination and enable it to request on a timely basis, vaccinia immune globulin, used to read some adverse reactions, from the CDC.

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

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

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

- Amebiasis
- Anthrax
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chancroid
- Chlamydia trachomatis infection
- Cholera
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli O157:H7 infections
- Ehrlichiosis
- Encephalitis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease

- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemolytic uremic syndrome
- Hemophilus influenzae (invasive disease)
- Hepatitis (A; B; C)
- Hospital-associated infections (as defined in section 2.2 of this Part)
- Legionellosis
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- Measles
- Melioidosis
- Meningitis
  - Aseptic
  - Hemophilus
  - Meningococcal
  - Other (specify type)
- Meningococemia
- Mumps
- Pertussis (whooping cough)
- Plague
- Poliomyelitis
- Psittacosis
- Q Fever
- Rabies
- Rocky Mountain spotted fever
- Rubella
- Congenital rubella syndrome
- Salmonellosis
- Shigellosis
- Smallpox
- Staphylococcal enterotoxin B poisoning
- Streptococcus pneumoniae invasive disease
- Syphilis, specify stage
- Tetanus
- Toxic Shock Syndrome
- Trichinosis
- Tuberculosis, current disease (specify site)
- Tularemia
- Typhoid
- Vaccinia disease (as defined in section 2.2 of this Part)
- Viral hemorrhagic fever
- Yellow Fever
- Yersiniosis

A new subdivision (g) is hereby added to Section 2.2 to read as follows:  
2.2 Definitions.

\* \* \*

(g) As used in this part, the term *vaccinia disease* shall mean:

- (1) persons with *vaccinia infection due to contact transmission*; and
- (2) persons with the following complications from vaccination: *eczema vaccinatum, erythema multiforme major or Stevens-Johnson syndrome, fetal vaccinia, generalized vaccinia, inadvertent inoculation, ocular vaccinia, post-vaccinal encephalitis or encephalomyelitis, progressive vaccinia, pyogenic infection of the vaccination site, and any other serious adverse events (i.e. those resulting in hospitalization, permanent disability, life-threatening illness or death).*

**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 22, 2003.

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

**Regulatory Impact Statement**

Statutory Authority:  
Sections 225(4) and 225(5)(a) and (h) 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. 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 condi-

tions, 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.”

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding potential complications of vaccinia as part of the reportable disease requirements.

Needs and Benefits:

Vaccinia virus is the immunizing agent used to vaccinate against smallpox. It has the potential for contact spread of vaccinia to nonimmune contacts. Vaccination is contraindicated in persons with deficient immune systems, eczema or certain other dermatitis. Vaccinia immune globulin is given to individuals developing certain adverse reactions; like the vaccine, vaccinia immune globulin can only be obtained from the CDC.

Adding vaccinia disease to the reportable disease list will permit the Department of Health to monitor for complications of smallpox vaccination efforts to both the person vaccinated as well as to the contacts of the person vaccinated. By enabling enhanced disease monitoring, there will be systemic active monitoring for complications, the complications will be known to both state and federal officials, and any requests to CDC for vaccinia immune globulin, needed to treat some of the vaccine’s adverse reactions, can be made on a timely basis.

Smallpox vaccination of core hospital medical care teams and public health response teams began in February 2003. Expansion of this program to include voluntary vaccination of health care and public safety workers is under review. Monitoring of vaccination complications is critical to appropriately evaluate and plan for continuation and future vaccination programs. Improved estimates of the number of potential complications and analysis of effective intervention strategies will assist in appropriately responding to such complications. Timely disease reporting will allow vaccinia immune globulin, used to treat some of the vaccine’s adverse reactions, to be obtained from CDC.

Costs:

Costs to Regulated Parties:

Smallpox vaccination of core hospital medical care teams and public health response teams began in February 2003. As of June 5, 2003, 704 individuals have been vaccinated. On two occasions, suspect generalized vaccinia has been investigated and clinical specimens were obtained for laboratory diagnosis. Generalized vaccinia was confirmed in one case. As previously mentioned, the expansion of the program is under review.

The costs of reporting this disease is expected to be modest as reporting processes already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting disease. The estimated cost of disease reporting by small hospitals is \$150.00 annually. The cost for physicians is expected to be less.

Costs to Local and State Governments:

The additional cost of reporting vaccinia disease is expected to be minimal because the staff who will be involved in reporting the additional diseases at the local and state health departments are the same as those currently involved with reporting of other communicable diseases listed in 10 NYCRR Section 2.1. The additional cost to local or state governments associated with investigating vaccinia disease will largely depend on the extent of vaccinia in contacts of persons vaccinated. The number of cases of contact vaccinia is expected to be few. (See Costs to Regulated Parties).

Potential savings include reducing costs associated with morbidity, treatment and premature death.

Costs to the Department of Health:

The New York State Department of Health already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the Centers for Disease Control and Prevention. The addition of vaccinia disease should not lead to additional costs for data entry, particularly as the Department adopts systems for electronic submission of case reports. The Department will assist counties in the investigation of vaccinia disease, as it does in the investigation of other communicable diseases.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to regulated parties.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports from physicians in attendance on persons with or suspected of being affected with vaccinia

disease, will be mandated to immediately forward such reports to the State Health Commissioner and to investigate the cases reported.

**Duplication:**

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

**Alternatives:**

No other alternatives are available.

Reporting of diseases associated with vaccinia is of critical import to public health. There is an urgent need to conduct surveillance, identify human cases in a timely manner, and, in the case of contact vaccinia, reduce the potential for further exposure to contacts.

**Federal Standards:**

Currently there are no federal standards requiring the reporting of vaccinia disease.

**Compliance Schedule:**

Reporting of vaccinia disease will be mandated upon filing of a Notice of Emergency Adoption with the Secretary of State and made permanent by publication of a Notice of Adoption in the *New York State Register*.

**Regulatory Flexibility Analysis**

**Effect on Small Business and Local Government:**

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

**Compliance Requirements:**

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

**Professional Services:**

No additional professional services will be required since providers should be able to utilize existing staff to report occurrences of vaccinia disease.

**Compliance Costs:**

No initial capital costs of compliance are anticipated. Annual compliance costs will depend upon the number of untoward events. As of June 5, 2003, 704 individuals have been vaccinated. On two occasions, suspect generalized vaccinia has been investigated and clinical specimens were obtained for laboratory diagnosis. Generalized vaccinia was confirmed in one case. The expansion of the program is currently under review.

The reporting of vaccinia disease should have a negligible effect on the estimated cost of disease reporting by small hospitals which is at most \$150.00 per year. The cost would be less for physicians and other small businesses.

**Minimizing Adverse Impact:**

There are no alternatives to the reporting requirement. Adverse impacts have been minimized since revised forms and reporting staff will be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as unnecessary and inconsistent with the purpose of the regulation.

**Feasibility Assessment:**

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

**Small Business and Local Government Participation:**

Local governments have been consulted in the process through ongoing communication on this issue with 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 expected to have minimal impact on local health units, physicians, hospitals and laboratories that are located in rural areas.

