

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.

Banking Department

EMERGENCY RULE MAKING

Changes in Regulations Governing Credit Unions

I.D. No. BNK-32-04-00001-E

Filing No. 840

Filing date: July 23, 2004

Effective date: July 26, 2004

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

Action taken: Amendment of Parts 95, 96 and 97; repeal of Part 113; and addition of Parts 326 and 327 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 453(5), 454, 454(9), (14), (19), 458(9) and 458-a

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

Specific reasons underlying the finding of necessity: Required to conform the regulations to changes in the Banking Law that have already become effective.

Subject: Changes in the regulations governing credit unions.

Purpose: To conform the regulations to the provisions of L. 2003, ch. 679 which are intended to provide New York chartered credit unions with powers comparable to, and competitive with, federally chartered credit

unions; and provide for prior notice of the proposed exercise of new credit union investment powers.

Text of emergency rule: Section 95.2 is REPEALED.

Section 96.1 is REPEALED.

A new Section 96.1 is added to read:

96.1 Definitions.

For purposes of this Part:

(a) *The term net worth shall have the same meaning as set forth in Section 702.2 of Part 702 of the Regulations of the National Credit Union Administration. In the event that a different definition of net worth is contained in that section, or in any successor section, or in any amendment to the Federal Credit Union Act, Part 96.1(a) shall be deemed to define net worth as set forth in such section or such law, as the case may be.*

(b) *The term loan shall mean any loan made to or guaranteed or endorsed by a member of a credit union.*

Section 96.3 is amended to read:

96.3 Fully secured loans.

A credit union may make loans to a member which are secured by the borrower's unhypothecated shares or by shares pledged by another member or members subject to the limitations contained in sections [453(5)] 454(6) and [454(2)] 456(2) of the Banking Law.

Section 97.5 is amended to read:

97.5 Aggregate limitation. The aggregate amount of a credit union's investment in the stock, capital notes and debentures of credit union organizations, together with the aggregate amount of loans to such organizations, shall not exceed [one] *three* percent of the amount due to the members of the credit union on shares and deposits. For the purposes of this section, a loan shall include any loan or advance made directly or indirectly to a credit union organization (excluding accounts payable incurred in the ordinary course of business and paid within 60 days).

Part 113 is REPEALED.

A new Part 326 is added to read:

PART 326

MAINTENANCE OF RESERVES BY CREDIT UNIONS

(Statutory Authority: Banking Law Section 458-a)

326.1 Applicability.

The provisions of this Part shall apply to all net worth reserve accounts required to be established and maintained by credit unions.

326.2 Reserve Accounts.

Credit unions shall establish and maintain such net worth reserve accounts as are required for Federally chartered credit unions pursuant to Title 12 U.S.C. 1790d and any regulations promulgated thereunder by the National Credit Union Administration, as such law and regulations may be amended from time to time.

326.2. Definition.

(a) *The term net worth shall mean the retained earnings balance of the credit union at the end of a quarterly period as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by the management of a credit union or regulatory authorities. Only undivided earnings and appropriations of undivided earnings shall be included in net worth. Net Worth shall not include the allowance for loan and lease losses account. In the case of a credit union that qualifies to be designated as a low income credit union, net worth shall also include secondary capital accounts that are uninsured and subordinate to all other claims of creditors, shareholders and the National Credit Union Share Insurance Fund.*

(b) In the event that a different definition of net worth is contained in 12 CFR 702.2 or any successor section, or in any amendment to the Federal Credit Union Act, this section shall be deemed to define net worth as set forth in such section or such law, as the case may be.

A new Part 327 is added to the Superintendent's Regulations to read:

Part 327

INVESTMENTS BY CREDIT UNIONS IN THE SHARES OF CORPORATE CREDIT UNIONS LOCATED IN THIS STATE

(Statutory authority: Banking Law Sections 454, 454(14))

Any credit union that seeks to invest in the shares of a state or Federal corporate credit union located in this state in an amount that exceeds fifty percent of its total capital or the insured limit, whichever is greater, shall give the Superintendent prior written notice of its intent to make such investment. If the Superintendent shall find that the proposed investment is consistent with the declaration of policy set forth in Section 10 of the Banking Law, he or she shall, within thirty days after receipt of such notice, notify the credit union in writing that such investment may be made or that an additional period of time, not to exceed sixty days, is required to properly make a determination.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 20, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Banking Law Section 14(1) gives the Banking Board the power "to make, alter and amend rules and regulations not inconsistent with law." Section 454 of the Banking Law states that the powers of a credit union specified therein shall be subject to any regulations promulgated by the Superintendent or, in certain specified cases, to regulations promulgated by the Banking Board. Section 454(6) of the Banking Law authorizes a credit union to lend money to its members, subject to such regulations and restrictions as the banking board finds necessary and proper. Section 454(9) of the Banking Law authorizes a credit union, subject to such regulations and restrictions as the Banking Board finds necessary and proper, to borrow money from any source in an aggregate amount not exceeding fifty percent of assets without the written approval of the Superintendent. Section 454(14) of the Banking Law permits a credit union to hold shares in and make loans to other credit unions, whether state or federally chartered, subject to the limitations contained in Section 456(7) of the Banking Law. Section 454(19) of the Banking Law provides that investments in and loans to a credit union organization by a credit union shall be subject to regulations and restrictions of the Banking Board. Section 458(9) of the Banking Law gives the Superintendent the power to promulgate regulations or take other measures necessary to provide for and implement the repeal of Section 458. Section 458-a of the Banking law gives the Superintendent the power to prescribe by regulation the net worth reserve categories which a credit union shall contribute to and maintain.

2. Legislative objectives:

As more fully described in response to Item 3, "Needs and benefits" below, the proposed repeal of Section 95.2 of the General Regulations of the Banking Board ("General Regulations"), the proposed amendment to Section 96.1 of the General Regulations, the proposed amendment to Section 96.3 of the General Regulations, the proposed amendment to Section 97.5 of the General Regulations, the proposed adoption of new Superintendent's Regulation Part 326 and the proposed repeal of Part 113 of the General Regulations all implement, or conform the regulations of the Banking Department to, specific changes made by the Legislature in the Banking Law, and thereby presumably accord with the public policy objectives of the Legislature in making such changes. As also more fully described in response to Item 3 below, the proposed adoption of new Superintendent's Regulation 327 addresses safety and soundness concerns which may arise from the repeal of Part 113 of the General Regulations, and thereby accords with the public policy objectives set forth in Section 10 of the Banking Law that the business of all banking organizations be regulated in such a manner as to ensure, among other things, the safe and sound conduct of such business.

3. Needs and benefits:

The repeal of Section 95.2 of the General Regulations of the Banking Board will conform the regulation to a change in the law by removing an obsolete limitation contained in the regulation requiring a credit union to obtain the approval of the Superintendent to borrow more than 15 but less

than 50 percent of its assets. New Section 454(9) of the Banking Law permits a credit union to borrow up to 50 percent of its assets without the approval of the Superintendent.

The amendment to Section 96.1 of the General Regulations of the Banking Board will implement a change in the law by eliminating references in the regulation to the surplus of a credit union and conforming the definition of "net worth" to the regulations of the National Credit Union Administration. Section 458 of the Banking Law, requiring credit unions to maintain surplus accounts, will be repealed effective October, 2004.

The amendment to Section 96.3 of the General Regulations of the Banking Board modifies the statutory references in the regulation to reflect changes made in Article XI of the Banking Law.

The amendment to Section 97.5 of the General Regulations of the Banking Board conforms the regulation to amended Section 454(19) of the Banking Law, which increases the limit on investments by a credit union in a credit union organization from one percent to three percent of the total sum due to members on shares and deposits.

New Superintendent's Regulation Part 326 implements new Section 458-a of the Banking Law. Section 458-a requires a credit union to maintain such net worth reserves as the Superintendent by regulation shall prescribe and mandates that the regulations prescribe a system of maintaining net worth reserves comparable to that promulgated by the National Credit Union Administration, except as otherwise deemed necessary by the Superintendent.

The repeal of Part 113 of the General Regulations of the Banking Board conforms the regulations to the investment powers of credit unions under Section 454(14) of the Banking Law. Part 113 limits a credit union to investing no more than 50 percent of its capital in shares of a central (*i.e.*, corporate) credit union located in this state. However, Banking Law Section 454(4) authorizes credit unions to hold shares of other credit unions, subject to the limitations in Banking Law Section 456(7). The latter section specifically excludes from its investment limitations investments in state or federal corporate credit unions.

New Superintendent's Regulation Part 327 addresses any possible safety and soundness concerns arising from the repeal of Part 113 by requiring that a credit union which intends to invest in the shares of a state or federal corporate credit union located in this state in an amount that exceeds 50% of its total capital or its insured limit, whichever is greater, give the Superintendent prior written notice of its intent. The regulation gives the Superintendent an opportunity to determine whether the proposed investment is consistent with the policy set forth in Section 10 of the Banking Law, which includes safety and soundness considerations.

4. Costs:

The repeal of Section 95.2 of the General Regulations of the Banking Board is not projected to impose any costs on regulated persons or the state government.

The amendment to Section 96.1 of the General Regulations of the Banking Board will conform the definition of net worth in state's credit union regulations to that of the federal regulator of credit unions, and is not therefore projected to impose any additional costs on regulated persons or the state government.

The amendment to Section 96.3 of the General Regulations of the Banking Board will conform statutory cross-references in the regulation to changes in the Banking Law and is not projected to impose any costs on regulated persons or the state government.

The amendment to Section 97.5 of the General Regulations of the Banking Board raises a limit on certain investments, in accordance with recent legislation, and therefore is not projected to impose any additional costs on regulated persons or the state government.

New Superintendent's Regulation Part 326 implements a statutory mandate that the Superintendent prescribe a system of maintaining net worth reserves comparable to that promulgated by the National Credit Union Administration. The amendment will conform the state's regulation to that of the federal government and therefore is not projected to impose any costs on regulated persons or the state government.

The repeal of Part 113 of the General Regulations of the Banking Board is not projected to impose any costs on regulated persons or the state government.

New Superintendent's Regulation Part 327 requires a credit union provide prior notice to the Superintendent if it seeks to invest more than 50% of its capital or its insured limit, whichever is greater, in a state or federal corporate credit union located in New York, and requires the Superintendent to ascertain whether such notice is consistent with the declared policies of the Banking Law. Prior to the repeal of Part 113 and the adoption of Part 327, credit unions were prohibited from making

investments in excess of the 50% notice threshold. An institution need only give the notice if it chooses to exercise the excess investment authority. The cost to institutions of giving the required notice, for which no particular form is prescribed, and the cost to the Department of reviewing such notices is expected to be minimal and is deemed necessary to ensure that the new investment powers are exercised in a safe and sound manner.

5. Local government mandates:

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

6. Paperwork:

The repeal of Section 95.2 of the General Regulations of the Banking Board will not require any new reporting or other paperwork.

The amendment to Section 96.1 of the General Regulations of the Banking Board will reduce reporting burdens on institutions by eliminating the reference to surplus and conforming the definition of net worth to that of the National Credit Union Administration.

The amendment to Section 96.3 of the General Regulations of the Banking Board updating statutory cross-references will not require any new reporting or other paperwork.

The amendment to Section 97.5 of the General Regulations of the Banking Board raising certain investment limits will not require any new reporting or other paperwork.

New Superintendent's Regulation Part 326 will reduce the reporting burden on institutions by requiring credit unions to maintain the same reserve accounts as are required by the federal regulator of credit unions.

The repeal of Part 113 of the General Regulations of the Banking Board will not require any new reporting or other paperwork.

New Superintendent's Regulation Part 327 will require institutions seeking to make certain investments to provide the Department with prior notice. Prior to the repeal of Part 113 and the adoption of Part 327, credit unions were prohibited from making investments in the shares of corporate credit unions in excess of the 50% notice threshold. An institution need only give the notice if it chooses to exercise the new investment powers. The paperwork burden of giving the notice is expected to be modest, especially as no particular form of notice is prescribed. The Department believes that the notice requirement is necessary to ensure that the new investment powers are exercised in a safe and sound manner.

7. Duplication:

The repeal of Section 95.2 of the General Regulations of the Banking Board will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

The amendment to Section 96.1 of the General Regulations of the Banking Board will reduce duplication, overlap and conflict with the rules of the federal government by conforming the definition of net worth in the Banking Department's regulations to that in the regulations of the National Credit Union Administration.

The amendment to Section 96.3 of the General Regulations of the Banking Board updating certain statutory cross-references will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

The amendment to Section 97.5 of the General Regulations of the Banking Board raising certain investment limits will not result in duplication, overlap or conflict with any rules or other legal requirements of the state or federal governments.

New Superintendent's Regulation Part 326 will reduce duplication, overlap and conflict with the rules of the federal government by requiring credit unions to maintain the same reserve accounts as are required by the National Credit Union Administration.

The repeal of Part 113 of the General Regulations of the Banking Board will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

New Superintendent's Regulation Part 327, requiring institutions seeking to make certain investments to provide the Department with prior notice, will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

8. Alternative approaches:

The repeal of Section 95.2 of the General Regulations of the Banking Board will conform the regulation to new Section 454(9) of the Banking Law. No significant alternatives to the rule were considered.

The amendment to Section 96.1 of the General Regulations of the Banking Board implements the repeal of Section 458 of the Banking Law. No significant alternatives to the rule were considered.

The amendment to Section 96.3 of the General Regulations of the Banking Board updates certain statutory cross-references. No significant alternatives to the rule were considered.

The amendment to Section 97.5 of the General Regulations of the Banking Board will conform the regulation to amended Section 454(19) of the Banking Law. No significant alternatives to the rule were considered.

New Superintendent's Regulation Part 326 implements new Section 458-a of the Banking Law. No significant alternatives to the rule were considered.

The repeal of Part 113 of the General Regulations of the Banking Board conforms the regulations to Sections 454(4) and 456(7) of the Banking Law. No significant alternatives to the rule were considered.

New Superintendent's Regulation Part 327 essentially replaces repealed Part 113. Consideration was given to simply repealing Part 113, thus permitting credit unions to invest in the shares of federal or state corporate credit unions without limitation. However, in light of concerns expressed about potential safety and soundness issues if such a course were followed, it was determined to adopt Part 327.

9. Federal standards:

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the repeal of Section 95.2 of the General Regulations of the Banking Board.

The amendment to Section 96.1 of the General Regulations of the Banking Board will conform the definition of "net worth" to the regulations of the National Credit Union Administration.

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendment of Section 96.3 of the General Regulations of the Banking Board updating certain statutory cross-references.

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendment to Section 97.5 of the General Regulations of the Banking Board. The National Credit Union Administration regulations applicable to federal credit union investments in credit union service organizations impose more restrictive investment limits.

New Superintendent's Regulation Part 326 requires credit unions to maintain the same reserve accounts as are required by the National Credit Union Administration.

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the repeal of Part 113 of the General Regulations of the Banking Board.

New Superintendent's Regulation Part 327 exceeds minimum standards of the federal government for the same subject area insofar as it imposes a prior notice requirement for certain investments by credit unions whereas no notice or approval requirement for such investments is imposed by federal law or regulations. The Department believes that the prior notice requirement is an appropriate prudential measure.

10. Compliance schedule:

No time will be necessary to enable regulated persons to achieve compliance with the repeal of Section 95.2 of the General Regulations of the Banking Board, which removes a limitation on borrowing by credit unions.

