

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.

Adirondack Park Agency

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Adirondack Park Agency Regulations

I.D. No. APA-17-05-00007-P

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

Proposed action: Amendment of Parts 570, 571, 572, 573, 576, 587 and 588; and repeal Appendix Q-1 of Title 9 NYCRR.

Statutory authority: Adirondack Park Agency Act, Executive Law, art. 27; Wild, Scenic and Recreational Rivers Systems Act (Environmental Conservation Law, section 15-2709); Freshwater Wetlands Act (Environmental Conservation Law, section 24-0801)

Subject: Adirondack Park Agency regulations.

Purpose: To clarify and simplify the regulations.

Public hearing(s) will be held at: 2:00 p.m., June 17, 2005 at Tannery Pond Community Center, 228 Main St., North Creek, NY

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

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

Substance of proposed rule (Full text is posted at the following State website: www.apa.state.ny.us): The following summarizes this 2003 proposal to amend 9 NYCRR Part 570 *et seq.*

1) Amend 570.3 to remove definitions which are identical to the statutory definitions and re-number the paragraphs remaining.

2) Add a new paragraph to the 570.3(bc) definition of “subdivision” to address “subdivision into sites.” The new definition is a non-substantive edit of the current definition in 573.4(f).

3) Add a new 573.4(j) to codify the existing practice of allowing certain “boundary line adjustments” without and Agency permit pursuant to defined parameters and conditions.

4) Delete 572.21(c) which requires the formal transfer of a permit when the property is conveyed.

5) Delete 571.1(b), and 572.4(a) and 572.15, which allow APA jurisdictional inquiries and permit applications, respectively, to be submitted to the regional and district offices of other State agencies serving the Park.

6) Amend 587.3 to more explicitly provide for what constitutes a “conflict of interest” for Agency members and employees. Also amend 587.3 (d) by changing it to new sub-section 587.4, and revise it to better define what constitutes “ex-parte communications” and the action to be taken by Agency members if they cannot prevent an ex-parte communication. The new rule establishes a procedure to report ex-parte communications to Agency Counsel, who will notify parties to the proceeding and the hearing officer.

7) Amend any section which uses the terms “operations committee” and “director of operations” to remove those terms and replace with “regulatory programs committee” or “director of regulatory programs,” respectively.

8) Amend Part 576, the standards for issuance of variances, to also include the current procedure for the review of variances, most of which comes from existing regulations, 572.15 to 572.19, and make adjustments to ensure the section provides the standards and procedure for all variances under the APA Act. This requires the addition of new sections 576.5 to 576.9, the deletion of existing sections 572.15 to 572.18, and amendment of 572.19.

9) Amend 588.8 to include the effective dates of all amendments to these rules adopted since the first comprehensive revision in 1979.

10) Delete Appendix Q-1, which provides the addresses and telephone numbers of the Regional and District Offices of the Departments of Environmental Conservation and Health. The information is no longer correct.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara A. Rottier, Associate Counsel, Adirondack Park Agency, P.O. Box 99, Ray Brook, NY, (518) 891-4050, e-mail: barottie@gw.dec.state.ny.us

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

Public comment will be received until: 10 days after the public hearing, which is close of business June 27, 2005.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Adirondack Park Agency Act, Executive Law, Article 27, In Section 804(9), authorizes the Agency “to adopt, amend and repeal... such rules and regulations...as it deems necessary to administer this article, and to do any and all things necessary or convenient to carry out the purposes and policies of this article...”

Similar authority is also found in the NYS Wild, Scenic and Recreational Rivers System Act (ECL Section 15-2709) and in the NYS Freshwater Wetlands Act (ECL Section 24-0801).

2. LEGISLATIVE OBJECTIVES

The legislative objectives are framed in Section 801 of the Adirondack Park Agency Act which refers to the Park's unique and special values, the constitutional safeguards over the public lands within the Park and the obligation on the part of the State, through the Adirondack Park Agency, "...to insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park ...". The Adirondack Park Agency seeks to accomplish these objectives through the administration of its statutory authority and the adoption of appropriate regulations to accomplish these objectives.

3. NEEDS AND BENEFITS

Current Agency regulations were last generally amended in 1979 after an almost three year process, and were a "front-to-back" revision, completely superseding earlier amendments made between 1972 and 1976. Part 578, implementing the Freshwater Wetlands Act, became effective in 1983.

The Task Force on the Adirondack Park Agency, an independent eleven member body created in 1993, determined the need for a comprehensive revision of Agency regulations was necessary to ensure greater predictability, reliability, fairness and consistency in the Agency's regulatory and decision making process.

In 1996, the Agency initiated a multi-phase, multi year public process to comprehensively revise its regulations. The main focus has been to 1) clarify existing regulatory language; 2) expedite delivery of services to the public; 3) introduce improved consistency, uniformity, and predictability into Agency administration and decision making consistent with governing statutes; and 4) otherwise improve the Agency's regulatory, advisory, and educational functions. To date, three phases of regulatory revision have been completed, resulting in changes effective January 3, 2001, May 1, 2002, and January 29, 2003.

These proposed changes constitute the Agency's 2003 regulatory revision effort. The proposed changes fall into four categories, and are not controversial. They do improve clarity and consistency of the regulations, as discussed below, but generally have no material impact because they implement existing practice or are ministerial in nature.