**Compliance Requirements:**

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

**Professional Services:**

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

**Compliance Costs:**

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

**Minimizing Adverse Impact:**

There are no alternatives to the reporting requirements. 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-bb(2) were rejected as unnecessary and inconsistent with the purpose of the regulation.

**Rural Area Input:**

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

**Job Impact Statement**

This regulation adds vaccinia disease to the list of diseases that health care providers must report to public health authorities using existing processes. The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

## NOTICE OF ADOPTION

### Seventh Grade Hepatitis B Vaccination

**I.D. No.** HLT-06-03-00009-A

**Filing No.** 800

**Filing date:** July 29, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Amendment of sections 66-1.1 and 66-1.3 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2164(10)

**Subject:** Seventh grade hepatitis B vaccination for school entry.

**Purpose:** To clarify hepatitis B vaccination requirements for those students entering the seventh grade.

**Text of final rule:** Paragraphs (6) and (7) of subdivision (e) of section 66-1.1 are amended to read as follows:

(6) all children less than age five years who are enrolled in a daycare, pre-kindergarten or nursery school must have received three doses of Haemophilus influenzae type b Conjugate Vaccine (HbCV), except that for a child who is 15 months of age or older, it is acceptable to have received a single dose of HbCV at or after the age of 15 months; [and]

(7) children born on or after January 1, 1993, beginning with their enrollment in any kindergarten, elementary, intermediate or secondary school and, [to] for children born on or after January 1, 1995, beginning with their enrollment in any school, as defined in subdivision (a) of this section, must have received three doses of hepatitis B vaccine[.]; and

A new paragraph (8) of subdivision (e) of section 66-1.1 is hereby added to read as follows:

(8) children, beginning with their entry or promotion into the seventh grade of any school, must have completed a valid hepatitis B immunization series with the number of doses set forth in the Centers for Disease Control and Prevention standards found in either *Morbidity and Mortality Weekly Reports (MMWR) August 4, 1995, 44(30); 574-575 or Morbidity and Mortality Weekly Reports (MMWR) March 31, 2000, 49(12); 261. These MMWR reports are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. They are available for public inspection and copying at the Office of Regulatory Reform, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. Copies are also available from the United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia, 30333 and from the CDC website at <http://www.cdc.gov/>.*

Paragraphs (6) and (7) of subdivision (a) of section 66-1.3 are amended to read as follows:

(6) all children less than age five years who are enrolled in a daycare, pre-kindergarten or nursery school must have received three doses of Haemophilus influenzae type b Conjugate Vaccine (HbCV), except that for a child who is 15 months of age or older, it is acceptable to have received a single dose of HbCV at or after the age of 15 months; [and]

(7) children born on or after January 1, 1993, beginning with their enrollment in any kindergarten, elementary, intermediate or secondary school and, children born on or after January 1, 1995, beginning with their

enrollment in any school, as defined in section 66-1.1 of this Subpart, must have received three doses of hepatitis B vaccine[.]; and

A new paragraph (8) of subdivision (a) of section 66-1.3 is hereby added to read as follows:

(8) children, beginning with their entry or promotion into the seventh grade of any school, must:

(i) have completed a valid hepatitis B immunization series with the number of doses defined in paragraph (8) of subdivision (e) of section 66-1.1 of this subpart; or

(ii) have demonstrated serologic evidence of past or current hepatitis B infection or serologic evidence of adequate protection from prior immunization.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 66-1.1(e)(8).

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

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

Although the regulation has been changed since it was published in the *State Register* on February 12, 2003, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

### Varicella Vaccine School Entry Requirement

**I.D. No.** HLT-06-03-00010-A

**Filing No.** 801

**Filing date:** July 29, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Amendment of sections 66-1.1 and 66-1.3 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2164(10)

**Subject:** Varicella vaccine school entry requirement.

**Purpose:** To implement L. 1999, ch. 416.

**Text of final rule:** Paragraphs (7) and (8) of subdivision (e) of section 66-1.1 are amended to read as follows:

(7) children born on or after January 1, 1993, beginning with their enrollment in any kindergarten, elementary, intermediate or secondary school and, [to] children born on or after January 1, 1995, beginning with their enrollment in any school, as defined in subdivision (a) of this section, must have received three doses of hepatitis B vaccine; [and]

(8) children, beginning with their entry or promotion into the seventh grade of any school, must have completed a valid hepatitis B immunization series with the number of doses set forth in the Centers for Disease Control and Prevention standards found in either Morbidity and Mortality Weekly Reports (MMWR) August 4, 1995, 44(30); 574-575 or Morbidity and Mortality Weekly Reports (MMWR) March 31, 2000, 49(12); 261. These MMWR reports are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. They are available for public inspection and copying at the Office of Regulatory Reform, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. Copies are also available from the United States Department of Health and Human Services, Centers for Disease Control and Prevention, Atlanta, Georgia, 30333[.]; and

A new paragraph (9) of subdivision (e) of Section 66-1.1 is hereby added to read as follows:

(9) children born on or after January 1, 1998, beginning with their enrollment in any public, private or parochial kindergarten, elementary, intermediate or secondary school, and children born on or after January 1, 2000, beginning with their enrollment in any school, must have received an adequate varicella immunization as set forth in the Centers for Disease Control and Prevention standards found in the *Morbidity and Mortality Weekly Reports (MMWR)* July 12, 1996 vol. 45 (No. RR-11) and *MMWR* May 28, 1999 vol. 48 (No. RR-6). These MMWR reports are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. They are available for public inspection and copy-

ing at the Office of Regulatory Reform, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Copies are also available from the United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333 and from the CDC website at <http://www.cdc.gov/>.

Paragraphs (7) and (8) of subdivision (a) of section 66-1.3 are amended to read as follows:

(7) children born on or after January 1, 1993, beginning with their enrollment in any kindergarten, elementary, intermediate or secondary school and, children born on or after January 1, 1995, beginning with their enrollment in any school, as defined in section 66-1.1 of this Subpart, must have received three doses of hepatitis B vaccine; [and]

(8) children, beginning with their entry or promotion into the seventh grade of any school, must:

(i) have completed a valid hepatitis B immunization series with the number of doses defined in paragraph (8) of subdivision (e) of section 66-1.1 of this subpart; or

(ii) have demonstrated serologic evidence of past or current hepatitis B infection or serologic evidence of adequate protection from prior immunization[.]; and

A new paragraph (9) of subdivision (a) of Section 66-1.3 is hereby added to read as follows:

(9) children born on or after January 1, 1998, beginning with their enrollment in any public, private or parochial kindergarten, elementary, intermediate or secondary school, and children born on or after January 1, 2000, beginning with their enrollment in any school, must have:

(i) received an adequate varicella immunization as set forth in paragraph (9) of subdivision (e) of Section 66-1.1 of this Subpart; or

(ii) have demonstrated either a medical history of prior varicella infection as documented by a health care provider or serologic evidence of immunity to varicella.