The amendment to Section 96.1 of the General Regulations of the Banking Board adopts the definition of "net worth" used in the regulations of the National Credit Union Administration (NCUA). Since credit unions are federally insured they are already subject to this NCUA regulation and will not require any time to achieve compliance with this amendment.

No time will be necessary to enable regulated persons to achieve compliance with the amendment to Section 96.3 of the General Regulations of the Banking Board, which updates certain statutory cross-references.

No time will be necessary to enable regulated persons to achieve compliance with the amendment to Section 97.5 of the General Regulations of the Banking Board, which increases the existing limits on credit union investments.

New Superintendent's Regulation Part 326 requires credit unions to maintain the reserve accounts required by the regulations of the National Credit Union Administration (NCUA). Since credit unions are federally insured they are already subject to this NCUA regulation and will not require any time to achieve compliance with this amendment.

No time will be necessary to enable regulated persons to achieve compliance with the repeal of Part 113 of the General Regulations of the Banking Board, which removes a limitation on investments by credit unions.

No time will be necessary to enable regulated persons to achieve compliance with new Superintendent's Regulation Part 327, since it requires that credit unions give prior notice of investments which were previously prohibited.

Regulatory Flexibility Analysis

The amendments to Part 95, Part 96 and Part 97, and the repeal of Part 113, will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by changes in the Banking Law, to which the amendments conform the regulations. These amendments will not impose any adverse economic or technological impact upon local governments. These amendments will impose no adverse reporting, recordkeeping or compliance requirements on small businesses or local governments.

New Superintendent's Regulation Part 326 implements a new statutory requirement that the Superintendent promulgate regulations prescribing a system of maintaining credit union net worth reserves comparable to that promulgated by the National Credit Union Administration. Credit unions are federally insured and thus already subject to the relevant NCUA regulations. Thus, Part 326 will impose no adverse economic or technological impact upon small business or local governments and will impose no new reporting, recordkeeping or compliance requirements on small businesses or local governments.

New Superintendent's Regulation Part 327 requires a credit union which intends to invest in the shares of a state or federal corporate credit union in an amount that exceeds specified limits to provide prior written notice to the Superintendent. Such investments were previously prohibited. Thus, the new regulation will not impose any adverse economic or technological impact upon small business or local governments. While Part 327 will impose new reporting and compliance requirements upon all credit unions, large or small, seeking to make certain investments, the Department believes that the requirements are modest and constitute appropriate prudential measures. Part 327 does not impose any reporting, record keeping or compliance requirements on local governments.

Rural Area Flexibility Analysis

The amendments to Part 95, Part 96 and Part 97, and repeal of Part 113, do not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

New Superintendent's Regulation Part 326 implements a new statutory requirement that the Superintendent promulgate regulations prescribing a system of maintaining credit union net worth reserves comparable to that promulgated by the National Credit Union Administration. Credit unions are federally insured and thus already subject to the relevant NCUA regulations. Thus, Part 326 will not have any adverse impact on credit unions located in rural areas.

New Superintendent's Regulation Part 327 requires a credit union which intends to invest in the shares of a state or federal corporate credit union in an amount that exceeds specified limits to provide prior written notice to the Superintendent. Such investments were previously prohibited. While Part 327 will impose new reporting and compliance requirements upon all credit unions, including credit unions located in rural areas, seeking to make certain investments, the Department believes that the requirements are modest and constitute appropriate prudential measures.

Parts 326 and 327 do not impose any reporting, recordkeeping or compliance requirements on public entities in rural areas.

Job Impact Statement

A Job Impact Statement is not attached because the amendments to Parts 95, 96 and 97, the repeal of Part 113, and the adoption of Parts 326 and 327 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Forensic Laboratory Accreditation

I.D. No. CJS-32-04-00005-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 section 6190.1(a)(8) of Title 9 NYCRR.

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

Subject: Forensic laboratory accreditation.

Purpose: To update citations to ASCLD/LAB accreditation standards.

Text of proposed rule: Paragraph 8 of subdivision (a) of section 6190.1 of Title 9 NYCRR is amended as follows:

(8) The term ASCLD/LAB refers to the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. Current ASCLD/LAB accreditation guidelines are contained in the [2001] 2003 edition of the ASCLD/LAB manual, which may be obtained from the ASCLD/LAB, 139 Technology Drive, Garner, NC 27529. These guidelines may also be viewed at the Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, and the Department of State, 41 State Street, Albany, NY 12231.

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

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

Section 6190.1(a)(8) refers to the 2001 edition of the ASCLD/LAB accreditation manual. However, ASCLD/LAB has issued a 2003 manual. This proposal merely updates the citation to the current ASCLD/LAB accreditation standards. It makes no substantive changes to the accreditation standards. Given the ministerial nature and purpose of the proposal, the Division has determined that no person is likely to object to the adoption of this rule as written.

Job Impact Statement

Section 6190.1(a)(8) refers to the 2001 edition of the ASCLD/LAB accreditation manual. However, ASCLD/LAB has issued a 2003 manual. This proposal merely updates the citation to the current ASCLD/LAB accreditation standards. It makes no substantive changes to the regulation. It is apparent from the ministerial nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Education Department

NOTICE OF ADOPTION

Qualified Public Educational Facilities Bond Program

I.D. No. EDU-18-04-00014-A

Filing No. 842

Filing date: July 27, 2004

Effective date: Aug. 12, 2004

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

Action taken: Addition of section 155.26 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 3713(1) and (2) and 26 USC section 142(a) and (k)

Subject: Qualified Public Educational Facilities Bond Program.

Purpose: To establish procedures, consistent with State and Federal law, for the allocation of the State's qualified public educational facility bond limitation pursuant to 26 USC section 142(k).

Text of final rule: Section 155.26 of the Regulations of the Commissioner of Education is added, effective August 12, 2004, as follows:

155.26 Qualified Public Educational Facility Bonds.

(a) *Purpose.* The purpose of this section is to establish procedures, consistent with State and federal law, for the allocation of the State's qualified public educational facility bond limitation pursuant to 26 USC section 142(k) (Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law section 107-16, section 422, 115 STAT. 65-66; Superintendent of Documents, U.S. Government Printing Office, Washington,

D.C. 20402-0001; 2001 - available at the Office of Facilities Planning, State Education Building Annex, Room 1060, Albany, New York 12234).

(b) Definitions. As used in this section:

(1) *Qualified Public Educational Facility bond* (or "QPEF bond") means a bond issued pursuant to the requirements of 26 USC section 142, the proceeds of which are to be used to provide qualified public educational facilities.

(2) *Qualified public educational facility* means a school facility as defined in 26 USC section 142(k).

(3) *Eligible local educational agency* means a local educational agency, as defined in 20 USC section 7801(26), which meets the requirements of subdivision (d) of this section (Public Law section 107-110, section 9101[26], 115 STAT 1961-1962, U.S. Government Printing Office, Washington, D.C. 20402-9328; 2002 - available at the Office of Facilities Planning, State Education Building Annex, Room 1060, Albany, New York 12234).

(4) *Annual aggregate face amount of tax-exempt financing* means the amount of the QPEF bond limitation allocated to the State pursuant to 26 USC section 142(k)(5).

(c) *Allocation*. The Commissioner shall determine annually the respective amounts of the annual aggregate face amount of tax-exempt financing to be allocated to eligible local educational agencies for approved qualified public educational facilities pursuant to 26 USC section 142(k).

(1) *Allocation percentages*. Except as provided in subparagraph (iii) of paragraph (2) of this subdivision:

(i) Eighty percent (80%) of the annual aggregate face amount of tax-exempt financing shall be allocated to the following eligible local educational agencies: The City School District of the City of New York, the Buffalo City School District, the Syracuse City School District, the Rochester City School District and the Yonkers City School District, in accordance with the procedures specified in paragraph (2) of this subdivision; provided that no more than ten percent (10%) of any amount so allocated to an eligible local educational agency shall be used to finance the equipping of qualified public educational facilities.

(ii) Fifteen percent (15%) of the annual aggregate face amount of tax-exempt financing shall be allocated to the remaining eligible local educational agencies in the State, other than charter schools, in accordance with the procedures specified in paragraph (2) of this subdivision; provided that no more than ten percent (10%) of any amount so allocated to an eligible local educational agency shall be used to finance the equipping of qualified public educational facilities.

(iii) The remaining five percent (5%) of the annual aggregate face amount of tax-exempt financing shall be allocated to eligible local educational agencies which are charter schools, in accordance with the procedures specified in paragraph (2) of this subdivision; provided that no more than ten percent (10%) of any amount so allocated to an eligible local educational agency shall be used to finance the equipping of qualified public educational facilities.

(2) *Allocation procedures*.

(i) All applications received from eligible local educational agencies by the date prescribed pursuant to subdivision (d) of this section shall be ranked in order of highest to lowest number of students enrolled in each such local educational agency.

(ii) Subject to the allocation percentages set forth in paragraph (1) of this subdivision, the annual aggregate face amount of tax-exempt financing shall be allocated to eligible local educational agencies in the order of their ranking, from highest to lowest, as established in subparagraph (i) of this paragraph, until such allocation is exhausted.

(iii) Notwithstanding any other provision of this subdivision to the contrary, in the event the Commissioner determines that the annual aggregate face amount of tax-exempt financing for any year will not be exhausted because of the failure of an eligible local educational agency receiving an allocation to use all or a part of its allocation, the Commissioner may:

(a) reallocate such unused allocation, adjusting the percentages specified in paragraph (1) of this subdivision as necessary, to assure that such annual aggregate face amount of tax-exempt financing is exhausted, provided that eligible local educational agencies whose allocation for the prior year was reallocated pursuant to this clause shall be given priority in the order in which they are ranked pursuant to subparagraph (i) of this paragraph in the allocation of any allocated but unused limitation; or

(b) elect to carry forward such unused allocation for any calendar year for three calendar years following the calendar year in which the unused allocation arose, pursuant to 26 USC section 142(k)(5)(B)(i).

(c) *Local educational agency responsibilities*.

(1) A local educational agency may apply, in a form prescribed by and a date established by the Commissioner, for approval to receive an allocation for QPEF bonds from the annual aggregate face amount of tax-exempt financing. Such application shall include, but is not limited to:

(i) a description of the project(s) and the amount(s) to be financed through the issuance of QPEF bonds;

(ii) a certification by the local educational agency that a public-private partnership agreement has been executed pursuant to 26 USC section 142(k)(2);

(iii) a certification by the local educational agency within which the qualified public educational facility or facilities are located, that each such facility meets the requirements for a qualified public educational facility pursuant to 26 USC section 142(k)(3) and (4);

(iv) the written approval of the superintendent of schools and the Board of Education, or in the case of a charter school - the chief executive officer and the board of trustees of the charter school, for such bond issuance; and

(v) an assurance that each such qualified public educational facility will be in compliance with the Education Law and this section.

(2) In cities with a population of less than 1,000,000, any capital construction project to be financed through the issuance of QPEF bonds shall be submitted to the Office of Facilities Planning in the State Education Department. In cities with a population of 1,000,000 or more, any capital construction project to be financed through the issuance of QPEF bonds shall be submitted to the appropriate authority having jurisdiction for review and issuance of a building permit.

(3) Nothing in this section shall prevent the use of QPEF bonds for projects that are not capital construction projects, provided that such projects meet all the other requirements of this section.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 155.26(c)(2)(i).

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

Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on May 5, 2004, a nonsubstantial revision was made to the proposed amendment as follows:

In section 155.26(c)(2)(i), at the end of the sentence, the word "agencies" was replaced with "agency" for grammatical consistency and now reads: "All applications received from eligible local educational agencies by the date prescribed pursuant to subdivision (d) of this section shall be ranked in order of highest to lowest number of students enrolled in each such local educational agency."

This revision does not require any changes to the Regulatory Impact Statement previously led herein.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on May 5, 2004, the proposed amendment was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revision to the proposed amendment does not require any changes to the previously published Regulatory Flexibility Analysis or Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on May 5, 2004, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed rule relates to the process by which local educational agencies gain access to a program entitled Qualified Public Educational Facility (QPEF) bonds, established in 26 USC section 142, by which the applicant receives tax-exempt bonds. Under the QPEF program, a local educational agency and private for-profit corporation enter into a public-private partnership agreement under which the corporation agrees to construct, rehabilitate, refurbish, or equip a school facility, and at the end of the term of the agreement, to transfer the school facility to the local educational agency for no additional consideration.

The proposed rule will not have an adverse impact on jobs or employment opportunities. The availability of financing through QPEF bonds for school construction projects will have a positive impact on jobs and employment opportunities. Because it is evident from the nature of the rule

that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Education for Gainful Employment (EDGE) Program

I.D. No. EDU-18-04-00015-A

Filing No. 843

Filing date: July 27, 2004

Effective date: Sept. 30, 2004

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

Action taken: Amendment of section 164.1(g) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 3713(1) and (2); and L. 2003, ch. 53, section 1

Subject: Education for Gainful Employment (EDGE) Program.

Purpose: To replace references to the Job Opportunities and Basic Skills (JOBS) Program with references to the Education for Gainful Employment (EDGE) Program.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-18-04-00015-P, Issue of May 5, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Teacher Aide and Teaching Assistant as School Support Personnel

I.D. No. EDU-18-04-00016-A

Filing No. 844

Filing date: July 27, 2004

Effective date: Aug. 12, 2004

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

Action taken: Amendment of sections 200.1, 200.2, 200.4, 200.6, 200.9 and 200.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided); 207 (not subdivided), 4403(3) and 4410(13)

Subject: Teacher aide and teaching assistant as school support personnel.

Purpose: To align Part 200 of the commissioner's regulations with the provisions of 8 NYCRR section 80-5.6, relating to supplementary school personnel, and with the provisions of the Federal No Child Left Behind Act (Public Law 107-110), relating to qualified paraprofessionals, by replacing the term "paraprofessional" with the term "supplementary school personnel."

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-18-04-00016-P, Issue of May 5, 2004.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on May 5, 2004, the State Education Department received the following comment.

COMMENT:

One comment was received which objected to the proposed amendment, stating that teacher aides and teaching assistants should not be categorized together under the term "supplementary school personnel."

DEPARTMENT RESPONSE:

No revisions to the proposed regulation have been made since section 80-5.6 of the Commissioner's Regulations already defines the term "sup-

plementary school personnel" to include teacher aides and teaching assistants.

Department of Environmental Conservation

**EMERGENCY
RULE MAKING**

Recreational Harvest and Possession of Marine Fish Species

I.D. No. ENV-19-04-00003-E

Filing No. 838

Filing date: July 21, 2004

Effective date: July 21, 2004

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

Action taken: Amendment of section 40.1(f) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0340-b, 13-0340-e and 13-0340-f

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

Specific reasons underlying the finding of necessity: Pursuant to § 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine fish species. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fisheries Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission. ASMFC recently amended the FMPs for summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. In order to maintain compliance with the FMPs and ACFCMA, states are required to immediately implement these changes by amending their recreational fishing regulations for each of these species.

Under the FMP for summer flounder and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest, assuming its regulations are unchanged and that harvest patterns and rates remain the same as the previous year. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding of its assigned quota. ASMFC reviews each state's regulations and must determine that they are compliant with the FMP. Accordingly, failure to timely adopt revised 2004 regulations may result in a non-compliance determination by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder, scup and/or black sea bass in New York State, with significant adverse impacts to the state's economy.