More specifically, the discussion of needs and benefits for the Agency's 2003 regulation revision proposals presented in this Regulatory Impact Statement follows:

SECTION 570.3

SECTION IS AMENDED TO REMOVE THOSE DEFINITIONS WHICH DUPLICATE THE STATUTORY DEFINITIONS IN EXECUTIVE LAW SECTION 802. THE REMAINING DEFINITIONS ARE RENUMBERED ACCORDINGLY.

Many definitions in the existing regulations are merely duplicates of the definitions provided by statute (Executive Law Article 27, Section 802). The Agency has determined that it is unnecessary to repeat the statutory definitions and hence proposes to remove them from the regulations. However, for purposes of assisting public use of the statute and regulations, the statutory definitions may be included (and properly identified) in subsequent printings of the regulations. This action is purely ministerial and creates no substantive change to the regulations. There will be no impacts to the environment, nor will there be created any costs, administrative or otherwise.

SECTION 573.4(f)

SECTION IS PROPOSED TO BE EDITED AND MOVED INTO SECTION 570.3(ah)(3), AND SUBSEQUENT SECTIONS RENUMBERED.

This regulatory change merely re-locates a regulatory section into the definitions, where it will be more accessible and useful to the public. The definition of "subdivision into sites" is currently located in Part 573 which addresses jurisdiction. It is better located as a subset of the definition of "subdivision of land," which in fact it is. Since the definition of "subdivision of land" includes a reference to "two or more lots, parcels or sites..." the "subdivision into sites" should be immediately explained in the next section of the regulatory definition.

SECTION 573.4(j)

NEW SECTION PROPOSED TO FACILITATE "BOUNDARY LINE ADJUSTMENTS"

This section has been added to implement long-standing Agency practice. Under the APA Act, Section 810, any substandard sized lot requires an Agency permit. Years ago, the Agency implemented a practice whereby certain transfers between neighbors, in the nature of "boundary line adjustments" could be undertaken without an Agency permit. Certain criteria were established, relating to the maximum size of the parcel, need to ensure merger of the new parcel with the receiving parcel so that it would

not later be sold separately as a building lot, and the need to ensure that no principal building potential is conveyed with or associated with the parcel, since it is substandard in size.

The proposed regulation implements the existing guidance. The regulation specifies what constitutes a "boundary line adjustment" which will not require a permit. This proposed regulation does not have "deleterious economic effects" nor is it "overly burdensome;" rather, it implements existing practice and provides a much simpler, non-jurisdictional process by which to undertake certain transfers of land between neighbors.

The benefit to the landowner is significant, as the project review process and delays commensurate with same is avoided. The benefit to the Agency is also important, as it need not spend time processing project applications and writing permits for projects which are very simple in nature, having no impact whatsoever provided standard criteria are met. This allows the Agency to focus its resources on projects which in fact may have potential environmental impacts.

Another option would be to issue a general permit for such transfers between neighbors, but even that creates more process than is warranted for these types of transfers. The conditional non-jurisdictional letter for such transfers is the simplest process to authorize these transfers, ensuring the necessary actions are taken to address the issues otherwise arising from the creation of substandard sized lots. There are no "costs" resulting from this regulation; if anything there is a cost savings to both the Agency and the public.

SECTION 572.21(c)

SECTION IS DELETED.

This section eliminates the requirement that a subsequent purchaser of property must seek a transfer of the permit. The existing provision duplicates what is already required by law: Lawfully issued and recorded permits bind the landowner and any subsequent grantee (APA Act, Section 809[7][b]). The only value that the existing regulation provides is when the project is not yet undertaken, and there may be a question about the financial ability of the grantee to implement the terms and conditions of the permit. However, as the permit conditions apply, the grantee should have assessed his or her ability to comply with the permit prior to purchasing the property. The elimination of the section relieves the grantee of the need to re-apply for a permit already issued and in effect.

SECTIONS 571.1(b) AND 572.4(a)

BOTH SECTIONS ARE DELETED AND THE SUBSEQUENT SUBSECTIONS OF 572.4 ARE RENUMBERED.

These sections provide for the submission to sister agencies of applications for Agency non-jurisdictional determinations or permits, relying upon the sister agency to forward same to the Agency in a timely way. While the Department of Environmental Conservation, the Department of Health and the Adirondack Park Agency routinely refer members of the public to their sister agencies which may also have jurisdiction over a project, the agencies do not routinely accept applications on behalf of other agencies. The Adirondack Park Agency Act imposes a 15 day response from the date of receipt of the original project application, with serious consequences for failure to adhere to the deadline. The referral process created by the existing regulation may effectively reduce or even eliminate the response time, or delay the start of the response time. In any case, it is better for the public and the Agency if applicants apply directly to the Agency, eliminating any potential confusion that could result from a referral process.

SECTION 587.3

SECTION IS AMENDED and NEW SECTION 587.4 IS ADDED.

The Agency has modified existing Section 587.3, its rules on conflict of interest, in non-substantial ways. One change clarifies and specifies what is meant by "pecuniary" interests, by using instead the terms "business, financial, property" interests. The other change specifies that "personal" interests are intended to be included within the provision of "other" interests which must in fact be disclosed.