Subdivision (b) of section 66-1.3 is amended to read as follows:

(b) a statement from a physician or health facility which specifies the products administered, and the dates of administration, and shows that the child:

\* \* \*

(5) has received at least one dose of hepatitis B vaccine; [and]

(6) if born on or after January 1, 1998, beginning with enrollment in any public, private or parochial kindergarten, elementary, intermediate or secondary school, and if born on or after January 1, 2000, beginning with enrollment in any school, has met the requirements of paragraph (9) of subdivision (a) of section 66-1.3 regarding receipt of an adequate varicella immunization, documentation of a medical history of prior varicella infection or serologic evidence of immunity to varicella; and

(7) has appointments to return to the physician or health facility for the remainder of the immunizations specified in subdivision (a) of this section;

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 66-1.1(e)(9).

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

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

Although the regulation has been changed since it was published in the *State Register* on February 12, 2003, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

### HIV Testing

**I.D. No.** HLT-11-03-00008-A

**Filing No.** 791

**Filing date:** July 24, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Amendment of Subpart 58-8 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 576(4)

**Subject:** HIV testing.

**Purpose:** To revise standards for HIV testing.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-11-03-00008-P, Issue of March 19, 2003.

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

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

**Assessment of Public Comment**

Prior to and concurrent with the rule's publication in the State Register, more than 1,500 copies of the proposed Subpart 58-8 amendment, concerning HIV testing, were distributed to clinical laboratories and blood banks holding New York State permits, as well as professional associations and trade organizations representing the laboratory industry and other affected parties. On March 19, 2003, a Notice of Revised Rulemaking to amend Subpart 58-8 was published in the State Register. Two letters of comment were received in response to the proposed amendment. No further changes were made to the revised rule as a result of these comments.

One commentator noted that the proposal blends testing previously separately classified as prognostic (i.e., for monitoring known HIV-infected individuals) into the definition of diagnostic testing, and expressed concern that the so-revised definition of diagnostic testing would encourage ordering of patient monitoring tests, such as HIV viral load tests, before patients would receive HIV antibody test results. The Department believes that it is not necessary to maintain in regulation a distinction between testing performed prior to and after HIV infection is diagnosed, because under this proposal, HIV screening tests conducted both pre- and post-diagnosis of infection would use the same algorithm, i.e., that approved by the Food and Drug Administration (FDA) for the particular kit in use. Moreover, the fact that few laboratories perform screening tests on known HIV-infected individuals concurrently with viral load procedures makes the distinction moot. The Department believes that applying the generally recognized term "diagnostic" to all HIV testing performed for medical/clinical purposes renders Subpart 58-8 terminology consistent with that in Section 63.4, which prescribes HIV test reporting requisites. The Department also finds that the term "identification testing" more accurately describes viral load testing and other nucleic acid-based methods, such as resistance testing. The commentator also recommended that the rule require ordering of an antibody screening test prior to or concurrent with a viral load test. While antibody screening may be a medically sound and fiscally prudent first step for the vast majority of persons presenting for testing, it would be inappropriate to include the suggested provision in Subpart 58-8. The process for arriving at a medical diagnosis cannot be mandated in regulation; decisions relating to the ordering of tests are within the purview of the practice of medicine. Clinicians have become increasingly aware of the most effective testing methodologies for determining whether a patient is HIV-infected, due, in part, to the diligence of laboratories in educating practitioners about the newest technologies. The Department expects this close interaction of the health care team will continue to address every patient's need for and right to a correct diagnosis.

Combining the definitions for diagnostic and prognostic testing would not, as the commentator suggested, in any way alter practitioners' ordering of antibody screening. The definition change should not be confused with proposed elimination of the requirement in Section 58-8.3 that laboratories conduct antibody testing concurrently with every viral load procedure, leaving such concurrent testing at the laboratories' and the practitioners' discretion. The Department finds little or no added benefit in concurrent screening now that laboratories, as well as practitioners, have acquired many years' experience with appropriate performance of viral load procedures currently capable of low detection limits.

The same commentator suggested that the proposal's reference to test kit manufacturers' instructions might be viewed as an attempt to place the responsibility for any false positive results on the manufacturers. That is certainly not the intent of that provision. The Department purposefully included such a reference rather than prescribing a specific testing algorithm, to better accommodate all available FDA-approved technologies, as well as those that may become available in the future through the FDA approval process. This streamlining change eliminates the need to modify the regulation with each newly introduced and approved HIV testing method.

The Department rejected the commentator's recommendation that preliminary (unconfirmed) test results not be communicated to test subjects. Section 58-8.3(d) of the existing regulation allows reporting of a prelimi-

nary result with written authorization from a practitioner. This provision, which has been in place for several years, would remain in the proposed rule at Section 58-8.4(a).

The same commentator suggested the rule specify that clinical laboratories be prohibited from releasing HIV test results to the test subject, because such disclosure would be inconsistent with Section 58-1.8. The New York State Public Health Law has been amended recently to allow individuals direct access to certain laboratory tests, including HIV tests, and the commentator's recommended provision would be inconsistent with that statute. Clinical laboratories meeting specified Department requirements for pre- and post-test counseling may now release negative and confirmed-positive HIV test results directly to test subjects, who are persons legally authorized to receive such results.

The commentator objected to elimination of the requirement that a standard operating procedure manual (SOPM) be submitted in conjunction with a laboratory's application for a permit in the HIV testing category. The Department would like to clarify that SOPMs would continue to be subject to Department review prior to initiation of testing, but that such review would be conducted on-site at the time of the Department's survey of the laboratory for the new category. On-site review would ensure that the manual accurately reflects the procedures currently used by the laboratory, and that such procedures are performed in accordance with the test manufacturer's instructions or are otherwise acceptable to the Department.

The commentator suggested that the proposal require a second screening of non-reactive specimens tested by the enzyme immunoassay (EIA) technique whenever the initial result falls within 20 percent of the test reactivity cut-off. The Department rejects the concept that retesting of "gray zone" specimens should be mandated in regulation, and believes that it is the laboratory director's responsibility to consider all pertinent factors, such as his or her laboratory's experience with particular instrumentation, personnel competency and test populations, in deciding whether enhancements to FDA-approved testing protocols would be prudent quality assurance measures.

The Department declines to accept the commentator's suggestion that Section 58-8.3, concerning appropriate content of HIV testing billing and invoices, needs to be further clarified. The intent of the proposed prohibition against naming HIV tests on invoices is clearly to prevent, to the degree possible, unintentional test disclosure to a third party, such as a spouse or family member, whenever bills are sent directly to patients. Third-party payors and Public Health Law Article 28 facilities are subject to New York State or federal confidentiality, disclosure and re-disclosure requirements. However, circumstances may arise, other than in direct patient billing, under which the recipient of the bill, claim or invoice is not subject to such requirements. Rather than attempt to list all such possibilities, the proposal simply exempts from the prohibition those entities subject to such requirements.