New York's projected harvests for summer flounder and scup in 2004 exceed the state's assigned quotas by 48.5% and 58%, respectively. The regulatory changes in this emergency rule are calculated, and have been approved by ASMFC, to achieve a 58% reduction for scup. The regulatory changes in the emergency rule are calculated to achieve a 20% reduction

for summer flounder. The Department is proposing to ASMFC that the New York 2004 recreational harvest projection for summer flounder be based on an average of the estimated harvest for 2001-2003, rather than on 2003 alone. New York's summer flounder regulations were essentially unchanged over this three year period, and the recreational harvest estimate, which is derived from a federal survey that is not statistically reliable at the individual state level, has fluctuated significantly over the period. For this reason, the Department has chosen to comply with the FMP by basing its harvest projection on a more reliable and stable three year average of harvest estimates, resulting in a 20% reduction requirement for 2004.

The FMP for black sea bass calls for annual adjustments to common coastwide regulations that are calculated to hold coastwide harvest within the allowed annual quota. For 2004, a two-week closure between September 1 and October 31 is required, with a recommended closure of September 6 through September 21. The emergency rule changes New York's closure period from September 1 through September 16 to September 23 through Oct. 7. This change is required to minimize the economic impact that would otherwise occur due to concurrent summer flounder and black sea bass closures on and immediately following September 6.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMPs for summer flounder, scup, and black sea bass and to avoid closure of these fisheries and the economic hardship that would be associated with such closure.

Subject: Regulation of the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) in New York's marine district.

Purpose: To control the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) consistent with conservation requirements identified in regional FMPs.

Text of emergency rule: Section 40.1(f) is amended as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	28" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	21" TL	No limit
Atlantic cod	All year	23" TL	No limit
Summer flounder	[All year] May 15 - Sept. 6	17" TL	[7] 3
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	21" TL	No limit
		14" Tail Length #	
Weakfish	All year	16" TL 10" Fillet length+ 12"Dressed length**	6
Bluefish	All year	No minimum size limit	10
Winter Flounder	Third Saturday in March to June 30 and Sept. 15 to Nov 30	11" TL	15
Scup (porgy)	[All year] June 16 - Oct. 17 and Nov. 1 - Nov. 30	[10"] 11" TL	[50] 20
Black Sea Bass	[Jan 1 -Sept. 1 and Sept. 16 - Nov 30] Oct. 8 - Sept. 23	12"	25
American Shad	All year	No minimum size limit	5

Hickory Shad	All year	No minimum size limit	5
Large & Small Coastal Sharks ##, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Pelagic Sharks ++, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks ***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

++ Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

*** Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205-S North Belle Meade Road, East Setauket, New York 11733.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ENV-19-04-00003-EP, Issue of May 12, 2004. The emergency rule will expire September 18, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Alice Weber, Department of Environmental Conservation, Bureau of Marine Resources, 205 S. North Belle Meade Rd., East Setauket, NY 11733, e-mail: amweber@gw.dec.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Sections 13-0340-b, 13-0340-e and 13-0340-f authorize the Department of Environmental Conservation (DEC or Department) to establish by regulation, open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder, scup and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate FMPs.

3. Needs and benefits:

Pursuant to § 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine fish species. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fisheries Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the

FMPs for these species adopted by the Atlantic States Marine Fisheries Commission. ASMFC recently amended the FMPs for summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. In order to maintain compliance with the FMPs and ACFCMA, states are required to immediately implement these changes by amending their recreational fishing regulations for each of these species.

Under the FMP for summer flounder and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest, assuming its regulations are unchanged and that harvest patterns and rates remain the same as the previous year. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding its assigned quota. ASMFC reviews each state's regulations and must determine that they are compliant with the FMP. Accordingly, failure to timely adopt revised 2004 regulations may result in a non-compliance determination by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder, scup and/or black sea bass in New York State, with significant adverse impacts to the state's economy.

New York's projected harvests for summer flounder and scup in 2004 exceed the state's assigned quotas by 48.5% and 58%, respectively. The regulatory changes in this emergency rule are calculated, and have been approved by ASMFC, to achieve a 58% reduction for scup. The regulatory changes in the emergency rule are calculated to achieve a 20% reduction for summer flounder. The Department is proposing to ASMFC that the New York 2004 recreational harvest projection for summer flounder be based on an average of the estimated harvest for 2001-2003, rather than on 2003 alone. New York's summer flounder regulations were essentially unchanged over this three year period, and the recreational harvest estimate, which is derived from a federal survey that is not statistically reliable at the individual state level, has fluctuated significantly over the period. For this reason, the Department has chosen to comply with the FMP by basing its harvest projection on a more reliable and stable three year average of harvest estimates, resulting in a 20% reduction requirement for 2004.

The FMP for black sea bass calls for annual adjustments to common coastwide regulations that are calculated to hold coastwide harvest within the allowed annual quota. For 2004, a two-week closure between September 1 and October 31 is required, with a recommended closure of September 6 through September 21. The emergency rule changes New York's closure period from September 1 through September 16 to September 23 through October 7. This change is required to minimize the economic impact that would otherwise occur due to concurrent summer flounder and black sea bass closures on and immediately following September 6.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMPs for summer flounder, scup, and black sea bass and to avoid closure of these fisheries and the economic hardship that would be associated with such closure. Specific major changes to the regulations include the following items:

Summer Flounder

Implement an open season of May 15 to September 6 for the summer flounder recreational fishery. The current fishing season for summer flounder is open year-round. Lower the recreational possession limit from 7 fish per person per trip to 3 fish per person per trip.

Scup

Implement an open season from June 16 through October 17 and November 1 through November 30 for the scup recreational fishery. The current fishing season for scup in New York is open year round. Lower the recreational possession limit from 50 fish per person per trip to 20 fish per person per trip. Increase the recreational minimum size limit from the current 10 inches to 11 inches total length.

Black sea bass

Implement an open season for black sea bass from October 8 to September 23 for the recreational black sea bass fishery. The current fishing season for black sea bass is open January 1 to September 1 and September 16 to November 30.

4. Costs:

(a) Cost to state government:

There are no new costs to state government resulting from this action.

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action. Certain regulated parties (Party/charter vessels, Bait and tackle shops) may experience some adverse economic effects through lost economic opportunities.

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

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules. The implementation costs will be associated with the public notification and final adoption of these regulations, and costs relating to the expense of updating informational materials and notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

There will also be additional costs associated with enforcement of these new regulations.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The following significant alternatives, listed by species, have been considered by the Department and rejected for the reasons set forth below:

Summer flounder alternatives:

(1) Implement a 48.5% reduction as calculated by ASMFC, projecting New York's 2004 harvest based on the 2003 landings alone:

The Department considered the following approaches for meeting a 48.5% reduction.

(a) One option would be to achieve a 48.5% reduction without increasing the size limit, *i.e.* with a season closure and reduced possession limit only. Under this approach, New York would meet the reduction by reducing effort, which is the most effective way to avert continuing overages in subsequent years. This approach would keep the size limit at 17", which prevents further displacement of opportunity for participation in harvest from west to east and inshore to ocean. Also, maintaining the existing size limit increases the probability that New York will be able to return to a size limit of 16", a size range preferred by all in industry.

However, this option would have a significant negative economic impact on the recreational fishery. Even after lowering the possession limit from 7 (current) to only 2, a very abbreviated (approximately 2½ month) open season would be necessary.

(b) As an alternative, New York could achieve a 48.5% reduction while increasing the minimum size limit to 17.5" or 18". Many, though not all, industry members have suggested that, if the Department adopts a 48.5% reduction strategy, it do so by implementing an 18" minimum size limit with a 3 fish possession limit and a May 1 - September 15 open season. The longer open season (approximately 4½ months) may mitigate the adverse impact of the higher size limit and lower possession limit.

Raising the size limit, however, fails to accrue the benefits associated with maintaining a 17" minimum, as noted in 1(a) above. There will likely be a significant increased impact resulting from the combination of raising the size limit and reducing the possession limit to 3. The longer open season may not sufficiently constrain the harvest to keep New York within its allowable harvest limit.

(2) Implement a 20% reduction in harvest while increasing size limit to 17.5" or 18". This option would allow for a longer open season and/or a higher possession limit than the proposed rule and the 48.5% reduction options. Accordingly, it would reduce the economic impacts associated with a 48.5% reduction. Increasing the minimum size limit allows for a longer open season, which may mitigate the adverse impact of the higher size limit. Raising the size limit, however, fails to accrue the benefits associated with maintaining a 17" minimum, as noted in 1(a) above. There will likely be an increased impact resulting from raising the size limit. The longer open season may not sufficiently constrain the harvest to keep New York within its allowable harvest limit.

The basis of a 20% reduction (as opposed to 48.5%) is that the MRFSS does not produce statistically valid estimates of catch and effort when estimates are disaggregated by state. Consequently, for this approach, New York would use the average annual fluke harvest over the past three years (during which our regulations were essentially unchanged), rather than New York's landings from only 2003, as the basis of projecting 2004 landings.

(3) No Action (no amendment to regulations).

The "no action" alternative would prevent any short term adverse impacts to the fishery from regulations. This option would likely result in a non-compliance determination by ASMFC and NMFS, which would bring about a federal closure of all fishing for summer flounder in New York under ACFCMA.

Scup alternatives:

(1) Achieve the 58% reduction called for by ASMFC without increasing size limit, *i.e.* with season closure and reduced possession limit only. This alternative complies with ASMFC requirements. It meets the reduction by reducing effort, which is the most effective way to avert continuing overages. It keeps the size limit at 10", which prevents further displacement of opportunity for participation in harvest from shore to private boat modes.

This option would likely have a significant adverse economic impact on the fishery. At this size limit, lowering the creel limit from 50 to 20 would reduce the open season from year round (current) to August 16 - December 31 or require a closure from June 1 to Labor Day.

(2) Achieve a 58% reduction while increasing size limit to 10.5" or 11.25". These options all comply with the ASMFC requirements. Many in the recreational fishing industry suggest an 11¼" minimum size. An 11¼" minimum size limit would allow New York to maintain a longer open season, which would mitigate adverse economic impacts associated with very large required harvest reduction. A 10.5" minimum would be consistent with other nearby states' proposed minimum size limits which would allow for a uniform minimum size limit throughout the southern New England region. The 10.5" minimum would minimize the further displacement of opportunity for participation in shore based scup fisheries, which tend to have access to smaller size fishes. Also, minimal changes in the size limit increases the probability that New York will be able to manage our recreational fishery at a smaller size limit in future years.

The impact on the fishery will still be severe. Increasing the size limit to only 10.5" would require a substantially reduced fishing season, and while increasing the minimum to 11¼" would minimize the length of the required season closure, the large increase in the minimum size limit (from the current 10 to 11¼") would likely result in a significant loss of opportunity for participation in harvest for shore-based fishermen. In addition, the extended open season that would be allowed under the 11¼" minimum size limit may not sufficiently constrain the harvest to keep New York within its allowable harvest limit.

(3) No Action (status quo regulations).

This alternative would retain the strong economic viability of the recreational scup fishery. This approach would fail to achieve the 58% reduction required by ASMFC and would likely result in a non-compliance determination by ASMFC and NMFS, and a federal closure this summer. Since New York's estimated 2003 scup landings were 5,030,575 fish as compared to an assigned quota of only 1,900,000 fish, a significant harvest reduction is clearly required.

9. Federal Standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs for scup and black sea bass. The Department has chosen to comply with the FMP for summer flounder by basing its harvest projection on a more reliable and stable three year average of harvest estimates, resulting in a 20% reduction requirement for 2004.

10. Compliance Schedule:

Regulated parties will be notified by mail, through appropriate news releases and via the Department's website of the changes to the regulations. The regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of the regulations:

There were 496 licensed party/charter vessels operating in New York during 2003 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in 2003. Many currently licensed party and charter boat owners and operators, as well as bait and tackle shops, will be affected by these regulations. The regulations will likely result in a short term reduction in allowable catch or availability of marine fisheries resources for the affected parties. This may result in a lower number of fishing trips and/or lower bait and tackle sales during the upcoming fishing season. However, over the long term, these short term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or

tackle. Therefore, no local governments are affected under these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

The annual cost of continuing compliance may take the form of lost income if the sales of marine bait fish or tackle declines or if fewer fishermen take trips aboard marine party and charter vessels. Some of the proposed regulations will likely result in a short term reduction in allowable catch or availability of marine fisheries resources for the affected parties. It is not known if fishermen will take fewer trips or if they will purchase less bait and tackle as a result of the shorter seasons, higher size limits or lower possession limits, or if they will instead re-direct their fishing effort towards other species.

The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question including party and charter vessels, as well as wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. These regulations are designed to protect stocks from continued over harvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the complete collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

5. Minimizing adverse impact:

The purpose to these regulations is to constrain the recreational harvest of these species by reducing the length of the fishing season, increasing minimum size limits and lowering possession limits for recreational fishermen. The impact of these regulations will be minimized by adjusting and coordinating fishing seasons to maintain recreational fishing opportunities for some species when others are closed, and by implementing season closure and size and possession limit options throughout the marine district that will not unduly affect some fishing modes and geographic areas more than others.

The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail outlets and other support industries for recreational fisheries. The purpose of the rule is to constrain harvest of these species to allow the stocks to rebuild to higher sustainable levels. There is no means to eliminate the potential for short term economic losses while attempting to rebuild over harvested stocks of fish. Failing to take these appropriate actions to protect our natural resources could cause the complete collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. Regulations are proposed which provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

6. Small business and local government participation:

The development of this proposal has drawn upon input from recreational fishermen, recreational fishing industry representatives and the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon consultation with and recommendations received from other interested and affected parties, including recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners and state law enforcement personnel. There was no special effort to contact local governments because the rule does not affect them.

7. Economic and technological feasibility:

The changes required by this action have been determined to be economically feasible for the majority of the affected parties. For those proposals which are required under federal and interstate fishery management plans, the Department does not have any discretion regarding this economic impact. New York must comply with the provisions of the FMPs or face Federal sanctions.

There is no additional technology required for small businesses, and this action does not apply to local governments, so there are no economic or technological impacts for any such bodies.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural

areas within the marine and coastal district. The summer flounder, scup and black sea bass fisheries directly affected by the emergency rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the emergency rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the emergency amendments of Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The Department of Environmental Conservation (Department) has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

There were 496 licensed party/charter vessels operating in New York during 2003 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in 2003. Many currently licensed party and charter boat owners and operators, as well as bait and tackle shops, will be affected by these regulations. The regulations will likely result in a short term reduction in allowable catch or availability of marine fisheries resources for the affected parties. This may result in a lower number of fishing trips and/or lower bait and tackle sales during the upcoming fishing season.

The purpose of these regulations is to constrain the harvest of certain marine fish species to reduce fishing mortality and rebuild stock biomass. The potential short term impact of these regulations may be that some recreational party and charter boat owners experience short term reductions in customers. It is possible that some jobs and employment opportunities associated with party and charter boat operations could be lost as a result of the restrictions imposed by the proposed regulations.

However, based on outreach with members of the recreational fluke and scup fisheries, the Department does not anticipate that there will be any substantial loss of jobs as a result of the proposed changes. Moreover, in the long term, the effect of this proposed rule on jobs and employment opportunities will be positive. Protection of the fluke and scup fisheries is essential to the survival of the party and charter boat operations that participate in these fisheries.

The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat owners and operators, wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. Over the long term, these short term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. These regulations are designed to protect stocks from continued over-harvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the complete collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

Based on the above and Department staff's knowledge and past experience with the adoption of finfish rules similar to those contained in this proposal, the Department has concluded that there will not be any substantial adverse impact on jobs or employment opportunities as a consequence of these amendments.