The proposal also revises 587.3 by moving the portion about *ex parte* communications into a new Part 587.4. The *ex parte* rules, fundamentally a State Administrative Procedures Act issue affecting the validity of certain Agency decisions, particularly those following a formal adjudicatory hearing, are distinct from "conflicts of interest" and other ethical considerations that govern the conduct of Agency staff and members. Hence, for clarity, the sections are proposed to be separated in the regulations.

SECTIONS 572.15, 572.16, 572.17 and 572.18 ARE MOVED, EDITED AND RENUMBERED AS THE NEW SECTIONS 576.5, 576.6, 576.7, 576.8 AND 576.9; SECTION 572.19 IS EDITED, AND ALSO DUPLICATED IN PART IN THE NEW SECTION 576.9; SECTIONS 576.1 AND 576.2 ARE EDITED.

At present, the process for variance review and appeals are addressed within the provisions for project review, Part 572.15, *et seq.*, and are not referenced in the provisions of Part 576 that currently establish the standards for variances to the provisions of Section 806 of the APA Act. The Agency determined to relocate the procedural sections for obtaining a variance to Part 576, so that all regulations pertaining to variances may be found in the same section. All references to variances are then deleted from Part 572. The only substantive change is that now all types of variances will be addressed by the new procedures, rather than just shoreline variances; hence the need for changes to sections 576.1 and 2. None of these changes create any significant substantive amendments to the regulations.

ALL APPROPRIATE REGULATORY SECTIONS ARE AMENDED TO CHANGE "DIRECTOR OF OPERATIONS" TO "DEPUTY DIRECTOR-REGULATORY PROGRAMS" AND TO CHANGE "OPERATIONS COMMITTEE" TO "REGULATORY PROGRAMS COMMITTEE."

Sections 571.5, 572.4, 572.10, 572.11, 572.12, 572.19, 572.20 and 572.22 are amended to reflect the changes in titles noted above. These changes are ministerial and effect no substantive change.

SECTION 588.8

SECTION IS AMENDED

SECTION 588.8 PROVIDES THE EFFECTIVE DATE OF Agency regulations. As it has not been amended in recent regulatory revisions, it is now being brought up-to-date. These amendments provide no substantive changes.

APPENDIX Q1

APPENDIX Q1 IS DELETED AS A COMPANION CHANGE TO DELETION OF SECTIONS 571.1(b) AND 572.4(a).

This Appendix provides the addresses and phone numbers for sister agencies the NYS Department of Environmental Conservation and the NYS Department of Health. Much of the information contained in the appendix is now incorrect. As a general rule, the placement of addresses and phone numbers in regulation seems inappropriate, considering the fact that such information does change regularly. In addition, the original purpose of this appendix was to provide access to the other agencies for the purpose of filing APA application materials via these other agencies. As we are eliminating the option of filing applications for APA permits with the sister agencies per other regulatory changes, this appendix is no longer necessary.

4. COSTS

These proposed revisions to Agency regulations are non-substantive in nature and will not impose any initial or ongoing additional capital and non-capital expenses for regulated parties, the Agency, or state or local government.

Most of the actions proposed are ministerial. The only one which provides a substantive change (the definition of "boundary line adjustment") will provide a cost savings to the public and the Agency.

5. LOCAL GOVERNMENT MANDATES

These proposed revisions of the Agency's regulations will not impose any local government mandates.

6. PAPERWORK

These proposed revisions of the Agency's regulations will not create any additional reporting requirements.

7. DUPLICATIONS

There is no duplication expected in other State or Federal regulations by the proposed regulatory revisions.

8. ALTERNATIVES

For each of the proposed amendments, the "no action" alternative was considered. The "no action" alternative was rejected for each since it would fail to (1) achieve the Agency's overall intended goals of improving clarification, consistency, predictability, and uniformity, and (2) expedite the delivery of services to the public.

9. FEDERAL STANDARDS

Proposed revision of Adirondack Park Agency regulations is not relevant or applicable to any minimum standard requirements established by the federal government.

10. COMPLIANCE SCHEDULE

Compliance with Agency regulatory revisions will be expected to occur when the revisions are formally adopted and published in the *State Register*.

Regulatory Flexibility Analysis

The Adirondack Park Agency has determined that the proposed regulatory amendments are not expected to impose any reporting, recordkeeping or other compliance requirements on small businesses or rural areas.

Further, they are also not expected to have any adverse economic impact on small businesses or rural areas or impose any reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

The proposed amendments are not expected to have any adverse impact upon regulated small businesses nor upon persons or businesses located in or operating in rural areas nor will it have an adverse impact upon jobs or employment opportunities.

Rural Area Flexibility Analysis

The Adirondack Park Agency has determined that the proposed regulatory amendments are not expected to impose any reporting, recordkeeping or other compliance requirements on small businesses or rural areas.

Further, they are also not expected to have any adverse economic impact on small businesses or rural areas or impose any reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

The proposed amendments are not expected to have any adverse impact upon regulated small businesses nor upon persons or businesses located in or operating in rural areas nor will it have an adverse impact upon jobs or employment opportunities.

Job Impact Statement

A formal job impact statement is not submitted for these proposed regulatory amendments to the Adirondack Park Agency's regulations as these amendments are not expected to create any substantial adverse impact on jobs and employment opportunities in the Adirondack Park. These amendments do not make any significant substantive changes to the regulations, and will not impact employment opportunities in the Park.