The second commentator simply expressed support for the amendment.

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## Insurance Department

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### NOTICE OF ADOPTION

#### Prepaid Legal Services Plans and Legal Services Insurance

**I.D. No.** INS-18-03-00001-A

**Filing No.** 794

**Filing date:** July 25, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Repeal of Part 260 (Regulation 132) and amendment of Parts 261 (Regulation 161) and 262 (Regulation 162) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1113(a)(29), 1116 and art. 23; and L. 1998, ch. 65 and L. 2003, ch. 28

**Subject:** Prepaid legal services plans and legal services insurance.

**Purpose:** To implement L. 2003, ch. 28.

**Text or summary was published** in the notice of proposed rule making, I.D. No. INS-18-03-00001-P, Issue of May 7, 2003.

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

*Text of rule and any required statements and analyses may be obtained from:* Joanna Rose, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: jrose@ins.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**License Applications and Examinations**

**I.D. No.** INS-20-03-00003-A

**Filing No.** 790

**Filing date:** July 24, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Amendment of sections 21.1 and 21.2 (Regulation 5) and Part 23 (Regulation 7) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 2104, 2105 and 2115; and L. 2000, ch. 505; and L. 2002, ch.13

**Subject:** Application forms and examinations for broker licenses.

**Purpose:** To reflect the creation of a new type of "broker" license, repeal obsolete provisions regarding examinations and update terminology concerning the examination on property/casualty insurance to reflect current practice and law.

**Text or summary was published** in the notice of proposed rule making, I.D. No. INS-20-03-00003-P, Issue of May 21, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** Joanna Rose, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: jrose@ins.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Motor Vehicles

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**NOTICE OF ADOPTION**

**Allegany County Motor Vehicle Use Tax**

**I.D. No.** MTV-22-03-00013-A

**Filing No.** 798

**Filing date:** July 29, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Amendment of section 29.12(o) of Title 15 NYCRR.

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

**Subject:** Allegany County motor vehicle use tax.

**Purpose:** To exempt motor vehicles with agricultural plates from the Allegany County motor vehicle use tax.

**Text or summary was published** in the notice of proposed rule making, I.D. No. MTV-22-03-00013-P, Issue of June 4, 2003.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Motor Vehicle Inspections**

**I.D. No.** MTV-22-03-00014-A

**Filing No.** 799

**Filing date:** July 29, 2003

**Effective date:** Aug. 13, 2003

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

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

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 301(d)(1), (f), 302(a) and (e)

**Subject:** Motor vehicle inspections.

**Purpose:** To revise safety and emissions inspection program.

**Text or summary was published** in the notice of proposed rule making, I.D. No. MTV-22-03-00014-P, Issue of June 4, 2003.

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

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

**Assessment of Public Comment**

The agency received no public comment.

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

**Tioga County Motor Vehicle Use Tax**

**I.D. No.** MTV-32-03-00006-P

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

**Proposed action:** This is a consensus rule making to add section 29.12(u) to Title 15 NYCRR.

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

**Subject:** Tioga County motor vehicle use tax.

**Purpose:** To impose the tax.

**Text of proposed rule:** Part 29.12 is amended by adding a new subdivision (u) to read as follows:

*(u) Tioga County. The Tioga County Board of Supervisors adopted Local Law Number 4 of 2003 on June 19, 2003, to establish a Tioga County Motor Vehicle Use Tax. The Tioga County Treasurer entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after January 1, 2004 and upon the renewal of registrations expiring on and after March 1, 2004. The County Treasurer of Tioga County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Tioga County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Tioga County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

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

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

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

**Consensus Rule Making Determination**

This proposed regulation would create a new 15 NYCRR Part 29.12(u) to provide for the collection of a Tioga County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On June 19, 2003 the Tioga County Legislature enacted a local law requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Tioga County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this regulation because the collection of the Tioga County Use Tax by DMV shall have no impact on job opportunities in New York State.

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## Public Service Commission

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### ERRATUM

A Notice of Continuation, I.D. No. PSC-09-03-00018-C, published in the July 30, 2003 issue of the *State Register*, was erroneously labeled as a Notice of Adoption. The notice was not an Adoption and should have been labeled as a Continuation.

The Department of State apologizes for any confusion this may have caused.

### NOTICE OF ADOPTION

#### **Standby Service Rates by Rochester Gas and Electric Corporation**

**I.D. No.** PSC-21-02-00009-A

**Filing date:** July 29, 2003

**Effective date:** July 29, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 02-E-0551, approving revisions to Rochester Gas and Electric Corporation's (RG&E) tariff schedules, P.S.C. Nos. 15 and 14—Electricity.

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

**Subject:** Tariff filing.

**Purpose:** To approve a new standby electric service in accordance with commission opinion and order, "Guidelines for the Design of Standby Service Rates."

**Substance of final rule:** The Commission adopted with modifications the terms of Rochester Gas and Electric Corporation's proposal establishing new standby service rates for customers that do not use the utility's transmission and distribution facilities for all their electric energy requirements, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

#### **Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(02-E-0551SA1)

### NOTICE OF ADOPTION

#### **Standby Service Rates by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-27-02-00013-A

**Filing date:** July 29, 2003

**Effective date:** July 29, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 02-E-0780, approving revisions to Orange and Rockland Utilities, Inc.'s (Orange & Rockland) tariff schedule, P.S.C. No. 2—Electricity.

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

**Subject:** Tariff filing.

**Purpose:** To approve a new standby electric service in accordance with commission opinion and order, "Guidelines for the Design of Standby Rates."

**Substance of final rule:** The Commission adopted with modifications the terms of Orange and Rockland Utilities, Inc.'s proposal establishing new standby service rates for customers that do not use the utility's transmission and distribution facilities for all their electric energy requirements, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

#### **Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(02-E-0780SA1)

### NOTICE OF ADOPTION

#### **Standby Service Rates by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-27-02-00014-A

**Filing date:** July 29, 2003

**Effective date:** July 29, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 02-E-0781, approving revisions to Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff schedules, P.S.C. Nos. 9, 4 and 2—Electricity.

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

**Subject:** Tariff filing.

**Purpose:** To approve a new standby electric service in accordance with commission opinion and order, "Guidelines for the Design of Standby Service Rates."

**Substance of final rule:** The Commission approved with modifications a request by Consolidated Edison Company of New York, Inc. to establish new standby service rates for customers that do not use the utility's transmission and distribution facilities for all their electric energy requirements, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

#### **Assessment of Public Comment**

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

(02-E-0781SA1)

### NOTICE OF ADOPTION

#### Transfer of Water System by Monroe Hills Estates Water System, Inc. and the Town of Monroe

**I.D. No.** PSC-52-02-00008-A

**Filing date:** July 25, 2003

**Effective date:** July 25, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 02-W-1427, authorizing the transfer of Monroe Hills Estates Water System, Inc.'s water plant assets to the Town of Monroe.