NOTICE OF ADOPTION

Sanitary Conditions of Shellfish Lands

I.D. No. ENV-22-04-00003-A

Filing No. 845

Filing date: July 27, 2004

Effective date: Aug. 11, 2004

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

Action taken: Amendment of section 41.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

Subject: Sanitary condition of shellfish lands.

Purpose: To examine shellfish lands and designate as certified (open) those lands that are in such sanitary condition that shellfish may be taken therefrom for use as food, and designate all other areas as uncertified (closed).

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ENV-22-04-00003-EP, Issue of June 2, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Carol Hoffman, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0482, e-mail: cjhoffma@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Archery Season for White-Tailed Deer in Suffolk and Westchester Counties

I.D. No. ENV-32-04-00010-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 1.29 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0903(10)

Subject: Archery season for white-tailed deer in Suffolk and Westchester Counties.

Purpose: To adjust the open season dates for hunting white-tailed deer to better match deer population status, hunter desires and agricultural and community desires.

Text of proposed rule: Section 1.29 is repealed and a new section 1.29 is adopted to read as follows:

§ 1.29 Regular open archery season for deer of either sex in Suffolk and Westchester Counties

(a) "Purpose." To provide for the taking of white-tailed deer by longbow in Suffolk and Westchester Counties.

(b) "Applicability." The provisions of this section apply to the taking of deer by longbow in Suffolk and Westchester Counties.

(c) White-tailed deer may be taken by longbow in Suffolk County, from sunrise to sunset beginning on October 1st and continuing through December 31st.

(d) White-tailed deer may be taken by longbow in Westchester County, from sunrise to sunset beginning on October 15th and continuing through December 31st.

Text of proposed rule and any required statements and analyses may be obtained from: John Major, Chief, Bureau of Wildlife, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8922, e-mail: jxmajors@gw.dec.state.ny.us

Data, views or arguments may be submitted to: Richard Henry, Bureau of Wildlife, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8867, e-mail: rjhenry@gw.dec.state.ny.us

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

Additional matter required by statute: State Environmental Quality Review Act (SEQR; ECL art. 8). Establishment of regulations pertaining to the taking and possession of game species 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 any significant departure from established and accepted practices as described in the FPIS and is therefore classified as a "type II" action pursuant to the Department's SEQR regulations (6 NYCRR § 618.2[d][5]).

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

Regulatory Impact Statement

1. Statutory Authority:

Section 11-0303 of the Environmental Conservation Law directs the Department of Environmental Conservation to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Section 11-0903(10) provides the specific authority to set seasons for the legal harvest of deer.

2. Legislative Objectives:

Restrictions on methods of taking, possession, open seasons and bag limits for game species are used by the Department of Environmental

Conservation to achieve the Legislature's intent of maintaining desirable species in ecological balance and observing sound management practices.

3. Needs and Benefits:

A regulated annual harvest of deer is necessary to maintain deer populations in balance with deer range, natural food supplies and human land uses. Harvests achieved through legal hunting are needed to meet mandated responsibilities for the efficient management of wildlife resources and the maintenance of desirable species in ecological balance.

The Department proposes to change the opening date for the regular (archery only) season for deer in Westchester County from November 1 to October 15. This amendment will create consistent archery hunting opportunities throughout the entire Southern Zone, and will provide increased archery deer hunting opportunities for Westchester County hunters who might otherwise travel to other Southern Zone locations to participate in archery hunting. It is a logical expansion of the existing archery only hunting regime that could enhance overall hunters success because weather related hunting conditions are generally more favorable earlier in the season rather than during the latter portions. Earlier season opportunities generally result in higher harvests of antlerless deer and can even further enhance the effectiveness of the existing Bonus Deer Management Permit program.

This proposal is consistent with actions to provide expanded early hunting opportunities and better control wildlife damage associated with an increasing deer population as suggested by many of those in attendance at a Future of Deer Hunting meeting held in Mount Kisco, Westchester County in 2000. The meeting was part of a statewide initiative that was held primarily to receive input from members of the public regarding actions which could serve to improve the participation and satisfaction of hunters and the overall effectiveness of hunting.

Deer continue to impact Westchester County residents and their quality of life. Deer damage to ornamental shrubbery and agriculture interests, deer/motor vehicle collisions, Lyme disease and a number of other issues remain in spite of the effects that the current levels of hunting produce. Any actions which could result in any increase in deer harvests in Westchester County should result in further mitigation of these negative impacts.

4. Costs:

This change will not affect the costs associated with hunting for either the Department or for deer hunters.

5. Local Government Mandates:

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

6. Paperwork:

This amendment does not require any additional paperwork by any regulated entity.

7. Duplication:

None.

8. Alternatives:

No Action: This alternative is not as desirable as the proposed action because it would limit the effectiveness of archery hunting as a management tool for controlling deer numbers in a locale where the use of more traditional hunting methods is constrained.

9. Federal Standards:

There are no federal standards associated or applicable to the subject matter of the proposed rule.

10. Compliance Schedule:

Compliance will be required immediately upon the effective date of the amendments.

Regulatory Flexibility Analysis

The proposed rule making will revise regulations concerning dates of the regular (archery only) deer hunting seasons in Westchester County. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting and trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rule making, the Department has determined that this rule making will not impose an adverse economic impact on small businesses or local governments. The Department's hunting regulations do not directly regulate or impact any small businesses or local government bodies, and the proposed revisions are not expected to 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 for this rule making.

Rural Area Flexibility Analysis

The proposed rule making will revise regulations concerning dates of the regular (archery only) deer hunting seasons in Westchester County. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting and trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed 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 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 are administered by the Department.

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

Job Impact Statement

The proposed rule making will revise regulations concerning the procedures for deer hunting in the Northern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its muzzleloading hunting regulations in the Northern Zone. 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Harvest of White-Tailed Deer with Muzzleloading Firearms in the Northern Zone

I.D. No. ENV-32-04-00011-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 1.22 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0907

Subject: Harvest of white-tailed deer with muzzleloading firearms in the Northern Zone.

Purpose: To adjust the muzzleloading deer hunting regulations in response to changing deer populations as a result of milder winter weather. These adjustments will better match deer hunting opportunities with deer population status, hunter satisfaction and agricultural and community desires.

Text of proposed rule: 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"

FIRST SPLIT of the muzzleloading season for deer shall be the seven days immediately preceding the Northern Zone regular big game season. 5A, 5C, 5F, 5G, 5H, 6A, [6C,] 6G, 6H [5F, 5G, 5H, 5J,] 6N 5J, 6C, 6F, 6J, 6K

SECOND SPLIT of the muzzleloading season for deer shall be the seven days immediately following the Northern Zone regular big game season. 5G, 5J, 6A, 6C, 6G, 6H [5G, 5J]

Subdivision 1.22(b) through end of Part 1 remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: Richard Henry, Department of Environmental Conservation, Bureau of Wildlife, 625 Broadway, Albany, NY 12233-4754, (518) 402-8867, e-mail: rjhenry@gw.dec.state.ny.us

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

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

Additional matter required by statute: State Environmental Quality Review Act (SEQR; ECL art. 8). Establishment of regulations pertaining to the possession and transportation of game species 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 any significant departure from established and accepted practices as described in the FPIS and is therefore classified as a "type II" action pursuant to the department's SEQR regulations (6 NYCRR § 618.2[d][5]).

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

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 wildlife 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 the need to protect private property. ECL Section 11-0907 governs open seasons and bag limits for deer.

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 Department proposes to change the muzzleloading regulations for deer in Wildlife Management Units (WMUs) 5G and 5J to either-sex hunting seasons and to change the regulations in WMU 5F, WMU 5H and WMU 6C to a single either sex early muzzleloading hunting season.

The winter of 2003-2004 saw a return to more normal winter conditions in the Adirondack region. In WMUs 5F, 5G, 5H and 5J, extended periods of deep snow and cold temperatures did not occur. Accordingly, deer populations in these areas have returned to more normal levels. Allowing the harvest of deer of either sex is once again an appropriate management action in these units in order to maintain the desired sex ratios needed for herd management.

A slightly different situation exists in WMU 6C, in the St. Lawrence Valley where winter mortality was less critical. Rapidly growing deer populations have been effectively managed to desirable levels through the use of Deer Management Permits (DMPs) and antlerless only muzzleloading seasons. At this time it is appropriate to return to muzzleloader opportunities for deer of either sex and provide buck hunting opportunities consistent with most other Northern Zone WMUs. Recent input from deer hunters and other concerned citizens has demonstrated a desire to return to these expanded muzzleloading hunting seasons.

4. Costs

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

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

The alternative to this rule making is no action. However, the Department would not be fulfilling the directives identified in paragraphs 1 and 2 above if it failed to provide hunters with greater and more diverse hunting opportunities where feasible and consistent with the Department's other objectives. Ultimately, this rule making will enhance hunter satisfaction and participation.

9. Federal Standards

There are no federal standards affecting this regulatory proposal.

10. Compliance Schedule

Hunters will be required to comply with the new regulations beginning with the 2004-2005 license year (October 1, 2004).

Regulatory Flexibility Analysis

The proposed rule making will revise regulations concerning the procedures for deer hunting in the Northern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its muzzleloader hunting regulations in the Northern Zone. 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 Department's hunting regulations do not directly regulate or impact any small businesses or local government bodies. Any impacts on small business would be indirect and positive as the new season may prompt spending (supplies, food, etc.) by those taking advantage of the opportunity.

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 for this rule making.

Rural Area Flexibility Analysis

The proposed rule making will revise regulations concerning the procedures for deer hunting during special muzzleloader seasons in the Northern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its muzzleloader hunting regulations in the Northern Zone. 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 activity.

The Department has also determined that these amendments 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 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 deer hunting in the Northern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its muzzleloading hunting regulations in the Northern Zone. 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.

Department of Health

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Criminal History Record Check of Certain Non-Licensed Nursing Home and Home Care Staff

I.D. No. HLT-07-04-00027-C

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

The notice of proposed rule making, I.D. No. HLT-07-04-00027-P was published in the *State Register* on February 18, 2004.

Subject: Criminal history record checks of certain non-licensed nursing home and home care staff.

Purpose: To protect nursing home residents and home care clients by requiring non-licensed nursing home and home care staff who are employed or used to provide direct care or supervision to residents/clients to undergo criminal history checks.

Substance of rule: These regulations would require the operator of a nursing home, licensed home care services agency, certified home health agency, long-term home health care program, personal care services agency or AIDS home care program to obtain a criminal history record check from the U.S. Attorney General for any prospective employee prior to employment or use of the individual.

Changes to rule: No substantive changes.

Expiration date: February 17, 2005.

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Department/Services Data Collection by SPARCS

I.D. No. HLT-32-04-00002-P

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

Proposed action: Amendment of sections 400.18 and 405.27(a) and (b) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2816

Subject: Emergency department/services data collection by SPARCS.

Purpose: To establish SPARCS in statute to continue as it has been operating with the addition of emergency department/services data to be included as a required submission for facilities.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): The proposed amendments require all hospitals with emergency departments to file for each emergency services patient, emergency department/service data elements as approved by the Commissioner. These amendments specify that data submissions need to be in computer readable format and according to specifications as provided by the Commissioner. Emergency department/service data will be added to the SPARCS database and will be covered by the confidentiality and security provisions in place for all SPARCS data submissions. This includes steps taken by the Health Department security officer, in coopera-

tion with SPARCS, to control access to the data bank through the use of systems software and security procedures designed to protect data against unauthorized access. Section 400.18 is amended to include the technical specifications for the submission of emergency department/service data to SPARCS. In addition, the designation that emergency services were provided prior to an inpatient admission will be reflected on the inpatient submission to SPARCS. The creation of the emergency department/services database would, like the SPARCS data system currently in place, utilize current reporting requirements including pre-existing financial/payer data. Section 405.27 has also been amended to include reference to emergency department/service data as a reporting requirement. The collection of emergency department/services data will allow for the comprehensive assessment of health care outcomes and provide meaningful health care benchmarks for use by the Department of Health and the health care industry.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Chapter 225 of the Laws of 2001 added a new Section 2816 to the Public Health Law (PHL). The provisions in this law established the Statewide Planning and Research Cooperative System (SPARCS) in statute for the first time, continuing it as it has been operating.

PHL Section 2816 specified that certain requirements must be included in the SPARCS regulations. Specification of data elements and format to be utilized include: (1) data related to inpatient hospitalization data from general hospitals; (2) ambulatory surgery data from hospital-based ambulatory surgery services and all other licensed ambulatory surgery facilities; and (3) emergency department (ED) data from general hospitals. This law also requires standards to assure protection of patient privacy and standards for the publication and release of data reported. Section 2803(2)(a)(v) contains the authority of the State Hospital Review and Planning Counsel to adopt, subject to the approval of the Commissioner, rules and regulations relating to hospital operating certificates.

Legislative Objectives:

Section 97-x of the State Finance Law contains the funding for SPARCS, which is through an assessment of annual fees on general hospitals. The Legislature found that SPARCS has worked well as a tool for planning, research, public information, and health care improvement and believes that the addition of ED data will greatly enhance the value of the system. Identification of patterns of certain illnesses and injuries will help target intervention programs and suggest hypotheses about causes. Identification of patterns of ED utilization will also assist in resource planning. The creation of the ED database would, like the SPARCS system currently in place, utilize pre-existing billing data. The transmission of ED data would be linked to outpatient/inpatient SPARCS data systems. Many states around the country are in the process of creating such a system.

Needs and Benefits:

The new statute (§ 2816 of the Public Health Law) continues the current SPARCS system with the addition of emergency service data reporting. New York State's emergency departments reported nearly 6.5 million visits in 1999, costing \$1.9 billion, or approximately 7% of the \$27.5 billion reported for hospital costs that year. While this is a major investment, very little data has been collected regarding the nature and extent of ED use in New York State. This lack of data hinders our ability to effectively plan to meet the health care needs of our residents. Currently we do not know why people come to the ED, their diagnoses or the services they received. We also do not have necessary demographic information such as race, ethnicity, place of residence, or age.

Current SPARCS inpatient and outpatient data contains financial, demographic and diagnostic information used to determine patterns of illness, costs of care, supports utilization review efforts, health planning, epidemiology and research studies. This regulation specifically authorizes SPARCS to collect ED data and was initiated because of radical changes in the delivery of health care and increased demand for accurate and timely health care information. An important missing link in the evaluation of health care systems is the health care services provided in EDs throughout New York State. Outcomes for patients utilizing the ED are important factors in assessing overall care for acute events. Collecting ED data will

allow the Department of Health to provide a comprehensive assessment of outcomes and meaningful benchmarks for use by both DOH and the health care industry.

The addition of data from emergency departments throughout the State will considerably increase the overall value of the SPARCS system as a research, planning and management tool. Chapter 225 of the Laws of 2001 mandates that DOH begin collecting ED data by September 2003. The adoption of this regulation is necessary to implement the law and will support an enhanced assessment of the health care system.

Costs:

Cost to State and Local Governments:

There will be minimal cost to State or local governments. Local governments or State operated hospitals that may have an emergency department would incur minimal costs to report to SPARCS in industry standard format that is compatible with information system requirements dictated by federal statute, (e.g. Health Insurance Portability and Accountability Act (HIPAA)), for payment purposes.