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Captive Cervids

I.D. No. AAM-17-05-00002-E

Filing No. 389

Filing date: April 6, 2005

Effective date: April 6, 2005

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

Action taken: Repeal of section 62.8 and addition of Part 68 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 72 and 74

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

Specific reasons underlying the finding of necessity: The proposed repeal of section 62.8 of 1 NYCRR and the adoption of 1 NYCRR Part 68 will help to prevent further introduction of chronic wasting disease (CWD) into New York State and permit it to be detected and controlled if it were to arise within the captive cervid population of the State. CWD is an infectious and communicable disease of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white tailed deer and mule deer). CWD has been detected in free-ranging deer and elk in Colorado, Wyoming, Nebraska, Wisconsin, South Dakota, New Mexico, Illinois and Utah. It has been diagnosed in captive deer and elk herds in South Dakota, Nebraska, Colorado, Oklahoma, Kansas, Minnesota, Montana, Wisconsin and New York and the Canadian provinces of Saskatchewan and Alberta.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and three to five years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary

of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program. On Dec. 24, 2003, the USDA proposed CWD regulations establishing a Federal CWD Herd Certification Program and governing the interstate movement of captive deer and elk. The proposed Federal regulations permit herd owners to enroll in State programs that it determines are equivalent to the proposed Federal program. The department believes that the State CWD herd certification program established by this rule is equivalent to the proposed Federal program.

New York State has 433 entities engaged in raising approximately 9,600 deer and elk in captivity with a value of several million dollars, and many of these entities have imported captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule repeals a prohibition on the importation of captive cervids susceptible to CWD and adopts a prohibition on the importation or movement of captive cervids into or within the State unless a permit authorizing such movement has been obtained from the department prior to such importation or movement. Except for cervids moving directly to slaughter, permits shall be issued only for captive cervids that meet the health requirements established by the rule.

The rule establishes general health requirements for captive cervids, special provisions for captive cervids susceptible to CWD, requirements for CWD Certified Herd Program, requirements for a CWD Monitored Herd Program, requirements for approved susceptible cervid slaughter facilities, requirements for the importation of captive susceptible cervids for immediate slaughter and requirements for the management of CWD positive, exposed or suspect herds of captive cervids. This is an essential disease control measure that will help to prevent the introduction of CWD into New York State and permit it to be detected and controlled within the captive cervid population of the State.

The promulgation of this regulation on an emergency basis is necessary because further introduction and spread of CWD into and within New York State would be devastating from both an animal health and economic standpoint given the threat the disease poses to the approximately 9,600 captive deer in the State and the 433 entities which raise them.

Subject: Captive cervids.

Purpose: To prevent the introduction and spread of chronic wasting disease into and within the State.

Substance of emergency rule: Section 62.8 of 1 NYCRR is repealed.

Section 68.1 of 1 NYCRR sets forth definitions for "CWD susceptible cervid," "CWD exposed cervid," "CWD positive cervid," "CWD negative cervid," "CWD suspect cervid," "CWD infected zone," "captive," "CWD Certified Herd Program," "Cervid," "Chronic Wasting Disease," "Commingling," "Department," "Enrollment Date," "Herd," "Herd Inventory," "CWD Herd Plan," "CWD Herd Status," "CWD positive herd," "CWD Suspect herd," "Special purpose herd," "CWD Exposed herd," "CWD certified herd," "Official identification," "CWD Monitored herd," "Owner," "Premises," "CWD Premises plan," "Quarantine," "State animal health official," "Status date," "Official test," and "USDA/APHIS."

Section 68.2 of 1 NYCRR establishes general health requirements for captive cervids including requirements relating to mandatory reporting, the movement of captive cervids, enforcement, facilities, fencing, herd integrity, sample collection and premises location.

Section 68.3 of 1 NYCRR establishes special provisions for captive cervids susceptible to chronic wasting disease including requirements relating to importation, enrollment in the CWD Herd Certification program, Monitored herd program, licenses and permits issued by the Department of Environmental Conservation, fencing, premises inspection and record keeping.

Section 68.4 of 1 NYCRR establishes requirements for the CWD Certified Herd program including requirements for captive susceptible cervid operations engaged in breeding and/or the sale or removal of live cervids from the premises for any purposes, the establishment of a CWD herd status, sampling and testing, animal identification, annual physical herd inventory and additions to CWD Certified Herd program herds.

Section 68.5 of 1 NYCRR establishes requirements for CWD Monitored Herds including requirements for special purpose herds consisting of one or more susceptible cervids, sampling and testing, additions to CWD monitored herds, animal identification and permitted movement to an approved CWD slaughter facility.

Section 68.6 of 1 NYCRR establishes requirements for approved susceptible cervid slaughter facilities, including requirements for holding pens, sample retention and holding facilities, susceptible cervid offal disposal plans and inspection.

Section 68.7 of 1 NYCRR establishes requirements for the importation of captive susceptible cervids for immediate slaughter including requirements for source herds, permits, direct movement, samples, waste and slaughter.

Section 68.8 of 1 NYCRR establishes requirements for the management of CWD positive, exposed or suspect herds including premises quarantine, establishment of a herd plan, depopulation, cleaning and disinfection, future land use restrictions, restocking constraints and timeframes, fencing requirements, risk analysis, official herd quarantines, elimination of high-risk cervids within the herd, special fencing requirements and the disposal of carcasses.