**Statutory authority:** Public Service Law, section 89-h

**Subject:** Transfer of water system.

**Purpose:** To permit the transfer of Monroe Hills Estates Water System, Inc.'s water supply assets to the Town of Monroe.

**Substance of final rule:** The Commission approved a joint petition by Monroe Hills Estates Water System, Inc. and the Town of Monroe authorizing the transfer of Monroe Hills Estates Water Systems, Inc.'s water plant assets to the Town of Monroe, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

#### Assessment of Public Comment

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

(02-W-1427SA1)

### NOTICE OF ADOPTION

#### Meter Recovery Charge by Consolidated Edison Company of New York, Inc.

**I.D. No.** PSC-19-03-00026-A

**Filing date:** July 23, 2003

**Effective date:** July 23, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 03-E-0635, allowing Consolidated Edison Company of New York, Inc. (Con Edison) to modify its tariff schedule, P.S.C. No. 9—Electricity.

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

**Subject:** Tariff revisions.

**Purpose:** To increase meter recovery charge.

**Substance of final rule:** The Commission approved a request by Consolidated Edison Company of New York, Inc. to increase its Meter Recovery Charge, a charge the company imposes when it disconnects service and obtains a court order to remove a customer's electric meter.

**Final rule compared with proposed rule:** No changes.

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

#### Assessment of Public Comment

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

(03-E-0635SA1)

### NOTICE OF ADOPTION

#### Electric Rate Increase by the Village of Bergen

**I.D. No.** PSC-19-03-00027-A

**Filing date:** July 25, 2003

**Effective date:** July 25, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 03-E-0639, approving modifications to the Village of Bergen's tariff schedule, P.S.C. No. 1—Electricity.

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

**Subject:** Tariff revisions.

**Purpose:** To increase annual electric revenues.

**Substance of final rule:** The Commission authorized the Village of Bergen to increase its annual electric revenues by \$246,750 or 15.6%, provided the Village of Bergen files further revisions to become effective on not less than one day's notice on August 1, 2003, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

#### Assessment of Public Comment

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

(03-E-0639SA1)

### NOTICE OF ADOPTION

#### Underground Extensions by Rochester Gas and Electric Corporation

**I.D. No.** PSC-20-03-00016-A

**Filing date:** July 23, 2003

**Effective date:** July 23, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 03-E-0673, allowing Rochester Gas and Electric Corporation (RG&E) to modify its tariff schedule, P.S.C. Nos. 14, and 15—Electricity.

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

**Subject:** Tariff revisions.

**Purpose:** To use a five-year average of actual calendar-year data in calculation of rates for underground extensions.

**Substance of final rule:** The Commission approved a request by Rochester Gas and Electric Corporation to use a five-year average of the actual calendar year data in calculating its rates for underground extensions instead of the traditional one-year average of costs.

**Final rule compared with proposed rule:** No changes.

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

#### Assessment of Public Comment

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

(03-E-0673SA1)

## NOTICE OF ADOPTION

**Installation of Mains, etc. by New York State Electric & Gas Corporation****I.D. No.** PSC-21-03-00018-A**Filing date:** July 23, 2003**Effective date:** July 23, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 03-G-0643, approving the amendments to New York State Electric & Gas Corporation's (NYSEG) schedule for gas service— P.S.C. No. 90.

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

**Subject:** Tariff filing by NYSEG.

**Purpose:** To revise the method of calculating gas service line installation costs.

**Substance of final rule:** The Commission authorized the revisions to New York State Electric & Gas Corporation's method of determining the costs billed to customers for the installation of gas service lines.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(03-G-0643SA1)

## NOTICE OF ADOPTION

**Allocation of Property Tax Refund by United Water New York, Inc.****I.D. No.** PSC-21-03-00021-A**Filing date:** July 28, 2003**Effective date:** July 28, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 02-W-0894, approving United Water New York, Inc.'s (United Water) request to allocate the property tax refund it received from the Town of Ramapo.

**Statutory authority:** Public Service Law, sections 89-c(3) and 113(2)

**Subject:** Allocation of property tax refund.

**Purpose:** To permit United Water to keep a portion of property tax refunds.

**Substance of final rule:** The Commission directed United Water New York, Inc. (United Water) to allocate, during the first quarter of 2004, 75% of the property tax refunds to water customers and authorized United Water to retain, for shareholder interests, 25% of the property tax refunds, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(02-W-0894SA2)

## NOTICE OF ADOPTION

**Disposition of Property Tax Refund by United Water New York, Inc.****I.D. No.** PSC-21-03-00022-A**Filing date:** July 28, 2003**Effective date:** July 28, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 03-W-0067, approving United Water New York, Inc.'s (United Water) request to allocate the property tax refund it received from the Town of Ramapo.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** Allocation of property tax refunds.

**Purpose:** To allow United Water to retain a portion of the property tax refund.

**Substance of final rule:** The Commission directed United Water New York, Inc. (United Water) to allocate, during the first quarter of 2004, 75% of the property tax refunds to water customers and authorized United Water to retain, for shareholder interests, 25% of the property tax refunds, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(03-W-0067SA2)

## NOTICE OF ADOPTION

**Economic Development Zone Rider by Niagara Mohawk Power Corporation****I.D. No.** PSC-22-03-00022-A**Filing date:** July 23, 2003**Effective date:** July 23, 2003

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

**Action taken:** The commission, on July 23, 2003, adopted an order in Case 01-M-0075, approving a request by Niagara Mohawk Power Corporation (Niagara Mohawk) to modify its tariff schedule, P.S.C. No. 207—Electricity.

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

**Subject:** Tariff modifications to rule 34.3—empire zone rider.

**Purpose:** To update empire zone rider rates and charges.

**Substance of final rule:** The Commission approved tariff amendments to Niagara Mohawk Power Corporation's Rule 34.3 to update Empire Zone Rider rates and charges.

**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.

(01-M-0075SA16)

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

**Interconnection Agreement between Champlain Telephone Company and Westelcom Network, Inc.**

**I.D. No.** PSC-32-03-00009-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 Champlain Telephone Company and Westelcom Network, Inc. for approval of a mutual traffic exchange agreement executed on July 1, 2003.

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

**Subject:** Interconnection of networks.

**Purpose:** To review the terms and conditions of the negotiated agreement.

**Substance of proposed rule:** Champlain Telephone Company and Westelcom Network, Inc. have reached a negotiated agreement whereby Champlain Telephone Company and Westelcom Network, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

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

(03-C-1013SA1)

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

**Interconnection Agreement between Chazy and Westport Telephone Corporation and PrimeLink, Inc.**

**I.D. No.** PSC-32-03-00010-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 Chazy and Westport Telephone Corporation and PrimeLink, Inc. for approval of a mutual traffic exchange agreement executed on July 1, 2003.