Costs to the Department of Health:

The SPARCS Special Revenue Account is expected to absorb the costs for the development and maintenance of emergency department reporting and data dissemination. The infrastructure for inpatient and outpatient reporting is already in place and that same infrastructure will be used for the collection and dissemination of emergency department data. The Department's estimate of the total number of hospital ED visits per year is 6.5-7.0 million. The cost of this regulation to the Department is estimated to be \$550,000. This reflects additional personnel costs of 4 FTE's and non-personnel, onetime costs of \$250,000 to purchase additional processor power, disk space and training to process the additional emergency service data.

Costs to Regulated Entities:

There will be minimal costs to the regulated entities, which are Article 28 hospitals that provide emergency department services. Hospitals with emergency departments would incur minimal costs to report to SPARCS in industry standard format that is compatible with information system requirements dictated by federal statute, (e.g. Health Insurance Portability and Accountability Act (HIPAA)) and used for payment purposes.

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.

Paperwork:

Efforts to collect this ED data will be built on systems that facilities already have in place for other purposes such as billing and current reporting requirements. There will be a need for facilities to develop procedures to route ED data submissions to SPARCS. SPARCS will work with the hospital industry to conform to the federal Health Insurance Portability and Accountability (HIPAA) Act of 1996 to standardize the reporting system. These issues should be offset by the ensuing enhanced data set that will allow hospital administrators to manage and plan more effectively. All of DOH's security and data protection procedures now in place for inpatient data will be applied to the use of ED data. Individual patient record security will be maintained utilizing an identity shielded unique personal identifier. Privacy and confidentiality regulations now in effect for SPARCS inpatient data will protect the patient's privacy and confidentiality by restricting access to any sensitive information in SPARCS and insuring a review of all such requests by an independent review board. The proposed regulations will contain specific data elements to be collected and in what format.

Duplication:

This regulation will not duplicate, overlap or conflict with federal or state statutes or regulations. SPARCS will be working within the HIPAA legislation to standardize the reporting system.

Alternative Approaches:

The collection of emergency department/services data has been mandated by law. Therefore, no practical alternative could be considered for this data submission. However, every effort has been made to address any concerns the hospitals may have in the collection of this data. SPARCS notifies facilities of proposed emergency department implementation through the e-mailing of bulletins and pursues statewide outreach through the hospital associations, the New York Health Information Management Association (NYHIMA), the New York State Chapter of the American College of Emergency Physicians (ACEP) and other organizations. Input from these organizations has been taken into consideration and reflected in the regulations and proposed data elements. In an effort to insure statewide participation in the development of these emergency department regula-

tions contact was made with hospital associations and information management associations throughout New York State. HANYS and NYHIMA sponsored regional meetings between SPARCS and hospital representatives. These meetings provided forums for the industry to comment and react to the Department of Health's development activities. These meetings helped SPARCS to redefine several emergency department data elements and made sure that SPARCS requirements were aligned with provider capabilities. In addition, meetings with emergency department physicians allowed us to modify the tracking of physician care. Ongoing information about the development of the emergency department data collection system was made publicly available in the SPARCS information bulletins starting in December 2001. These bulletins are published on the SPARCS public web site and have provided updated information to the industry and other interested parties as the project progressed. The SPARCS Information Bulletins can be accessed at: <http://www.health.state.ny.us/nysdoh/sparcs/info.htm>.

Federal Requirements:

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

Compliance Schedule:

Chapter 225 of the Laws of 2001 mandates that the Department of Health begin collecting ED data by September 2003. There have been informational sessions throughout the State for hospitals and data users on the collection of ED data. SPARCS is currently engaged in a statewide testing phase with hospitals and their vendors. For those hospitals that have successfully tested with SPARCS to date, the production processing of emergency department data began on a voluntary basis in the middle of June. We expect full implementation of the emergency department data collection system by September 2003.

Regulatory Flexibility Analysis

Effect of Rule:

These regulations will apply to hospitals (Article 28 facilities) with emergency departments. Local government will be minimally impacted by this rule. The State Administrative Procedure Act (SAPA 202-b) defines a small business as "being resident in this State, having fewer than 100 employees, independently owned and operated." According to the New York State Health Department's Division of Health Care Finance, every hospital with an emergency department operating in New York State employs more than 100 workers. If we consider a small business based on the assumption that hospitals with a total certified bed capacity of 50 beds or less can be considered a small business then there are approximately 19 of these types of facilities. These numbers are based on the New York State Health Facilities Master File.

Compliance Requirements:

These amendments will not impose increased record keeping or other compliance requirements on providers. Hospitals that provide emergency services will continue to collect the industry standard emergency services data and will now redirect a subset of this data to SPARCS. These amendments will allow SPARCS to receive this emergency department/services data.

Professional Services:

These amendments are not expected to cause the need for additional professional services. Emergency department/services data collected by SPARCS will be compatible with information system requirements dictated by Federal Statute (e.g. HIPAA) and used for payment purposes.

Compliance Costs:

No initial capital costs of compliance are involved. Providers will incur the cost of modifying their information systems to include SPARCS on their data disbursement list and in the correction and resubmission of data errors. This effort will be aided by Health Department software which will be provided free of charge. This software will allow the provider to submit data to SPARCS in accordance with HIPAA and industry standards. In addition the Health Department's Health Provider Network (HPN) provides for the secure transmission of emergency data to SPARCS at no cost to the provider. The annual cost for compliance with the proposed rule should be minimal for all providers. It is anticipated that [that] some providers will experience a reduction in costs by using the Health Department's software and HPN.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses to comply with the proposed regulations. Providers should not need to hire additional professional or administrative staff to comply with the requirements of the regulations. Due to the fact that emergency department/services data is required by Federal Statute, HIPAA and payment purposes the additional staff time and costs of redirecting a subset of this

data to SPARCS should be minimal. SPARCS data submission software can be used by facilities through the use of a personal computer or coupled with other mainframe data uses. The software is maintained and updated by SPARCS and SPARCS staff will provide software instructions. The Health Provider Network (HPN) is currently used by data providers of large and small facilities and allows for the transmission of data in a secure environment. The HPN is available free of charge.

Minimizing Adverse Impact:

The Department of Health considered the approaches specified in section 202-b(1) of the State Administrative Procedure Act (SAPA) and finds them to have no bearing on the implementation of the proposed rule because the proposed rule will have no adverse impact on small businesses or local governments. This can be assumed because data submission standards will mirror current industry standards. SPARCS data collection will be a subset of the emergency department/services data that is currently provided to other data requestors. As part of an ongoing effort to minimize adverse impact, SPARCS posts for comment, all emergency department/services proposals and technical specifications on the SPARCS web site. In addition SPARCS notifies facilities of proposed emergency department implementation procedures through the e-mailing of bulletins and continuing statewide outreach through the hospital associations, the New York Health Information and Management Association (NYHIMA), the New York State chapter of the American College of Emergency Physicians (ACEP) and other organizations.

Small Business and Local Government Participation:

Prior to the processing of the proposed rule, outreach meetings were held throughout New York State. These meetings were held in Buffalo, Rochester, Syracuse, Albany, New Rochelle, New York City and Long Island. The Hospital Association in each region sponsored these meetings and participation by all facilities was encouraged. Facilities in attendance indicated that they had no objection to submitting data, according to the proposed rule, that was an industry standard. SPARCS will continue this outreach. SPARCS also posts emergency department/services data collection proposals including technical specifications on the SPARCS web site with an e-mail address to contact SPARCS with comments and concerns.

Small businesses and local governments will also have the opportunity to participate in the rule making process by their invitation to the State Hospital Review and Planning Council. The agenda will be mailed to those facilities defined as a small business, hospital associations representing the needs and concerns of hospitals across New York State including rural facilities, and all organizations and/or professional associations sending or receiving emergency department/services data. Comments regarding the proposed amendments will be solicited at these meetings.

Rural Area Flexibility Analysis

Types and Estimated Numbers of 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 of 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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

This regulation should not adversely affect current emergency department services in a rural setting. Hospitals that provide emer-

gency services will continue to collect the industry standard emergency services data and will now redirect a subset of this data to SPARCS. This amended regulation allows SPARCS to receive this emergency department/services data.

Hospitals will not need to hire additional professional or other staff to comply with the requirements of this regulation. Emergency department/services data collected by SPARCS will be in a format consistent with information system requirements dictated by applicable Federal Statute (e.g. Health Insurance Portability and Accountability Act (HIPAA)) and used for payment purposes.

Costs:

No initial capital costs of compliance are involved. Providers will incur the cost of modifying their information systems to submit a subset of emergency department/services data to SPARCS and in the correction and resubmission of data errors. This effort will be aided by Health Department software which will be provided free of charge. This software will allow the facility to submit data to SPARCS in accordance with HIPAA and industry standards. In addition, the Health Department's Health Provider Network (HPN) provides for the secure transmission of emergency data to SPARCS at no cost to the provider. The annual cost for compliance with the proposed rule should be minimal for providers, both public and private in rural areas. Providers should not need to hire additional staff to comply with the requirements of the regulations as emergency department/services data are currently collected as required by HIPAA and for payment purposes. It is anticipated that some providers will experience a reduction in costs by using the Health Department's software and HPN.

Minimizing Adverse Impact:

The Department of Health considered the approach specified in section 202-bb(2) of the State Administrative Procedure Act (SAPA) and finds them to have no bearing on the implementation of the proposed rule because the proposed rule will have no adverse impact on public or private entities operating emergency rooms in rural areas. This can be assumed because data submission standards will mirror current industry standards. SPARCS data collection will be a subset of the emergency department/services data that is currently provided to other data requestors. As part of an ongoing effort to minimize adverse impact, SPARCS posts for comment, all emergency department/services proposals and technical specifications on the SPARCS web site. In addition SPARCS notifies facilities of proposed emergency department implementation procedures through the e-mailing of bulletins and continuing statewide outreach through the hospital associations, the New York Health Information and Management Association (NYHIMA), the New York State chapter of the American College of Emergency Physicians (ACEP) and other organizations.

Rural Area Participation:

Prior to the processing of the proposed rule, outreach meetings were held throughout New York State. These meetings were held in Buffalo, Rochester, Syracuse, Albany, New Rochelle, New York City and Long Island. The Hospital Association in each region sponsored these meetings and participation by all facilities was encouraged. Facilities in attendance indicated that they had no objection to submitting data, according to the proposed rule, that was an industry standard. SPARCS will continue this outreach.

Public and private entities in rural areas will also have the opportunity to participate in the rule making process by their invitation to the State Hospital Review and Planning Council. The agenda will be mailed to those facilities in all rural areas, hospital associations representing the needs and concerns of hospitals across New York State including rural facilities and all organizations and/or professional associations sending or receiving emergency department/services data. Comments regarding the proposed amendments will be solicited at these meetings.

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 the proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities in hospitals which provide emergency services. Those hospitals which provide emergency services will continue to collect the industry standard emergency services data and simply redirect a subset of this data to SPARCS.

The proposed amendments to the regulations will allow SPARCS to receive this emergency department/services data. Therefore, the jobs of people who collect emergency department/services data will not be negatively impacted.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York City Watershed Rules and Regulations

ID. No. HLT-32-04-00003-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 128-1.6(a) and 128-3.8(b)(2) of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201(1)(l) and 1100

Subject: New York City watershed rules and regulations.

Purpose: To make the State adopted New York City watershed regulations consistent with the revised New York City regulations.

Text of proposed rule: Paragraphs (42) through (117) of subdivision (a) of section 128-1.6 are renumbered (43) through (118) and, a new paragraph (42) is added to read as follows:

(42) *Galley System means any subsurface system for treating sewage that employs structural chambers in a horizontal or vertical arrangement for the storage of effluent until it can be absorbed into the soil that is utilized following a septic tank as an alternative to a standard absorption field.*

Paragraph (2) of subdivision (b) of section 128-3.8 is amended to read as follows:

Mound systems, intermittent sand filters, [and] evapotranspiration/absorption systems and galley systems that did not have all discretionary approvals before June 30, 2002, are prohibited from use in the watershed.

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

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

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

Regulatory Impact Statement

Introduction:

This Regulatory Impact Statement addresses the requirements for amending the state-adopted NYC watershed regulations under the State Administrative Procedures Act.

The NYC watershed regulations regulate activities in the NYC watershed. Watershed towns and villages are listed by county in Table 1.

TABLE 1
Watershed Towns by County

WEST OF HUDSON					
Schoharie	Greene		Ulster	Delaware	
Town	Village			Town	Village
Broome	Ashland		Denning	Andes	
Conesville	Halcott		Hardenburg	Bovina	
Gilboa	Hunter		Hurley	Colchester	
Jefferson		Hunter	Kingston	Delhi	
		Tannersville	Marbletown	Deposit	
	Jewitt		Olive	Franklin	
	Lexington		Rochester	Hamden	
	Prattsville		Shandaken	Harpersfield	
	Windham		Wawarsing	Kortright	
			Woodstock	Masonville	
				Meredith	
				Middletown	Fleischmanns
					Margaretville
				Roxbury	
				Sidney	
				Stamford	Hobart
					Stamford
				Tompkins	
				Walton	Walton

EAST OF HUDSON					
Dutchess		Putnam		Westchester	
Town	Village	Town	Village		
Beekman		Carmel		Bedford	New Castle
East Fishkill		Kent		Cortland	North Castle
Pawling	Pawling	Patterson		Harrison	North Salem
		Putnam		Lewisboro	Pound Ridge
		Valley			
		Southeast	Brewster	Mt Kisco	Somers
				Mt. Pleasant	Yorktown

Statutory Authority:

Public Health Law, Section 201(1)(l) and Section 1100

Legislative Objectives:

Public Health Law, Section 201(1)(l) requires the Department to supervise and regulate the sanitary aspects of water supplies.

Public Health Law, Section 1100 authorizes the Department to make rules and regulations for the protection from contamination of public supplies of water.

Needs and Benefits:

The purpose of the NYC watershed regulations is to provide tools to protect New York City's water supply, which serves more than half the population of New York State – eight million residents of New York City (the City) and an additional one million consumers north of the City. The regulations were developed by the New York City Department of Environmental Protection (NYCDEP) in conjunction with the New York State Department of Health (the Department) to preserve and, wherever possible, improve the excellent quality of the water supply by reducing, eliminating and controlling current and potential sources of pollution and contamination.

The City recently revised its watershed regulations banning new galley systems in the NYC watershed. The City took that action based on a study it commissioned required by the Watershed Agreement. The Galley Project Final Report: A General Study of Galley Systems, May 2000, by James M. Hassett, Ph.D., Donald I. Siegel, Ph.D., Mark Sherlock, Ph.D. and Albert Zumbuhl, M.S., concluded that galley systems were not as effective in treating wastewater as conventional subsurface sewage treatment systems (SSTs). The City also conducted an analysis of new SSTs constructed on the watershed from May 1997 through August 2001. The analysis was presented in a November 5, 2001, DEP Findings Memorandum, re: Proposed Modification to NYC's Watershed Regulations to Prohibit New Galley Systems in NYC's Upstate Watershed, CEQR #01DEP088. The analysis revealed that less than 1% (26 of 2972) of the SSTs were galley systems. The City concluded that banning galley systems would benefit water quality in the watershed while having minimal impact on development. Inquiries on the documents cited above should be directed to: Diane M. McCarthy, AICP, Office of Environmental Planning and Assessment, NYCDEP, 59-17 Junction Boulevard, Flushing, NY 11373-5108, Telephone Number: (718) 595-6443, Email Address: dmc-mccarthy@dep.nyc.gov.