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 July 4, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Dr. John Huntley, DVM State Veterinarian, Director, Division of Animal Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3502

Regulatory Impact Statement

1. Statutory Authority:

Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Law also provides that whenever any infectious or communicable disease affecting domestic animals shall exist or have recently existed outside this State, the Commissioner shall take measures to prevent such disease from being brought into the State.

Section 74 of the Law authorizes the Commissioner to adopt rules and regulations relating to the importation of domestic or feral animals into the State. Subdivision (10) of said Section provides that "feral animal" means an undomesticated or wild animal.

2. Legislative Objectives:

The statutory provisions pursuant to which these regulations are proposed are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State to control, suppress and eradicate such diseases and prevent the spread of infection and contagion. The Department's proposed repeal of 1 NYCRR section 62.8 and adoption of 1 NYCRR Part 68 will further this goal by preventing the importation of deer which may be infected with chronic wasting disease (CWD), and permitting CWD to be detected and controlled within the captive cervid population of the State.

3. Needs and Benefits:

CWD is an infectious and communicable disease of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white tailed deer and mule deer). CWD has been detected in free-ranging deer and elk in Colorado, Wyoming, Nebraska, Wisconsin, South Dakota, New Mexico, Illinois and Utah. It has been diagnosed in captive deer and elk herds in South Dakota, Nebraska, Colorado, Oklahoma, Kansas, Minnesota, Montana, Wisconsin and New York and the Canadian provinces of Saskatchewan and Alberta.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program.

New York State has 433 entities engaged in raising approximately 9,600 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. This rule repeals a rule that had prohibited, with certain exceptions, the importation of captive cervids susceptible to CWD and adopts a prohibition on the importation or movement of captive cervids into or within the State unless they are accompanied by a valid certificate of veterinary inspection and a permit authorizing such importation or movement has been obtained from the

Department, in consultation with the New York State Department of Environmental Conservation. The rule establishes general health requirements for captive cervids, special requirements for captive cervids susceptible to CWD, requirements for a CWD Certified Herd Program, requirements for a CWD Monitored Herd Program, requirements for approved susceptible cervid slaughter facilities, requirements for the importation of captive susceptible cervids for immediate slaughter and requirements for the management of CWD positive, exposed or suspect herds of captive cervids. This is an essential disease control measure that will help to prevent the introduction of CWD into New York State, and permit it to be detected and controlled if it were to arise within the captive cervid population of the State.

4. Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. During 2002, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the prior prohibition on the importation of captive cervids susceptible to CWD prevented the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis. It is not known how many captive cervids will meet the health requirements of 1 NYCRR Part 68 or otherwise qualify for importation or movement within the State of New York. The number and value of the captive cervids that will continue to be prohibited from importation will depend upon the extent to which the owners of herds of captive cervids outside the State comply with the requirements of 1 NYCRR Part 68.

Owners of captive cervids within New York State will incur certain costs as a result of this rule. The New York State Department of Environmental Conservation currently regulates 129 farms with whitetailed deer. DEC requires these farms to have an eight-foot fence, as does this rule. There are 82 farms with elk, red deer, sika deer or mule deer in the State that do not have whitetailed deer. Assuming that half of these farms do not have adequate fences, that they have an average of 20 adult cervids and a 160-acre square enclosure, it would require two miles of fence extensions to raise the fence to eight feet. Assuming the farms will use post extensions and wire or tape at a cost of \$1.00 a foot, the cost to each of the 41 farms that will need to upgrade their fences will be \$10,560.

The rule also requires that captive cervid operations, with the exception of special purpose herds, have proper restraining facilities, chutes, gates and corrals to capture and restrain cervids for diagnostic testing and inventory. Assuming that the 30 farms that are currently tested have adequate handling facilities and that the 102 farms that are currently under tuberculosis quarantine will be special purpose herds, there are currently 79 farms that will need to upgrade their capture and restraint facilities. The owners of those farms will have to build catch pens and chutes at an approximate cost of \$10,000 to \$20,000 per farm.

Whitetailed deer experience a five to ten percent death loss when handled for purposes such as testing. The majority (1,975 out of 2,950) of captive whitetailed deer in the State are in quarantined premises and will not have to be handled. Handling the other whitetailed deer can be expected to produce a total death loss of 49 to 98 deer on 43 farms for a loss of \$1,700 to \$3,400 per farm per year, assuming the deer each have a value of \$1,500.

The labor costs associated with the handling of captive cervids required by this Part will average three person days, or \$250.00 per year. It is estimated that the recordkeeping associated with this rule will require less than one hour annually on the average farm.

The 102 herds designated as special purpose herds will require an area in which to keep, for testing purposes, the heads of captive cervids that have died. It is estimated that this will result in a one-time cost of \$400 to \$500 per farm.

(b) Costs to the agency, state and local governments:

There will be no cost to local government or the State, other than the cost to the Department. The cost to the Department will be between \$500 and \$1,000 per farm annually, or between \$121,500 and \$243,000 annually to carry out necessary inspections and to collect and process samples.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Local Government Mandates:

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

6. Paperwork:

The rule requires that captive cervids being imported or moved into or within New York State be accompanied by a permit. Such permits will be issued by the Department in consultation with the New York State Department of Environmental Conservation after a determination that the deer in question qualify for importation. A valid certificate of veterinary inspection must also accompany all cervids imported into New York State, with the exception of those moving directly to slaughter. Accurate records documenting purchases, sales, interstate shipments, intrastate shipments, escaped cervids and deaths (including divested cervids) will have to be established by herd owners and maintained for at least seventy-two months for all captive susceptible cervids. A report of the required annual inventory of CWD certified herds must be made and submitted to the Department. For each natural death, clinical suspect and cervid harvested from a CWD Monitored Herd, tag numbers must be entered into the CWD Monitored Herd record along with the corresponding information that identifies the disposition of the carcass. A CWD herd plan must be developed by each herd owner, in conjunction with the Department and USDA/APHIS officials containing the procedures to be followed for positive or trace herds that will be implemented within sixty days of a diagnosis of CWD.