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

**Subject:** Interconnection of networks.

**Purpose:** To review the terms and conditions of the negotiated agreement.

**Substance of proposed rule:** Chazy and Westport Telephone Corporation and PrimeLink, Inc. have reached a negotiated agreement whereby Chazy and Westport Telephone Corporation and PrimeLink, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

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

(03-C-1014SA1)

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

**Gas Meters and Accessories by Corning Natural Gas Corporation**

**I.D. No.** PSC-32-03-00011-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, an application by Corning Natural Gas Corporation for the approval of the Eagle XARTU/1-VC-LDVI electronic volume corrector manufactured by Eagle Research Corporation.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of types of gas meters and accessories.

**Purpose:** To approve utilization of the Eagle Research Corporation's XARTU/1-VC-LDVI electronic volume corrector in New York State.

**Substance of proposed rule:** The Public Service Commission will consider a request by Corning Natural Gas Corporation for approval of the Eagle XARTU/1-VC-LDVI Electronic Volume Corrector for commercial billing applications in New York State. The Eagle Volume Corrector is an ancillary instrument that is meter mounted, that corrects for gas flow measurements created by natural gas line temperature and pressure.

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

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

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

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

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

(03-G-0976SA1)

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

**Non-Residential Distributed Generation Firm Sales by Rochester Gas and Electric Corporation**

**I.D. No.** PSC-32-03-00012-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 Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service—P.S.C. Nos. 16 and 17.

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

**Subject:** Service Classification No. 6 – non-residential distributed generation firm sales service to P.S.C. No. 16 – Gas and Service Classification No. 7 – non-residential distributed generation firm transportation service to P.S.C. No. 17—Gas Distribution Service.

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

**Substance of proposed rule:** Rochester Gas and Electric Corporation proposes to establish Service Classification No. 6 – Non-Residential Distributed Generation Firm Sales to its P.S.C. No. 16 – Gas and Service Classification No. 7 – Non-Residential Distributed Generation Firm Transportation Service to its P.S.C. No. 17 – Gas Distribution Service which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission's April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(02-M-0515SA4)

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

**Distributed Generation Service by National Fuel Gas Distribution Corporation**

**I.D. No.** PSC-32-03-00013-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 National Fuel Gas Distribution Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service – P.S.C. No. 8.

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

**Subject:** Service Classification No. 23 – distributed generation service.

**Purpose:** To comply with the commission's April 24, 2003 order to file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.

**Substance of proposed rule:** National Fuel Gas Distribution Corporation proposes to establish Service Classification No. 23 – Distributed Generation Service to its P.S.C. No. 8 – Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission's April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.

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

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

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

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

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

(02-M-0515SA5)

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

**Gas Rates for Distributed Generation Facilities by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-32-03-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, 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:** Gas rates for distributed generation facilities.

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

**Substance of proposed rule:** Orange and Rockland Utilities, Inc. proposes to establish Rider B – Gas Rates for Distributed Generation Facilities to its P.S.C. No. 4 – Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission's April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.

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

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

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

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

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

(02-M-0515SA6)

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

**Non-Residential Distributed Generation Firm Sales Service by New York State Electric & Gas Corporation**

**I.D. No.** PSC-32-03-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service—P.S.C. Nos. 87 and 88.

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

**Subject:** Nonresidential distributed generation firm sales service; non-residential distributed generation firm transportation service.

**Purpose:** To comply with the commission's April 24, 2003 order to file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.

**Substance of proposed rule:** New York State Electric & Gas Corporation proposes to establish Service Classification No. 10 – Non-Residential Distributed Generation Firm Sales Service to its P.S.C. No. 87 – Gas and Service Classification No. 16 – Non-Residential Distributed Generation Firm Transportation Service to its P.S.C. No. 88 - Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission's April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.

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

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

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

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

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

(02-M-0515SA7)

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

**Baseload Distributed Generation Sales Service by The Brooklyn Union Gas Company**

**I.D. No.** PSC-32-03-00016-P

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

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

**Statutory authority:** Public Service Law, section 66(12)  
**Subject:** Baseload distributed generation sales service.  
**Purpose:** To comply with the commission’s April 24, 2003 order to file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.  
**Substance of proposed rule:** The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York proposes to establish Service Classification No. 21 – Baseload Distributed Generation Sales Service to its P.S.C. No. 12 – Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission’s April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.  
**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204  
**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530  
**Public comment will be received until:** 45 days after publication of this notice.  
**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**  
 Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (02-M-0515SA8)

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

**Baseload Distributed Generation Sales Service by KeySpan Gas East Corporation**  
**I.D. No.** PSC-32-03-00017-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:  
**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.  
**Statutory authority:** Public Service Law, section 66(12)  
**Subject:** Baseload distributed generation sales service.  
**Purpose:** To file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.  
**Substance of proposed rule:** KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island proposes to establish Service Classification No. 17 – Baseload Distributed Generation Sales Service to its P.S.C. No. 1 – Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission’s April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.  
**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204  
**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530  
**Public comment will be received until:** 45 days after publication of this notice.  
**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**  
 Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (02-M-0515SA9)

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

**Distributed Generation Rate by Consolidated Edison Company of New York, Inc.**  
**I.D. No.** PSC-32-03-00018-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:  
**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service — P.S.C. No. 9  
**Statutory authority:** Public Service Law, section 66(12)  
**Subject:** Rider H—distributed generation rate to P.S.C. No. 9—Gas.  
**Purpose:** To file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.  
**Substance of proposed rule:** Consolidated Edison Company of New York, Inc. proposes to establish Rider H – Distributed Generation Rate to its P.S.C. No. 9 – Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission’s April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.  
**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204  
**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530  
**Public comment will be received until:** 45 days after publication of this notice.  
**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**  
 Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (02-M-0515SA10)

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

**Distributed Generation Commercial and Industrial by Central Hudson Gas & Electric Corporation**  
**I.D. No.** PSC-32-03-00019-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:  
**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation 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:** Distributed generation commercial and industrial.  
**Purpose:** To file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.  
**Substance of proposed rule:** Central Hudson Gas & Electric Corporation proposes to establish Service Classification No. 15 – Distributed Generation Commercial and Industrial to its P.S.C. No. 12 – Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission’s April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.  
**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204  
**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530  
**Public comment will be received until:** 45 days after publication of this notice.  
**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**  
 Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (02-M-0515SA11)

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

**Issuance of Debt and Approval of Surcharge by Rainbow Water Company**

**I.D. No.** PSC-32-03-00020-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 petition of Rainbow Water Company, Inc. for authority to issue emergency debt and permanent financing through the NYS Environmental Facilities Corporation, to finance the temporary restoration of water service, to replace its pumping station destroyed in an explosion, and for approval of a surcharge designed to provide about \$19,700 per year for 20 years to repay the loan.

**Statutory authority:** Public Service Law, sections 89-f and 89-c(10)

**Subject:** Issuance of debt and approval of a surcharge to repay the loan.

**Purpose:** To approve the financing necessary to replace Rainbow's pumping station and the surcharge necessary to repay the loan.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, the petition of Rainbow Water Company, Inc. for authority to issue Emergency debt and permanent financing through the NYS Environmental Facilities Corporation, to finance the temporary restoration of water service, to replace the pumping station destroyed in an explosion, and for approval of a surcharge designed to provide about \$19,700 per year for 20 years to repay the loan.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(03-W-1026SA1)

**Assessment of Public Comment**

The agency received no public comment.