Costs:

There are no anticipated costs to regulated parties associated with this regulatory amendment. This proposed change to the state-adopted NYC watershed regulations would mirror those enacted in the revised NYC watershed regulations. The costs to regulated parties are already realized and unavoidable since galley systems are prohibited in the NYC watershed by the revised NYC watershed regulations. Nevertheless, the incremental costs to regulated parties should be minimal, as other engineering options of comparable cost for sewage treatment are available under most development scenarios that may be reasonably envisioned in the watershed. Annual costs for system maintenance should be similar among the engineering options available.

There will be no increase in cost to the agency, the state and local governments since ongoing county and City regulatory programs for SSTs in the NYC watershed address the revised NYC watershed regulations.

Local Government Mandates:

Counties within the NYC watershed that review and approve SSTs within the NYC watershed will be unable to issue a meaningful approval of proposed new galley systems. This responsibility is already in effect under the revised NYC watershed regulations.

Local governments and special districts constructing intermediate and "other" SSTs for their facilities will be restricted from building new galley systems. This restriction is already in effect under the revised NYC watershed regulations. Other engineering options of comparable costs for sewage treatment are available for intermediate systems.

Paperwork:

The proposed rule change will not result in any reporting requirements, including forms and other paperwork.

Duplication:

The proposed rule change is to revise the state-adopted NYC watershed regulations to be consistent with the revised NYC watershed regulations and to resolve an existing conflict between the rules.

Alternatives:

The only alternative would be to not revise the state-adopted NYC watershed regulations and leave the state-adopted NYC regulations in conflict with the revised NYC watershed regulations.

Federal Standards:

None.

Compliance Schedule:

Regulated persons are already in compliance with the proposed rule change since the revised NYC watershed regulations have been in effect since June 30, 2002.

Regulatory Flexibility Analysis

Effect of Rule:

Some small businesses and local governments that may have proposed galley systems for new facilities will have to install alternative subsurface sewage treatment systems (SSTs). A survey of new systems installed on the NYC watershed for residences and small facilities during the period May 1997 through August 2001, revealed that 26 of 2972 SSTs were galley systems. If all 26 galley systems were for small businesses and/or local governments, a maximum of 6 to 7 small businesses and/or local governments would be required to install alternative SSTs per year.

Compliance Requirements:

The proposed rule change will result in no reporting, recordkeeping or other compliance requirements.

Professional Services:

All new SSTs must be designed by a professional engineer or architect. A ban on new galley systems will have no effect on the need for professional services.

Compliance Costs:

There are no anticipated costs to regulated parties associated with this regulatory amendment. This proposed change to the state-adopted NYC watershed regulations would mirror those enacted in the revised NYC watershed regulations. The costs to regulated parties are already realized and unavoidable since galley systems are prohibited in the NYC watershed by the revised NYC watershed regulations. Nevertheless, the incremental costs to small businesses and local governments should be minimal, as other engineering options of comparable cost for sewage treatment are available under most development scenarios that may be reasonably envisioned in the watershed. Annual costs for system maintenance should be similar among the engineering options available.

Economic and Technological Feasibility:

Other engineering options are available for sewage treatment at costs similar to galley systems making alternatives technologically and economically feasible.

Minimizing Adverse Impacts:

Adverse economic impact on small businesses and local governments constructing SSTs should be minimal as other engineering options of comparable cost for sewage treatment are available for these types of facilities. Subpart 128-6.1 provides for variances for specific provisions of the NYC watershed regulations if compliance would create a substantial hardship due to site conditions or other site limitations.

Small Business and Local Government Participation:

In April 2002, the NYCDEP held public hearings in New York City and in Westchester and Ulster Counties to provide the public with the opportunity to comment on its proposal to prohibit the construction of new galley systems in the NYC watershed. Written comments were also received and considered by the NYCDEP.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The NYC watershed includes rural areas in Putnam, Dutchess and Westchester Counties east of the Hudson River and in Greene, Ulster, Schoharie, Sullivan and Delaware Counties west of the Hudson River.

Compliance Requirements:

The proposed rule change will result in no reporting, recordkeeping or other compliance requirements.

Professional Services:

All new subsurface sewage treatment systems must be designed by a professional engineer or architect. A ban on new galley systems will have no effect on this requirement for professional services.

Costs:

There are no anticipated costs to regulated parties associated with this regulatory amendment. This proposed change to the state-adopted NYC watershed regulations would mirror those enacted in the revised NYC watershed regulations. The costs to regulated parties are already realized and unavoidable since galley systems are prohibited in the NYC watershed by the revised NYC watershed regulations. Nevertheless, the incremental costs to regulated parties should be minimal, as other engineering options of comparable cost for sewage treatment are available under most development scenarios that may be reasonably envisioned in the watershed. An-

nual costs for system maintenance should be similar among the engineering options available.

Minimizing Adverse Impact:

Minimal adverse impact is expected since alternative system designs of comparable cost may be used in place of new galley systems. Subpart 128-6.1 provides for variances for specific provisions of the NYC watershed regulations if compliance would create a substantial hardship due to site conditions or other site limitations.

Rural Area Participation:

In April 2002, the NYCDEP held public hearings in New York City and in Westchester and Ulster Counties to provide the public with the opportunity to comment on its proposal to prohibit the construction of new galley systems in the NYC watershed. Written comments were also received and considered by the NYCDEP.

Job Impact Statement

A Job Impact Statement is not attached because it is apparent, from the nature and purpose of the proposed rules, that it will not have a significant adverse impact on jobs and employment opportunities. Designers and installers of SSTs will use other engineering options in place of new galley systems.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Part-Time Clinics

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

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

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

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

Subject: Part-time clinics.

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

Text of proposed rule: Section 703.6 is repealed and a new section 703.6 is added to read as follows:

Section 703.6 Part-time clinics

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

(1) *provide services which shall be limited to low-risk (as determined by prevailing standards of care and services) procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility. Such services may include health screening (such as blood pressure and HIV screening), preventive health care and other public health initiatives (such as HIV services), procedures and examinations (such as well child care, the provision of immunizations and screening for chronic or communicable conditions which are treatable or preventable by early detection or which are of public health significance). Services also shall be limited to caring for conditions that do not require extended treatment regimens and which should be the type of condition that may be treated in short term treatment regimens of one or two visits and where other health care alternatives are not readily available (such as to service clients in a domestic violence or homeless shelter). Types of services that are not appropriate for and may not be provided in a part-time clinic include physical therapy, occupational therapy, speech pathology, audiology and routine prenatal care or other ongoing routine medical and health services.*

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

(3) not be located at a private residence or apartment, an intermediate care facility, an individualized residential alternative, congregate living arrangements, (not including a shelter for adults or other group shelter operated by governmental or other organizations to provide temporary housing accommodations in a safe environment to at-risk populations), an area within an adult home, a residence for adults or enriched housing program as defined in section 2 of the Social Services Law, unless such part-time clinic is operated as part of an approved State Department of Health public health initiative. A part-time clinic also shall not be located in space which is part of another facility licensed under Article 28 of the Public Health Law, unless such part-time clinic is operated as part of an approved State Department of Health public health initiative, or in space which is part of the private office of a health care practitioner or group of practitioners licensed by the State Education Department.

(b) Department approval and/or notification.

(1) An operator of part-time clinics may initiate patient care services at a specific site only upon written approval from the department in accordance with the department's prior limited review process set forth at section 710.1(c)(6)(v) of this Title. To request such approval, the operator shall submit to the department, for each such site, information and documentation in a format acceptable to the department and in sufficient detail to enable the commissioner to make a decision, including the following:

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

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

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

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

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

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

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

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

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

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

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

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

(3) After initiating patient care services, the operator shall give written notification, including a closure plan acceptable to the department, to the Director of the Bureau of Hospital and Primary Care Services of the department at least 15 days prior to the discontinuance of a part-time clinic site other than a scheduled discontinuance as indicated in accordance with subparagraph (i) of paragraph (1) of this subdivision. No part-time clinic site shall discontinue operation without first obtaining written approval from the department.

(4)(i) The operator of any part-time clinic that was in operation on August 15, 2000, and in conformance with all pertinent statutes and regulations in effect prior to that date, and has submitted request(s) to the department for approval to continue providing services for each such site by November 13, 2000 in accordance with requirements in effect at that time shall be permitted to operate until and unless the department issues a written denial of approval to continue operation. If a request to continue operation of a part-time clinic site is denied, the operator shall, within 30 days of receipt of such denial submit to the department and obtain written approval of a closure plan consistent with the provisions of paragraph (3) of this subdivision for the expeditious termination of services at the site. Notwithstanding any other provision of this section, the operator of such part-time clinic site shall cease providing services at and close such site within 60 days of receipt of the notice of denial to continue operation regardless of whether a plan of closure has been approved by the department.

(ii) The operator of any part-time clinic site for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall cease operations by December 31, 2000.

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

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

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

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

(iv) the prohibition of smoking within the facility;

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

(vi) a fire plan consistent with local laws;

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

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

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

(x) utilization review;

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

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

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

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

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

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

(iv) the types of services that are indicated in subdivision (a)(1) of this section as not being appropriate for part-time clinics.

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

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

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

(e) Environment. The operator shall ensure that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Proposals not requiring an application.

(ii) Any proposal to [add,] discontinue [or relocate] a part-time clinic site of a medical facility already authorized to operate part-time clinics pursuant to this Part shall not require the submission of an application pursuant to this Part, but compliance is required with the applicable notice provisions of [Parts 405 and 703] section 703.6 of this Title.

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

(6) Proposals requiring a prior review.

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

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

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

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

permissible for a part-time clinic, the proposal will not be accepted for processing under this section.

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

Part-time clinics were established as a separate category of service to encourage the provision of basic preventive health care in community-based settings easily accessible to the general public and to groups targeted for particular services (e.g., senior citizens). Consequently, the approval process for these clinics is simpler than that for extension clinics of hospitals and diagnostic and treatment centers, whose services are more elaborate and hours of operation less restricted. The initial authority for a hospital or diagnostic and treatment center to operate part-time clinics requires administrative approval under the Certificate of Need (CON) process. However, until the issuance of emergency regulations in August 2000, the subsequent opening of individual clinic sites required only a letter of notification to the appropriate area office of the Department of Health, submitted a minimum 15 business days in advance of the proposed commencement of service. Environmental requirements for part-time clinics are minimal, calling only for compliance with prevailing standards for life safety, sanitation and infection control. Some 300 hospitals and diagnostic and treatment centers are authorized to operate part-time clinics.

The minimal requirements in section 703.6, which were in effect prior to the adoption of the emergency regulations in August 2000, which encouraged the provision of needed services, also led, unfortunately, to the delivery of services in locations and on a scale not intended for part-time clinics. Some providers, for example, set up part-time clinics in sites such as adult homes and patients' private residences and in other settings not sanctioned under the current emergency and proposed permanent regulations. Other operators of part-time clinics offered services far more elaborate than the low-risk screening and basic care procedures to which part-time clinics are restricted. Still others billed for less costly services (e.g., habilitation) using the Medicaid rate for comprehensive services provided at their main clinics. This created a situation in which payments to operators of part-time clinics often far exceeded the actual costs of services delivered in the part-time setting.

With large part-time clinic networks (one network had over 600 sites), there were issues of service quality and patient safety in settings that

lacked appropriate medical supervision and staff support and which did not meet operational and environmental requirements. The delivery of services under these circumstances posed a threat to patient safety and demanded the issuance of new rules on an emergency basis. The regulations proposed here are intended to make permanent the stricter oversight of part-time clinics afforded by the emergency regulations currently in effect.

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

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

- a more detailed description of the types of services permitted in part-time clinics, as well as examples of types of services that may not be provided;
- explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics, including private residences and apartments, adult homes, community residences, individualized residential alternatives, and offices of private physicians;
- a requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic and treatment center to ensure adequate supervision;
- enhanced operational standards for part-time clinics, including requirements for quality assurance and improvement and for credentialing of staff;
- a limitation on the volume of services that an operator may provide through part-time clinics;
- a requirement for prior limited review of new part-time clinic sites and proposed relocations of existing clinics;
- recognition that part-time clinics operated by city and county health departments are governed by Section 614 of the Public Health Law.

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

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

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

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

Costs to State and Local Government:

If inappropriate or duplicative Medicaid billings are reduced, or if sites providing unsafe or inappropriate services discontinue operations, State and local governments will realize a share of the Medicaid savings. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding the location, hours of operation and services offered at any part-time clinic operated by the city or county health department in the previous calendar year. This information would be only a minor update to the Municipal Public Health Services Plan submitted by the city or county pursuant to section 602 of the Public Health Law.

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

The governing body of the operator of the part-time clinic will be responsible for filing requests for approval to operate specific sites under the limited prior review process. The Department has attempted to limit the paperwork burden of this requirement by developing a standardized format for such submissions, which may be filed electronically. The Department also considered requiring that each site maintain a patient log with numerous data elements. It was decided not to include this requirement in the operating standards because many of the data elements duplicated information in the medical record, and some could interpret the requirement as an unnecessary paperwork burden unrelated to patient care.

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

Duplication:

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

Alternative Approaches:

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

Federal Requirements:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect on Rule:

New York State has nine hospitals and 167 diagnostic and treatment centers and that could be considered small businesses affected by this rule. Physician practices, of which the Department has no statistics on how many there are, also could be considered small businesses and impacted by this 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 affected 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).

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 approval to operate, change services or relocate a part-time clinic under the prior limited review process will represent a new cost to the facility, including facilities operated as a small business or by 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 internet 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 of both full-review and administrative-review CON applications. The Department also has developed a standardized electronic form to minimize the paperwork burden for requests for approval to operate specific part-time clinic 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 obtain.

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.

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 at its meeting of April 10, 2003. While the public was invited to comment during this meeting, and prior to it in required public announcements, no comments were received, either at the meeting or in writing.

Rural Area Flexibility Analysis

Types and Estimated Numbers of 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

Reporting, Recordkeeping and Other 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 Title 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 location.

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 that would duplicate 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 meeting of April 10, 2003. While the public was invited to comment during this meeting, and prior to it in required public announcements, no comments were received, either at the meeting or in writing.

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. Staff whose jobs may be affected because they currently provide services at inappropriate sites should be able to relocate to other appropriate health care delivery sites. The proposed amendments will help to ensure that qualified people provide clinical care and services at appropriate sites. Appropriately operating 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 regulations. Thus, the jobs of people qualified to provide services, and currently doing so, will not be substantively negatively affected.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Payment for Psychiatric Social Work Services

I.D. No. HLT-32-04-00008-P

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

Proposed action: Amendment of section 86-4.9 of Title 10 NYCRR.

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

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

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

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

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

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

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

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

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the

facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

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

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

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

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

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner. Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made changes to the Social Security Act affecting how prices are set for Federally Qualified Health Centers and rural health centers. Section 1902(a)(10) of the federal Social Security Act [42 U.S.C. 1396a(a)(10)] and 1905(a)(2) of the Social Security Act [42 U.S.C. 1396d(a)(2)] require the State to cover the services of Federally Qualified Health Centers. Additionally, section 1861(aa) of the Social Security Act [42 U.S.C. 1395x(aa)] defines the services that a Federally Qualified Health Center provides, including the services of a clinical social worker.