7. Duplication:

None.

8. Alternatives:

Various alternatives, from the imposition of a total prohibition against the importation of all cervids, to no restriction on their importation were considered.

Due to the spread of CWD in other states and the threat that this disease poses to the State's captive deer population, the proposed rule was determined to be the best method of preventing the further introduction of this disease into New York State and permitting it to be detected and controlled if it were to arise within the State. It was concluded that a total prohibition against the importation of captive cervids susceptible to CWD was not necessary if health standards and a permit system were established. It was also concluded that a failure to regulate the importation of cervids was an alternative that posed an unacceptable risk of introducing CWD to the State's herds of captive cervids.

9. Federal Standards:

The federal government currently has no standards restricting the interstate movement of cervids due to CWD, but has proposed CWD regulations establishing a Federal CWD Herd Certification Program and governing the interstate movement of captive deer and elk. The proposed Federal regulations permit herd owners to enroll in State programs that are determined to be equivalent to the proposed Federal program. The Department believes that the State CWD program established by this rule is equivalent to the proposed Federal program.

10. Compliance Schedule:

It is anticipated that regulated parties can immediately comply with the rule.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are approximately 433 small businesses raising a total of approximately 9,600 captive cervidae (the family that includes deer and elk) in New York State. The rule would have no impact on local governments.

2. Compliance Requirements:

Regulated parties are prohibited from importing captive cervids, other than those moving directly to slaughter, without a valid certificate of veterinary inspection. In addition, regulated parties importing or moving captive cervids into the State or within the State for any purpose must first obtain a permit from the Department, in consultation with the New York State Department of Environmental Conservation, authorizing such movement.

Captive cervid operations, with the exception of special purpose herds, must have proper restraining facilities to capture and restrain cervids for testing, as well as storage facilities for samples.

Captive cervid operations must have a continuous barrier fence and maintain herd integrity.

Regulated parties will be able to import CWD susceptible cervids only if they are moved from a herd which has achieved CWD certified herd status and the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those set forth in 1 NYCRR Part 68. Regulated parties may not hold CWD susceptible cervids in captivity in New York State unless they are enrolled in the CWD Certified Herd

Program or the CWD Monitored Herd Program or have a license or permit issued by DEC pursuant to ECL section 11-0515.

Regulated parties with herds containing at least one CWD susceptible cervid must have a perimeter fence that is at least eight feet high. Captive CWD susceptible cervid facilities and perimeter facilities must be inspected and approved by a state or federal regulatory representative.

Regulated parties must keep accurate records documenting purchases, sales, interstate shipments, escaped cervids and deaths, including harvested cervids, and maintain them for at least sixty months for all captive CWD susceptible cervid operations. The owners of all CWD susceptible cervid herds enrolled in the CWD Certified Herd Program shall establish and maintain accurate records that document the results of the annual herd inventory.

All captive CWD susceptible cervid herds that are not special purpose herds or held at an approved CWD susceptible cervid slaughter facility must participate in the CWD Certified Herd program. Samples must be submitted for testing as required by the Program. For reasons of animal disease control, limiting potential contamination of the environment and benefiting trace back/trace forward activities the carcasses of animals that have been tested for CWD must be retained until it has been determined that the tests are negative for CWD. As of the first annual inventory after the effective date of 1 NYCRR Part 68, each herd member and herd addition shall have a minimum of two official/approved unique identifiers. At least one of these identification systems shall include visible identification. A physical herd inventory shall be conducted between ninety days prior to and ninety days following the annual anniversary date established based upon the CWD Certified Herd Program enrollment date. Cervids that were killed or died during the course of the year must be tested. A state or federal animal health official must validate the annual inventory. A report of the validated annual inventory containing all man-made identification of each animal must be submitted to the Department.

All special purpose herds consisting of one or more CWD susceptible cervid shall participate in the CWD Certified Herd Program. Samples shall be submitted for testing as required by the Program. Each herd addition must have a minimum of two official/approved unique identifiers affixed to the animal. Carcass and sample identification tags must be affixed to unidentified harvested captive cervids, natural deaths, and clinical suspects.

Direct movement from a CWD monitored herd to an approved CWD slaughter facility requires a permit from the Department prior to movement; all animals moved must be individually identified with an approved identification tag and all animals must be slaughtered within six days of the time the animals leave the premises of the CWD monitored herd.

Approved CWD susceptible slaughter facilities must have holding pens constructed to prevent contact with captive or free-ranging cervid populations. Sample retention and holding facilities must be adequate to preserve and store diagnostic tissues for seventy-two hours after slaughter. A CWD susceptible cervid offal disposal plan must be developed, implemented and approved by the Department in consultation with the Department of Environmental Conservation.