**Department of Taxation and  
Finance**

**NOTICE OF ADOPTION**

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel**

**I.D. No.** TAF-21-03-00009-A

**Filing No.** 797

**Filing date:** July 28, 2003

**Effective date:** July 28, 2003

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) 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, 2003, and ending Sept. 30, 2003, 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-21-03-00009-P, Issue of May 28, 2003.

**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.

**Department of State**

**NOTICE OF ADOPTION**

**Single Door, Card-Access Entry Systems**

**I.D. No.** DOS-16-03-00003-A

**Filing No.** 788

**Filing date:** July 23, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Amendment of section 195.2(c) of Title 19 NYCRR.

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

**Subject:** Installation, service and maintenance of single-door, card-access entry systems.

**Purpose:** To clarify for the industry that the installation, service and maintenance of a single-door-card-access entry system does not require an alarm installer's license if the system does not detect and/or provide notification of intrusion, break-in, theft, movement, sound or fire.

**Text or summary was published** in the notice of proposed rule making, I.D. No. DOS-16-03-00003-P, Issue of April 23, 2003.

**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

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

**Eligible Business Facility Credit for Corporation Taxes**

**I.D. No.** TAF-32-03-00004-P

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

**Proposed action:** This is a consensus rule making to repeal Subparts 5-1, 20-1, 32-3 and Appendix 1 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First and 1096(a)

**Subject:** Eligible business facility credit for corporation taxes.

**Purpose:** To eliminate unnecessary regulations that are obsolete due to the termination of the availability of the eligible business facility credit by L. 1988, ch. 165.

**Text of proposed rule:** Section 1. Subpart 5-1 of Part 5 of such regulations is REPEALED and such subpart is to be reserved for a later date.

Section 2. Subpart 20-1 of Part 20 of such regulations is REPEALED and such subpart is to be reserved for a later date.

Section 3. Subpart 32-3 of Part 32 of such regulations is REPEALED.

Section 4. Appendix 1 of such regulations is REPEALED.

Section 5. This rule shall take effect on the date the notice of adoption is published in the *State Register*, provided, however, that the repeal of provisions by this rule shall not affect or impair any act done, offence committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

**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.

#### **Consensus Rule Making Determination**

The Department of Taxation and Finance has considered the proposed repeal of 20 NYCRR 5-1, 20 NYCRR 20-1, 20 NYCRR 32-3, and 20 NYCRR Appendix 1, and has determined that no person is likely to object to the rule as written.

The rule repeals obsolete regulations regarding the eligible business facility credit for corporate taxes. The eligible business facility credit applied to taxable years beginning before January 1, 2000. The rule is being done as part of the Department's regulatory reform effort, which has the elimination of unnecessary regulations as one of its objectives.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will not have an adverse impact on jobs and employment opportunities. These amendments provide for the repeal of Appendix 1 of 20 NYCRR and obsolete material within the Business Corporation Franchise Tax, Franchise Tax on Banking Corporations, and Franchise Taxes on Insurance Corporations Regulations, relating to the eligible business facility tax credit for corporation taxes.

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

### **New York State and City of Yonkers Withholding Tables**

**I.D. No.** TAF-32-03-00005-P

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

**Proposed action:** Amendment of sections 171.4(b)(1) and 251.1(b); repeal of Appendixes 10 and 10-A; and addition of new Appendixes 10 and 10-A to Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 671(a)(1); 697(a); 1329(a); 1332(a); and section 7 of the Model Local Law found in section 1340(c); Codes and Ordinances of the City of Yonkers, sections 15-105; 15-108(a); 15-121; and 15-130

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

**Purpose:** To provide New York State and City of Yonkers withholding tables and other methods and to reflect the revision of certain tax rates and the tax table benefit recapture for wages and compensation paid on or after July 1, 2003.

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

This rule repeals Appendixes 10 and 10-A of Title 20 NYCRR and enacts new Appendixes 10 and 10-A of such Title to provide new New York State and City of Yonkers withholding tables and other methods applicable to wages and other compensation paid on or after July 1, 2003. The new tables and other methods reflect the revision of the New York State and City of Yonkers tax tables and the tax table benefit recapture which were enacted by Chapter 62 of the Laws of 2003. This rule also reflects the increases of the New York State and City of Yonkers supplemental withholding tax rates to be applied to supplemental wage payments.

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

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

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

#### **Regulatory Impact Statement**

1. **Statutory authority:** Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations that are necessary to enforce the personal income tax; section 1329(a) of the Tax Law and section 15-105 of the Codes and Ordinances of the City of Yonkers provide that the City of Yonkers Income Tax Surcharge shall be withheld in the same manner and form as that required by sections 671 through 678 of the Tax Law, except where noted; section 1332(a) of the Tax Law and section 15-108(a) of the Codes and Ordinances of the City of Yonkers provide that the City of Yonkers Income Tax Surcharge shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Section 7 of the Model Local Law found in section 1340(c) of the Tax Law and sections 15-121 and 15-130 of the Codes and Ordinances of the City of Yonkers provide with respect to the withholding of the City of Yonkers nonresident earnings tax, that the provisions of Part V of Article 22, as described above, shall have the same force and effect as if they were incorporated into the Codes and Ordinances of the City of Yonkers, except where noted.

2. **Legislative objectives:** New Appendixes 10 and 10-A of Title 20 NYCRR contain the revised New York State and City of Yonkers withholding tables and other methods applicable to wages and other compensation paid on or after July 1, 2003. The amendments reflect the revision of the tax tables and the tax table benefit recapture in Chapter 62 of the Laws of 2003, and the requirement in the new law that the withholding rates for the remainder of tax year 2003 reflect the full amount of tax liability for tax year 2003 as accurately as practicable. The revised tax tables include two new brackets for taxpayers at the highest levels of taxable income and an increase in the tax rates for taxpayers whose taxable income reaches these levels. The rule also reflects the increase, to 9.05 percent, for the New York State supplemental withholding rate, and the increase, to .4525 percent, for the City of Yonkers supplemental withholding rate, both to be applied to supplemental wage payments. Although the City of Yonkers Earnings Tax on Nonresidents withholding tables and other methods are included as part of the new Appendix 10-A, no revision was required for these tables and other methods included therein by the Laws of 2003.

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

This rule was previously adopted as an emergency measure on June 12, 2003. This emergency measure is scheduled to expire on September 9, 2003. This proposal will make the rule permanent, ensuring the continuation of withholding rates that more accurately reflect the current income tax rates.

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

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to revise the New York State withholding tables and other methods, and the City of Yonkers income tax surcharge on residents and earnings tax on nonresidents withholding tables and other methods, arises due to the statutory change in the rates of New York State personal income tax, there are no

costs to this agency or the State and local governments that are due to the promulgation of this rule.