Legislative Objective:

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

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

Needs and Benefits:

For some time, the Department of Health (DOH) has interpreted existing regulation 10 NYCRR Part 86-4.9(c) as restricting threshold reimbursement for medical social work services in Article 28 outpatient and diagnostic and treatment center (D&TC) clinics. Advocacy groups (e.g., United Cerebral Palsy (UCP), Community Health Care Association of

New York (CHCANYS)) have challenged this policy interpretation arguing that the prohibition only relates to the provision of social work services coincident to medical care, not to medical/behavioral health services provided by certified social workers.

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

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

Costs:

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

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

Cost to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for the services of certified social workers. In light of this federal requirement, no alternatives were considered.

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

With the exception of part-time clinics, this rule will apply to all Article 28 primary and extension clinics (not part-time clinics) in New York that have been designated by the Centers for Medicare and Medicaid Services (CMS) as Federally Qualified Health Centers. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has had conversations with the National Association of Social Workers Association (NASW), UCP, and CHCANYS to discuss Medicaid reimbursement for social work services and the impact of this new rule on their constituents. These groups and Association represent social workers from across the State, including rural areas.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

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

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic and that has been designated by the Centers for Medicare and Medicaid Services (CMS) as a Federally Qualified Health Center.

Minimizing Adverse Impact:

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

Self-Employment Opportunities:

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standard Autopsy Protocols for Unanticipated Infant Deaths

I.D. No. HLT-32-04-00009-P

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

Proposed action: Addition of Subpart 69-9 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 4210 as amd. by L. 2002, ch. 58

Subject: Standard autopsy protocols for unanticipated infant deaths.

Purpose: To establish standard autopsy protocols for any person under the age of one year whose death is unanticipated by medical history or when the cause of death is unknown.

Text of proposed rule: The table of contents for Part 69 is amended to read as follows:

Part 69

Testing for Phenylketonuria and Other Diseases and Conditions/Early Intervention Program/Newborn Hearing Screening/

Standard Infant Autopsy Procedures

A new Subpart 69-9 is added to read as follows:

Subpart 69-9

Standard Infant Autopsy Procedures

(Statutory authority: Public Health Law Section 4210)

Section 69-9.1 Definition. "Autopsy" means a post-mortem external and internal physical examination conducted in accordance with the laws of New York State, as well as the performance of needed special studies. Infant autopsies are to be performed in accordance with the State of New York Infant Autopsy Protocol.

Section 69-9.2 Use of New York State Infant Autopsy Protocol. When an autopsy is performed on a person under the age of one year who dies under circumstances in which death is not anticipated by medical history or the cause is unknown, such autopsy must be performed in accordance with the New York State Infant Autopsy Protocol. This provision shall be subject to the limitations of Section 4210-c of the Public Health Law.

Section 69-9.3 New York State Infant Autopsy Protocol. (See Appendix published in this issue.)

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 4210 of Public Health Law as amended by Chapter 58 of the Laws of 2002 requires the Commissioner of Health to adopt regulations to establish standard autopsy protocols for any person under the age of one year, whose death is unanticipated by medical history or when the cause of death is unknown.

Legislative Objectives:

This particular legislation was passed at the urging of New York State parents, who are asking the state and medical community to partner with them to more effectively research and reduce the risks of Sudden Infant Death Syndrome (SIDS).

The proposed regulations require infant autopsies consistent with the International Standardized Autopsy Protocol for Sudden Unexpected Infant Death (ISAP). The ISAP was developed and implemented to serve the following purposes:

- Assist medical examiners, hospital pathologists and coroners in establishing the cause and manner of death of infants dying suddenly and unexpectedly.
- Standardize postmortem examinations in participating countries.
- Assist in comparison of SIDS cases in participating countries.
- Support research.

Needs and Benefits:

The only way to address and ameliorate the causes of untoward infant death is to discover, document and disseminate them in an appropriate fashion to the parents, public and health care providers and professionals. Infant autopsies are an effective and appropriate medical procedure to detect causes of death, such as potential genetic abnormalities, abuse and mistreatment, public safety issues and inadequate attention to existing medical problems.

Sudden Infant Death Syndrome (SIDS) can be more effectively studied and understood by adopting an infant autopsy protocol, which is consistent with the International Standardized Autopsy Protocol for Sudden Unexpected Infant Death (ISAP).

In summary, a standardized infant autopsy protocol is needed:

1. To ensure comprehensive postmortem examinations if infants who die suddenly and unexpectedly.
2. To provide findings to correlate with the decedent's medical history.
3. To provide findings to correlate with the death scene investigation.
4. To develop documentation, which justifies the autopsy diagnoses.
5. To establish accurate causes of death.
6. To develop accurate vital statistics, information and records.
7. To assist in prioritizing the allocation of health care resources.
8. To provide a database for research and education.
9. To fulfill criteria to make a diagnosis of Sudden Infant Death Syndrome (SIDS).
10. To allow comparison of SIDS and sudden, unexpected death cases in different locales. (from Henry F. Krous, MD, Director of Pathology at Children's Hospital of San Diego, and Barry Brokaw, President of Sacramento Advocates, Inc.)

Costs:

The proposed regulations require that autopsies on a person under one year of age who dies under circumstances in which death is not anticipated by medical history or the cause is unknown, be performed in accordance with the New York State Infant Autopsy Protocol. A 2-page form that includes check boxes and comment areas must be completed. Filling out this paperwork will add a small amount of time to the work of the medical examiner. This should not result in a significant increase in costs.

Local Government Mandates:

This does not represent a local government mandate.

Paperwork:

No reporting requirements are required.

Duplication:

None.

Alternatives:

We considered a longer reporting form similar to that used in California. Medical examiners felt that this would be too time-consuming and would not result in improved autopsies.

Federal Standards:

Federal standards relative to infant autopsies do not exist.

Compliance Schedule:

Compliance could begin shortly after the State of New York Infant Autopsy Protocol is distributed — within 2 months.

Regulatory Flexibility Analysis

Pursuant to section 202-b of the State Administrative Act, a regulatory flexibility analysis is not required. This regulatory action applies to medical examiners or another qualified physician who performs autopsies. It requires that infant autopsies be performed in accordance with the New York State Infant Autopsy Protocol.

The proposed rule will not impose an adverse economic impact on local governments. It will not impose any additional reporting requirements.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. This regulatory action applies to medical examiners or another qualified physician who performs autopsies. It requires that infant autopsies be performed in accordance with the New York State Infant Autopsy Protocol.

The proposed rule will not impose an adverse economic impact on county health departments in rural areas in New York State and will not impose any additional reporting requirements.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

Insurance Department

NOTICE OF ADOPTION

Availability of Insurance Department Records

I.D. No. INS-15-04-00009-A

Filing No. 839

Filing date: July 22, 2004

Effective date: Aug. 11, 2004

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

Action taken: Amendment of Part 241 (Regulation 71) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; and Public Officers Law, art. 6

Subject: Availability of Insurance Department records.

Purpose: To update references to names of bureaus within the department and add a reference to the department's website.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-15-04-00009-P, Issue of April 14, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5257, e-mail: emangan@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Minimum Standards of Policies and Contracts

I.D. No. INS-32-04-00006-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 52.17(a) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3217, 3221 and 4303; and L. 2002, ch. 82

Subject: Minimum standards for the form and content of policies and contracts subject to the provisions of Insurance Law, sections 4303(s)(3) and 3221(k)(6)(c).

Purpose: To adopt revised minimum standards for the form, content and sale of policies and contracts as a result of changes to the Insurance Law enacted by L. 2002, ch. 82.

Text of proposed rule: Section 52.17(a) is amended by adding a new paragraph (35) to read as follows:

(35) *Insurers issuing policies and contracts subject to the provisions of Section 4303(s) of the Insurance Law shall use standards and guidelines no less favorable than those established and adopted by the American Society for Reproductive Medicine in relation to the following:*

(i) *the determination of infertility for purposes of compliance with Section 4303(s)(3) of the Insurance Law;*

(ii) *the identification of experimental procedures and treatments not covered for the diagnosis and treatment of infertility;*

(iii) *the identification of the required training, experience and other standards for health care providers for the provision of procedures and treatments for the diagnosis and treatment of infertility; and*

(iv) *the determination of appropriate medical candidates by the treating physician. Said standards and guidelines are taken from The American Society for Reproductive Medicine's Practice Committee Opinions on The Definition of Experimental, The Definition of Infertility, The Guidelines for the Provision of Infertility Services and The Revised Minimum Standards for In Vitro Fertilization, Gamete Intrafallopian Transfer and Related Procedures. These Practice Committee Opinions were approved by the Practice Committee of the American Society for Reproductive Medicine (Formerly The American Fertility Society) on March 27, 1993 and approved by the Board of Directors of the American Society for Reproductive Medicine (Formerly The American Fertility Society) on May 17, 1993. The Practice Committee Opinions may be obtained from The American Society for Reproductive Medicine Formerly The American Fertility Society 1209 Montgomery Highway, Birmingham, Alabama 35216-2809 and are available for public inspection and copying from The New York State Insurance Department at either 25 Beaver Street, New York, New York 10004 or One Commerce Plaza, Albany, New York 12257.*

Section 52.18(a) is amended by adding a new paragraph (10) to read as follows:

(10) *Insurers issuing policies and contracts subject to the provisions of Sections 3221(k)(6) or 4303(s) of the Insurance Law shall use standards and guidelines no less favorable than those established and adopted by the American Society for Reproductive Medicine in relation to the following:*

(i) *the determination of infertility for the purposes of compliance with Sections 3221(k)(6)(C) and 4303(s)(3) of the Insurance Law;*

(ii) *the identification of experimental procedures and treatments not covered for the diagnosis and treatment of infertility;*

(iii) *the identification of the required training, experience and other standards for health care providers for the provision of procedures and treatments for the diagnosis and treatment of infertility; and*

(iv) *the determination of appropriate medical candidates by the treating physician. Said standards and guidelines are taken from The American Society for Reproductive Medicine's Practice Committee Opinions on The Definition of Experimental, The Definition of Infertility, The Guidelines for the Provision of Infertility Services and The Revised Minimum Standards for In Vitro Fertilization, Gamete Intrafallopian Transfer and Related Procedures. These Practice Committee Opinions were approved by the Practice Committee of the American Society for Reproductive Medicine (Formerly the American Fertility Society) on March 27,*

1993 and approved by the Board of Directors of the American Society for Reproductive Medicine (Formerly the American Fertility Society) on May 17, 1993. The Practice Committee Opinions may be obtained from the American Society for Reproductive Medicine Formerly The American Fertility Society 1209 Montgomery Highway, Birmingham, Alabama 35216-2809 and are available for public inspection and copying from the New York State Insurance Department at either 25 Beaver Street, New York, New York 10004 or One Commerce Plaza, Albany, New York 12257.

Text of proposed rule and any required statements and analyses may be obtained from: Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5262, e-mail: emangan@ins.state.ny.us

Data, views or arguments may be submitted to: Thomas Fusco, Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, e-mail: tfusco@ins.state.ny.us

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

Regulatory Impact Statement

1. **Statutory Authority:** The Superintendent's authority for the adoption of the Thirty-second Amendment to Regulation 62 (11 NYCRR 52) is derived from Sections 201, 301, 1109, 3201, 3217, 3221 and 4303 of the Insurance Law, and Chapter 82 of the Laws of 2002.

Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the Superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the Superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4303 governs the accident and health insurance contracts written by non-profit corporations and sets forth the benefits that must be covered under such contracts. Chapter 82 of the Laws of 2002 enhances Sections 3221(k)(6) and 4303(s) of the Insurance Law by adding coverage for procedures used to diagnose and treat infertility when certain conditions are met and by adding a prescription drug benefit for coverage of prescription drugs approved by the FDA for use in the diagnosis and treatment of infertility. The law directs the Superintendent, in consultation with the Commissioner of Health, to promulgate regulations that shall stipulate the guidelines and standards that will be used in carrying out the mandates of the legislation.

2. **Legislative Objectives:** The objective of Chapter 82 of the Laws of 2002 is to increase access for consumers to health insurance through coverage of medically viable solutions for infertility. The law is designed to make coverage for infertility treatments more readily accessible. The law adds coverage for procedures used to diagnose and treat infertility when certain conditions are met and by adds a prescription drug benefit for coverage of all FDA approved prescription drugs used in the diagnosis and treatment of infertility. The new legislation also requires the Insurance Department, in consultation with the Department of Health, to promulgate regulations for the implementation of the statute. This amendment is intended to stipulate the guidelines and standards that will be used in carrying out the provisions of the statute as required per law.

3. **Needs and Benefits:** Chapter 82, Laws of 2002 specifically directs the Superintendent, in consultation with the Commissioner of Health, to promulgate regulations which shall stipulate the guidelines and standards which will be used in carrying out the mandates of the legislation.

This amendment directs insurers to use standards and guidelines no less favorable than those established and adopted by the American Society for Reproductive Medicine in relation to the determination of infertility, the identification of experimental procedures and treatments not covered for the diagnosis and treatment of infertility, the identification of the required training, experience and other standards for health care providers for the provision of procedures and treatments for the diagnosis and treatment of infertility and the determination of appropriate medical candidates by the treating physician. This amendment will provide insurers with guidance in interpreting the mandates of Chapter 82, Laws of 2002.

4. **Cost:** The costs associated with this mandate are imposed by the legislation. The regulatory requirements should not add any additional costs. There is tremendous variation in the size of different regulated

parties. This factor will impact on the actual cost of implementing the regulatory requirements making actual costs difficult, if not impossible to estimate. There is a potential cost to insurers because they are adding a benefit to the contracts. There is also a potential cost to insureds because premium rates may be impacted by the addition of this benefit.

There are no costs to state or local government.

The costs to the regulating agency will be minimal since the majority of insurers affected by the amendment already have policies and contracts that encompass many of the mandates of the legislation and this amendment. Any costs will be in relation to time spent by staff to review and approve any new or revised contract amendments.

5. Local Government Mandate: This amendment imposes no new programs, services, duties or responsibilities or other obligations on any county, city, town, village government, school district, fire district or other special district or other local government.

6. Paperwork: Since the majority of insurers are already utilizing standards and guidelines which are similar or more favorable than those mandated by this amendment, any additional paperwork will be minimal.

7. Duplication: This amendment does not duplicate any existing State or Federal law or regulation.

8. Alternatives: There is no alternative to the adoption of this amendment. Chapter 82, Laws of 2002 specifically directs the Superintendent, in consultation with the Commissioner of Health, to promulgate regulations which shall stipulate the guidelines and standards which will be used in carrying out the mandates of the legislation.

9. Federal Standards: None.

10. Compliance Schedule: Regulated entities began complying with this amendment's provisions immediately upon the law's effective date of September 1, 2002. The Department has had an on-going dialogue with HMOs and insurers concerning implementation of the legislation and regulations. The Department has had discussions with interested parties to ensure awareness and compliance with the legislation and regulations.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments: The Insurance Department finds that this regulatory amendment will not impose any adverse economic impact on small businesses and local governments and, in addition, will not impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The basis for this finding is that this amendment is directed at insurance companies licensed to do business in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act. This determination was based upon the information provided by the insurance companies in annual statements filed with the Superintendent.

2. Compliance Requirements: The proposed amendment will not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed amendment is directed at authorized insurers who are not small businesses or local governments. Any compliance requirements are imposed by statute. The regulation does not add any additional compliance requirements.

3. Professional Services: The proposed amendment will not require the use of professional services by small businesses or local governments.

4. Compliance Costs: There are no compliance costs imposed upon small businesses or local governments because the proposed amendment is applicable only to insurers. The costs associated with this mandate are imposed by the legislation. The regulatory requirements should not add any additional costs. There is a potential cost to insurers because they are adding a benefit to the contracts. There is also a potential cost to insureds because premium rates may be impacted by the addition of this benefit.