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

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

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

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

8. Alternatives: Since section 671(a) of the Tax Law mandates New York State withholding tables be promulgated, and Sections 1309 and 1329(a) of the Tax Law, Section 7 of the Model Local Law contained in section 1340(c) of the Tax Law, and section 92-88 of the Codes and Ordinances of the City of Yonkers mandate that City of Yonkers withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods. The only alternative to promulgating this rule would be to allow the withholding tables adopted as an emergency measure to lapse. This alternative, however, would require that employers withhold at rates that no longer reflect the personal income tax rates of New York State and the City of Yonkers which will be in effect for the 2003 tax year.

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

10. Compliance schedule: Affected employers have received the required information in sufficient time to implement the revised New York State and City of Yonkers withholding tables and other methods for wages and other compensation paid on or after July 1, 2003.

#### **Regulatory Flexibility Analysis**

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

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

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

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

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

6. Minimizing adverse impact: Sections 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1332 of the Tax Law mandates, in part, that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold

from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

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

#### **Rural Area Flexibility Analysis**

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

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

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

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

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

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

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. These amendments provide new New York State and City of Yonkers withholding tables and other methods, applicable for compensation paid on or after July 1, 2003, which reflect the revision of the tax tables and the tax table benefit recapture in Chapter 62 of the Laws of 2003. The rule also reflects the increases in the New York State and City of Yonkers supplemental withholding tax rates applied to supplemental wage payments.

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

**City of New York Withholding Tables**

**I.D. No.** TAF-32-03-00007-P

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

**Proposed action:** Amendment of section 291.1(b); repeal of Appendix 10-C; and addition of new Appendix 10-C to Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 671(a)(1); 697(a); 1309; and 1312(a); Administrative Code of the City of New York, sections 11-1771(a); 11-1797(a); 11-1909; and 11-1943

**Subject:** City of New York withholding tables and other methods.

**Purpose:** To provide City of New York withholding tables and other methods and reflect the revision of certain tax rates and the new tax table benefit recapture, for wages and compensation paid on or after July 1, 2003.

**Substance of proposed rule:** Section 1309 of the Tax Law and section 11-1771(a) of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of New York personal income tax on residents reasonably estimated to be due for the taxable year.

This rule repeals Appendix 10-C of Title 20 NYCRR and enacts a new Appendix 10-C of such Title to provide new City of New York withholding tables and other methods applicable to wages and other compensation paid on or after July 1, 2003. The new tables and other methods reflect the revision of the City of New York tax tables and the new tax table benefit recapture which were enacted in Chapter 63 of the Laws of 2003 and a New York City local law. This rule also reflects the increase in the City of New York supplemental withholding tax rate to be applied to supplemental wage payments.

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

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

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

**Regulatory Impact Statement**

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations that are necessary to enforce the personal income tax; section 1309(not subdivided) provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Tax Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by tax regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York; section 11-1909 (not subdivided) and section 11-1943 (not subdivided) provide that after January 1, 1976 the laws found in Parts V and VI of Article 22 of the Tax Law, which contain sections 671 through 699 of the Tax Law and which pertain to the withholding of tax and the procedural and administrative aspects of the state tax law, shall have the same force and effect as if they were incorporated into the Administrative Code of the City of New York, except where noted.

2. Legislative objectives: New Appendix 10-C of Title 20 NYCRR contains the revised City of New York withholding tables and other methods applicable to wages and other compensation paid on or after July 1, 2003. The amendments reflect the revision of the tax tables and the newly added tax table benefit recapture enacted in Chapter 63 of the Laws of 2003 and a New York City local law, and the requirement in the new law

that the withholding rates for the remainder of tax year 2003 reflect the full amount of tax liability for tax year 2003 as accurately as practicable. The revised tax tables include two new brackets for taxpayers at the highest levels of taxable income and an increase in the tax rates for taxpayers whose taxable income reaches these levels. The rule also reflects the increase, to 5.60 percent, of the City of New York supplemental withholding tax rate to be applied to supplemental wage payments.

3. Needs and benefits: This rule sets forth City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after July 1, 2003, reflecting the revision of the City of New York tax tables and the newly added City tax table benefit recapture enacted in Chapter 63 of the Laws of 2003 and a New York City local law. This rule benefits taxpayers by providing City of New York withholding rates that more accurately reflect the current income tax rates. If this rule was not promulgated, the use of the existing withholding tables would cause some under withholding for some taxpayers.

This rule was previously adopted as an emergency measure on July 1, 2003. This emergency measure is scheduled to expire on September 28, 2003. This proposal will make the rule permanent, ensuring the continuation of withholding rates that more accurately reflect the current income tax rates.

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

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to revise the City of New York personal income tax on residents withholding tables and other methods arises due to the statutory change in the rates of City of New York personal income tax on residents, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

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

5. Local government mandates: Any local governments, as employers, maintaining an office or transacting business within New York City, who have a City of New York resident as an employee, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

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

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

8. Alternatives: Since section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods. The only alternative to promulgating this rule would be to allow the withholding tables adopted as an emergency measure to lapse. This alternative, however, would require that employers withhold at rates that no longer reflect the personal income tax rates of the City of New York which will be in effect for the 2003 tax year.

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

10. Compliance schedule: Affected employers have received the required information in sufficient time to implement the revised City of New York withholding tables and other methods for wages and other compensation paid on or after July 1, 2003.

**Regulatory Flexibility Analysis**

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

are otherwise subject to the withholding requirements must comply with the provisions of this rule.

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

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

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

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

6. Minimizing adverse impact: Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

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

#### **Rural Area Flexibility Analysis**

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

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

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

3. Costs: Employers are already subject to the City of New York withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York and City of Yonkers purposes. As such, these City of New York changes should place no additional burdens on employers

located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the withholding requirements.

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

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. These amendments provide new City of New York withholding tables and other methods, applicable for compensation paid on or after July 1, 2003, which reflect the revision of the tax tables and the addition of the tax table benefit recapture enacted in Chapter 63 of the Laws of 2003 and a New York City local law. The rule also reflects the increase in the City of New York supplemental withholding tax rate applied to supplemental wage payments.

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## Office of Temporary and Disability Assistance

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### NOTICE OF ADOPTION

#### **Trust Assets**

**I.D. No.** TDA-20-03-00001-A

**Filing No.** 796

**Filing date:** July 28, 2003

**Effective date:** Aug. 13, 2003

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

**Action taken:** Amendment of section 352.22(e)(1) and repeal of section 352.22(e)(2) of Title 18 NYCRR.

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

**Subject:** Trust assets.

**Purpose:** To clarify the regulations concerning the treatment of trust funds and the eligibility for public assistance.

**Text or summary was published** in the notice of proposed rule making, I.D. No. TDA-20-03-00001-P, Issue of May 21, 2003.

**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**

During the public comment period for the proposed amendments concerning the treatment of trust funds, the Office of Temporary and Disability Assistance received one comment in support of the amendments.