5. Economic and Technological Feasibility: There are no issues of economic and technological feasibility of compliance that relate to small businesses or local governments because the amendment is directed at insurance companies licensed to do business in New York State. Therefore, there are no compliance requirements imposed by the proposed regulation.

6. Minimizing Adverse Impact: The proposed amendment will have minimal, if any, adverse impact on small businesses or local governments. Differing compliance timetables are not feasible as the statute sets forth the compliance date. Exemptions from regulation would have a significant impact on entities regardless of whether they are a small business, since as noted previously, the majority of requirements are established by statute.

7. Small Business and Local Government Participation: This Notice of Proposed Rule-Making is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with the opportunity to participate in the rule-making process. The amendment

is being made due to changes in the Insurance Law mandated by legislative action. The bill was considered and debated in the Senate and Assembly. The small businesses and local governments in New York State are all represented by their legislators, thereby giving them the opportunity to participate in the process of establishing the infertility mandate in the Insurance Law.

Rural Area Flexibility Analysis

This Amendment will regulate the actions of insurers only. Specifically, the amendment will apply to insurers doing business in New York State who issue the type of coverage specified in the statute. The regulated entities are major corporations, a majority of which are headquartered in major metropolitan areas. To the best of our knowledge, none of the regulated parties are headquartered in rural areas.

Job Impact Statement

The proposed amendment to Regulation 62 will not adversely impact jobs or employment opportunities in New York. The Regulation not only serves to further implement Chapter 82 of the Laws of 2002 in the health insurance marketplace, but may also enhance employment opportunities in the State by facilitating a natural employment growth increase in the areas of insurance company administration, advertising, product development and contract analysis.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Real Property by Aquarion Water Company of New York, Inc.

I.D. No. PSC-11-04-00038-A

Filing date: July 21, 2004

Effective date: July 21, 2004

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

Action taken: The commission, on July 8, 2004, adopted an order in Case 04-W-0200 authorizing Aquarion Water Company of New York, Inc. (Aquarion) to transfer a parcel of real property.

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

Subject: Transfer of real property.

Purpose: To allow Aquarion to transfer a parcel of real property.

Substance of final rule: The Commission approved Aquarion Water Company of New York, Inc.'s request to transfer certain real property located at 25 Willett Avenue, Village of Port Chester, Westchester County for the sum of \$750,000, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-W-0200SA1)

NOTICE OF ADOPTION

Attachment of Wireless Facilities by Niagara Mohawk Power Corporation

I.D. No. PSC-13-04-00006-A

Filing date: July 21, 2004

Effective date: July 21, 2004

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

Action taken: The commission, on July 8, 2004, adopted an order in Case 04-E-0231 approving a joint petition of Niagara Mohawk Power Corporation (Niagara Mohawk) and Independent Wireless One Leased Realty Corporation (IWO) for installation of cellular antennas and base equipment attachments.

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

Subject: Attachments of wireless facilities.

Purpose: To allow IWO to make wireless attachments to a Niagara Mohawk transmission tower.

Substance of final rule: The Commission authorized Independent Wireless One Leased Realty Corporation to make wireless attachments to Niagara Mohawk's transmission tower #837 on the Elbridge-Woodard #4/Curtis Street – Teall #13 115kV double circuit transmission line west of NY Route 57 in the Town of Clay, Onondaga County, New York, subject to the conditions and terms of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-E-0231SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

2-1-1 Dialed Calls by the County of Rockland

I.D. No. PSC-32-04-00012-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a petition submitted by the County of Rockland requesting the authority to receive all 2-1-1 dialed calls originating in Rockland County.

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

Subject: 2-1-1 dialed calls.

Purpose: To consider authorizing Rockland County to receive all 2-1-1 calls originating in Rockland County.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a petition submitted by the County of Rockland requesting the authority to receive all 2-1-1 dialed calls originating in Rockland County.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-C-0766SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Redistribution of Funds by National Fuel Gas Distribution Corporation

I.D. No. PSC-32-04-00013-P

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

Proposed action: The commission is considering a petition from National Fuel Gas Distribution Corporation (the company) for a limited waiver of the terms and conditions governing the use of specific research and development (R&D) funds. The commission may approve, modify or reject, in whole or in part, the relief requested.

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

Subject: Redistribution of funds from the current assignment to fund medium- to long-range R&D programs in end use technologies and for funding shorter-term demonstrations of distributed generation end-use technologies.

Purpose: To approve redistribution of funds.

Substance of proposed rule: The Commission is considering a petition from National Fuel Gas Distribution Corporation (the company) for a limited waiver of the terms and conditions governing the use of specific research and development (R&D) funds. The Commission may approve, modify or reject, in whole or in part the relief requested.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-G-0837SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

814 Consumption History Request and Response Standard by Orange & Rockland Utilities, Inc.

I.D. No. PSC-32-04-00014-P

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

Proposed action: The Public Service Commission is considering modifications in the electronic data interchange (EDI) 814 consumption history request and response standard. The standard is used by ESCOs to request a customer's consumption history prior to transmittal of an enrollment request for that customer. Orange & Rockland Utilities, Inc. proposes to modify their standard to enable ESCOs to separately request historic consumption for unmetered electric service on an account when both metered and unmetered electric services are present on the same utility account. In addition, the standard has been updated to delete references to fees applicable to provision of history data to comply with the revised uniform business practices.

Statutory authority: Public Service Law, section 5(2)

Subject: 814 consumption history request and response standard.

Purpose: To revise the EDI transaction set standards.

Substance of proposed rule: In its Opinion and Order No. 01-03, issued and effective July 23, 2001, the Commission adopted various data exchange standards, compatible with Electronic Data Interchange (EDI) systems, that were necessary to facilitate a change in customers' electric or gas service provider. Following the initial publication of these EDI standards it has been necessary to modify one or more standards to recognize changes in regulatory policies, technological improvements in data exchange systems or inefficiencies in the content or syntax of the initial standards.

In this instance, comments are requested on proposed revisions to version 1.1 of the Consumption History Request & Response standard. Orange & Rockland Utilities, Inc. (Orange & Rockland) requests modification of the "front matter notes" and the REF*12 segment (Utility Account Number) in the Consumption History Implementation Guide to enable ESCOs to separately request consumption history for the unmetered electric service on an account when both metered and unmetered electric services are present on the same account. If the Implementation Guide changes proposed by Orange & Rockland are subsequently adopted by the Commission, corresponding changes would also be made in the Data Dictionary document which is part of the Consumption History standard.

In addition, the Consumption History standard has been updated to comply with the revised Uniform Business Practices by deleting references to fees applicable to provision of history data (REF*93 - Fee Approved/Fee Applied segment).

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.

(98-M-0667SA47)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Fees to be Charged by Utilities to Energy Service Companies

I.D. No. PSC-32-04-00015-P

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

Proposed action: The Public Service Commission is considering a proposal to use previously approved tariff fees for service reconnection as a proxy for suspension fees chargeable to energy service companies, pertaining to commission orders in Case 03-M-0117 dated June 20, 2003, Dec. 5, 2003 and June 9, 2004. The commission may approve the proposal, reject it or take other action.

Statutory authority: Public Service Law, sections 32, 66(4) and (12)

Subject: Service fees to be charged by utilities to energy service companies for the suspension of residential service as a result of nonpayment.

Purpose: To determine the appropriate level of utility fees for the suspension of utility service.

Substance of proposed rule: The Commission is considering a proposal to use previously approved tariff fees for service reconnection as a proxy for suspension fees chargeable to energy service companies, as authorized by Public Service Law § 32(5)(c), and implemented by the Commission's Orders dated June 20, 2003, December 5, 2003 and June 9, 2004 in Case 03-M-0117. The Commission may approve the proposal, reject it or take other action.

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.

(03-M-0117SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing by Reagans Mill Water Company

I.D. No. PSC-32-04-00016-P

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

Proposed action: The Public Service Commission is considering whether to grant or deny, in whole or in part, the petition of Reagans Mill Water Company for rehearing and reconsideration of the commission's order setting rates issued May 21, 2004.

Statutory authority: Public Service Law, sections 22, 89-a, 89-b and 89-c

Subject: Rehearing of the commission's order setting rates issued May 21, 2004.

Purpose: To rehear the order.

Substance of proposed rule: The Public Service Commission is considering whether to grant or deny, in whole or in part, the petition of Reagans Mill Water Company for rehearing and reconsideration of the Commission's Order setting rates issued May 21, 2004.

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.

(03-W-0952SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deferred Accounting by Aquarion Water Company of New York

I.D. No. PSC-32-04-00017-P

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

Proposed action: The Public Service Commission is considering a petition filed by Aquarion Water Company of New York for permission to defer an increase in the cost of purchased water from the Westchester Joint Water Works Company and the New York City Water Board.

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

Subject: Deferred accounting.

Purpose: To defer an increase in the cost of purchased water from the Westchester Joint Water Works Company and the New York City Water Board.

Substance of proposed rule: On July 16, 2004, Aquarion Water Company of New York filed a petition to defer, with interest, for subsequent recovery the expense associated with an increase in the cost of water it purchases from the Westchester Joint Water Works Company and the New York City Water Board. The 7.9% increase in purchased water costs is retroactive to January 1, 2004. The Commission may approve or reject, in whole or in part, or modify the company's petition.

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

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

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

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

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

(04-W-0878SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Video Lottery Gaming Occupational Licensing

I.D. No. RWB-32-04-00004-E

Filing No. 841

Filing date: July 23, 2004

Effective date: July 23, 2004

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

Action taken: Amendment of sections 4002.1 and 4101.24 of Title 9 NYCRR.

Statutory authority: Tax Law, section 1617-a(a); and Racing, Pari-Mutuel Wagering and Breeding Law, section 101

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

Specific reasons underlying the finding of necessity: To immediately permit occupational licensing of video lottery gaming employees and not delay the implementation of video lottery gaming by the Division of the Lottery. An emergency rule making is necessary because the board has determined that emergency adoption is necessary for the preservation of the general welfare and that standard rule making procedures would be contrary to the public interest.

Subject: Video lottery gaming occupational licensing.

Purpose: To permit the occupational licensing of video lottery gaming employees.

Substance of emergency rule: This rule establishes a new category of New York State Racing and Wagering Board license. The rule provides that the Board shall deem an individual licensed as a video lottery gaming employee upon written notification from the Division of the Lottery that said individual will be issued a video lottery gaming license pursuant to Part 2836 of Title 21 of the New York Code of Rules and Regulations if licensed as a video lottery gaming employee by the Board. The Board will grant such license unless information existing and immediately available in Board records indicate that the applicant's financial responsibility, experience, character and general fitness are such that the participation of such person will not be consistent with the public interest, convenience or necessity and with the best interests of racing. The rule is limited to those engaged exclusively in the employ of a video lottery gaming operation, provided however no employee engaged in the preparation, service and handling of food and beverages in the operation of a restaurant or a food or beverage dispensing facility at a track will be required to hold an independent racing license for employment outside the video lottery gaming operation unless employed in the backstretch, stable area, paddock, racing strip, infield, mutuel area of a track, or other restricted area of the racetrack as designated by the Board.

Each such video lottery gaming employee license granted by the board, unless revoked for cause, shall be effective for a period equal to that of the license issued by the Division of the Lottery. Such license shall also terminate upon the end of a licensee's video lottery gaming employment.

No annual license or renewal fee will be charged applicants for a video lottery gaming employee license.

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 20, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Robert A. Feuerstein, Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206-1668, (518) 453-8460, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 1617-a of Article 34 of the Tax Law provides that the Division of the Lottery is authorized to license, pursuant to rules and regulations to be promulgated by the Division of the Lottery, the operation of video lottery gaming at Aqueduct, Monticello, Yonkers, Finger Lakes and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the Racing, Pari-mutuel Wagering and Breeding Law that are located in a county or counties in which video

lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the Racing, Pari-mutuel Wagering and Breeding Law as the "New York State Exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack. The statute requires that the Division's rules and regulations shall provide, as a condition of licensure, *inter alia*, that racetrack employees involved in the operation of video lottery gaming are licensed by the Racing and Wagering Board. Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Section 101, the New York State Racing and Wagering Board has general jurisdiction over pari-mutuel horse racing and requires the licensing of all individuals who work at a racetrack.

2. Legislative Objective: This regulation meets the legislative objective of ensuring that racetrack employees involved in the operation of video lottery gaming are licensed by the Board.

3. Needs and Benefits: This regulation is needed to enable the Division of the Lottery to carry out its responsibilities with respect to chapter 383 of the laws of 2001, as amended by chapters 85 of the laws of 2002 and 62 of the laws of 2003. These laws require that racetrack employees involved in the operation of video lottery gaming are licensed by the Board.

The Board does not currently have occupational license categories for video lottery gaming employees. This proposed rule would establish a category for video lottery gaming employees. It is the Board's belief that the proposed rule will eliminate duplicative applications and procedures.

4. Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. No local mandates are imposed by rule upon any county, city, village, etc. There are no fees imposed by this rule.

(a) Costs to the Racing and Wagering Board: The costs to the New York State Racing and Wagering Board are expected to be minimal. An overwhelming majority of the Board's responsibilities in executing the provisions of this rule will be automated.

(b) Costs to other state agencies: None.

(c) Costs to Local Government: None.

(d) Costs to Regulated Entities: None.

5. Local Government Mandates: The proposed rule imposes no burdens on local government.

6. Paperwork: Under the proposed rule, applicants for a video lottery gaming employee license need only execute a single release form as the Board will be utilizing the applicant's existing filings with the Division of the Lottery.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the Division of the Lottery must license the operation of video lottery gaming at the racetracks as well as licensing video lottery gaming employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Lottery may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Board and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. Alternatives: No other alternatives are available.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: These regulatory amendments will be effective upon their adoption and compliance can be achieved immediately.

Regulatory Flexibility Analysis

1. Effect of Rule. The Board finds that the rule will not adversely affect local government. The rule will impact a number of types of businesses:

(a) Licensed racetracks. It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102.

(b) Gaming vendors. Vendors wishing to supply gaming products and services must be licensed by the Lottery. These include the supplier of the central computer system that will support the video lottery games; and the companies supplying the games and terminals. Employees of those vendors who will conduct their business on-site within the property of licensed racetracks will have to be licensed by the Board.

(c) Non-gaming vendors. Vendors wishing to supply goods and services not directly related to gaming will be required to complete a registration process or licensing process by the Lottery. Employees of those vendors who will conduct their business on-site within the property of licensed racetracks will have to be licensed by the Board.

2. Compliance Requirements. This rule will not require small businesses to complete burdensome forms or reports. To the extent that any small businesses have employees who will conduct their business on-site and thus require a Board license, the applicants need only execute a single release form as the Board will be utilizing the applicant's existing filings with the Division of the Lottery.

3. Professional Services. It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs. This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. There are no fees associated with this rule amendment.

5. Economic and Technological Feasibility. The economic and technological impact of these rules on local government is minimal. There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impacts. None.

7. Small Business and Local Government Participation. None.

Rural Area Flexibility Analysis

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County.

However, the Board has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Board believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

Job Impact Statement

The Board has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the agency has determined the rule will have a positive impact on jobs and employment opportunities. This rule will facilitate the license application process by eliminating duplicative detailed license applications.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ upwards of 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs at prevailing labor rates. Undoubtedly, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.