Herd owners, in conjunction with the Department and USDA/APHIS, must develop CWD herd plans for any CWD positive, exposed or suspect herd. Perimeter fencing adequate to prevent fence line contact with captive and free-ranging cervids must be established for all CWD positive herds and positive premises. The carcasses of CWD positive cervids that are depopulated shall be disposed of in accordance with disposal plans approved by the Department and USDA/APHIS.

The rule would have no impact on local governments.

3. Professional Services:

It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

4. Compliance Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. During 2002, 195 elk and 165 deer were imported into New York. The value of elk ranges from \$500 to \$2,000 per animal. The value of deer ranges from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, it is estimated that the prior prohibition on the importation of captive cervids susceptible to CWD prohibited the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis. The number and value of the captive cervids that will be prohibited from importation as a result of this rule will depend upon the extent to which the owners of herds

of captive cervids outside the State comply with the requirements of 1 NYCRR Part 68.

Owners of captive cervids within New York State will incur certain costs as a result of this rule. The New York State Department of Environmental Conservation currently regulates 129 farms with whitetailed deer. DEC requires these farms to have an eight-foot fence, as does this rule. There are 82 farms with elk, red deer, sika deer or mule deer that do not have whitetailed deer. Assuming that half of these farms do not have adequate fences; that these farms have on average 20 adult cervids and a 160-acre, square, enclosure, it would require 2 miles of extensions to raise the fence to eight feet. Assuming the farms will use post extensions and wire or tape, the cost to each of the 41 farms that will need to upgrade their fences will be \$10,560, at \$1.00 per foot.

The rule also requires that captive cervid operations, with the exception of special purpose herds have proper restraining facilities, chutes, gates and corrals to capture and restrain cervids for diagnostic testing and inventory. Assuming that the 30 farms that are currently tested have adequate handling facilities and that the 102 farms that are currently under tuberculosis quarantine will be special purpose herds, there are currently 79 farms with 1,646 deer that will need to upgrade their capture and restraint facilities. The owners of those farms will have to build catch pens and chutes at an approximate cost of \$10,000 to \$20,000 per farm.

Whitetailed deer experience a five percent to ten percent death loss when handled for purposes such as testing. The majority, 1,975 out of 2,950, of captive whitetailed deer in the State are in quarantined premises and will not have to be handled. Handling the other captive whitetailed deer in the State can be expected to produce a death loss of 49 to 98 deer on 43 farms for a loss of \$1,700 to \$3,400 per farm per year, assuming a \$1,500 value per deer.

The labor costs associated with the handling of captive cervids required by this Part will average three person days or \$250.00 per year per farm. It is estimated that the recordkeeping associated with this rule will require less than one hour each year on the average farm.

The 102 herds designated as special purpose herds will require an area in which to keep, for testing purposes, the heads of captive cervids that have died. It is estimated that this will result in a one-time cost of \$400 to \$500 per farm.

(b) Costs to the agency, state and local governments:

There will be no cost to local government or the State, other than the cost to the Department. The cost to the Department will be between \$500 and \$1,000 per farm annually, or between \$121,500 and \$243,000 to carry out necessary inspections and to collect and process samples.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Economic and Technological Feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed. The rule is economically feasible. Although the regulation of the importation of captive deer into New York State will have an economic impact on the entities that imported a total of 360 captive deer into New York State in 2002, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater. The rule is technologically feasible. Captive deer imported into the State are already required to be accompanied by a health certificate. Endorsement of that certificate with the number of the permit issued by the Department presents no technological problem. The structural, recordkeeping and testing requirements of the rule involve existing technologies that are already in use.

6. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the requirements to those which comply with the proposed USDA requirements for state CWD programs and which are necessary to prevent the introduction of CWD into New York State and permit it to be detected and controlled if it were to arise within the State. It was concluded that a total prohibition against the importation of cervids susceptible to CWD was not necessary, given the imposition of a permit system, health requirements and a CWD Certified Program. These requirements will protect the health of the State's captive cervid population, while giving herd owners access to healthy animals from states with comparable regulatory programs.

The rule would have no impact on local governments.

7. Small Business and Local Government Participation:

In developing this rule, the Department has consulted with representatives of the approximately 433 deer owners known to the Department. In addition, the Department is notifying public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The approximately 433 entities raising captive deer in New York State are located throughout the rural areas of New York.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

The rule requires that captive cervids being imported or moved into or within New York State be accompanied by a permit. Such permits will be issued by the Department in consultation with the New York State Department of Environmental Conservation after a determination that the deer in question qualify for importation. A valid certificate of veterinary inspection must also accompany all cervids imported into New York State, with the exception of those moving directly to slaughter. Accurate records documenting purchases, sales, interstate shipments, intrastate shipments, escaped cervids and deaths (including divested cervids) will have to be established by herd owners and maintained for at least seventy-two months for all captive susceptible cervids. A report of the required annual inventory of CWD certified herds must be made and submitted to the Department. For each natural death, clinical suspect and cervid harvested from a CWD Monitored Herd, tag numbers must be entered into the CWD Monitored Herd record along with the corresponding information that identifies the disposition of the carcass. A CWD herd plan must be developed by each herd owner, in conjunction with the Department and USDA/APHIS officials containing the procedures to be followed for positive or trace herds that would be implemented within sixty days of a diagnosis of CWD. It is not anticipated that regulated parties in rural areas will have to secure any professional services in order to comply with the rule.

3. Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. During 2002, 195 elk and 165 deer were imported into New York. The value of elk ranges from \$500 to \$2,000 per animal. The value of deer ranges from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, it is estimated that the prior prohibition on the importation of captive cervids susceptible to CWD prohibited the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis. The number and value of the captive cervids that will be prohibited from importation as a result of this rule will depend upon the extent to which the owners of herds of captive cervids outside the State comply with the requirements of 1 NYCRR Part 68.

Owners of captive cervids within New York State will incur certain costs as a result of this rule. The New York State Department of Environmental Conservation currently regulates 129 farms with whitetailed deer. DEC requires these farms to have an eight-foot fence, as does this rule. There are 82 farms with elk, red deer, sika deer or mule deer that do not have whitetailed deer. Assuming that half of these farms do not have adequate fences; that these farms have on average 20 adult cervids and a 160-acre, square, enclosure, it would require 2 miles of extensions to raise the fence to eight feet. Assuming that the farms will use post extensions and wire or tape, since at that height, only a visual barrier is needed, the cost to each of the 41 farms that will need to upgrade their fences will be \$10,560, at \$1.00 per foot.

The rule also requires that captive cervid operations, with the exception of special purpose herds have proper restraining facilities, chutes, gates and corrals to capture and restrain cervids for diagnostic testing and inventory. Assuming that the 30 farms that are currently tested have adequate handling facilities and that the 102 farms that are currently under tuberculosis quarantine will be special purpose herds, there are currently 79 farms that will need to upgrade their capture and restraint facilities. Since the Department currently owns three portable deer chutes, the owners of those farms will only have to build catch pens and chutes at an approximate cost of \$10,000 to \$20,000 per farm.

Whitetailed deer experience a five percent to ten percent death loss when handled for purposes such as testing. The majority, 1,975 out of 2,950, of captive whitetailed deer in the State are in quarantined premises and will not have to be handled. Handling the other captive whitetailed deer in the State can be expected to produce a death loss of 49 to 98 deer on

43 farms for a loss of \$1,700 to \$3,400 per farm per year, assuming a \$1,500 value per deer.

The labor costs associated with the handling of captive cervids required by this Part will average three person days or \$250.00 per year per farm. It is estimated that the recordkeeping associated with this rule will require less than one hour each year on the average farm.

The 102 herds designated as special purpose herds will require an area in which to keep, for testing purposes, the heads of captive cervids that have died. It is estimated that this will result in a one-time cost of \$400 to \$500 per farm.

(b) Costs to the agency, state and local governments:

There will be no cost to local government or the State, other than the cost to the Department. The cost to the Department will be between \$500 and \$1,000 per farm annually, or between \$121,500 and \$243,000 to carry out necessary inspections and to collect and process samples.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

4. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the requirements to those which comply with the proposed USDA requirements for state CWD programs and which are necessary to prevent the introduction of CWD into New York State and permit it to be detected and controlled if it were to arise within the State. It was concluded that a total prohibition against the importation of cervids susceptible to CWD was not necessary, given the imposition of a permit system, health requirements and a CWD Certification Program. These requirements will protect the health of the State's captive cervid population, while giving herd owners access to healthy animals from states with comparable regulatory programs.

5. Rural Area Participation:

In developing this rule, the Department has consulted with representatives of the approximately 433 deer owners known to the Department. In addition, the Department is notifying public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

Job Impact Statement

1. Nature of Impact:

It is not anticipated that there will be an impact on jobs and employment opportunities.

2. Categories and Numbers Affected:

The number of persons employed by the 433 entities engaged in raising captive deer in New York State is not known.

3. Regions of Adverse Impact:

The 433 entities in New York State engaged in raising captive deer are located throughout the rural areas of the State.

4. Minimizing Adverse Impact:

By helping to protect the approximately 9,600 captive deer currently raised by approximately 433 New York entities from the introduction of CWD, this rule will help to preserve the jobs of those employed in this agricultural industry.

Banking Department

EMERGENCY RULE MAKING

Licensed Cashers of Checks

I.D. No. BNK-17-05-00003-E

Filing No. 390

Filing date: April 7, 2005

Effective date: April 10, 2005

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

Action taken: Amendment of Part 400 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 37(3), 369, 371 and 372

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

Specific reasons underlying the finding of necessity: Chapter 432 of the Laws of 2004 amended art. 9-A of the Banking Law to provide an appropriate regulatory regime for entities engaged in cashing commercial checks. The amendments to Part 400 are necessary to conform the regulations governing check cashers to the changes in the law, which were approved on Sept. 14, 2004 and were effective immediately.

Subject: Licensed cashers of checks.

Purpose: To regulate commercial check cashing.

Text of emergency rule: The title of Part 400 is amended to read as follows:

Part 400

LICENSED CASHERS OF CHECKS

(Statutory authority: Banking Law, §§ 37[3], 369, 371, 372)

Paragraphs (a) and (b) of Section 400.1 of the Superintendent's Regulations shall be amended to read as follows:

(a) Application [form]. *No person shall engage in the business of cashing checks, drafts or money orders, as principal, broker, agent or otherwise, for a consideration, without first obtaining a license from the superintendent. This licensing requirement applies whether such activities are conducted for customers who are natural persons or for any business, corporation, partnership, limited liability company or partnership, association, or sole proprietorship, or any other entity.* Application for a new license or for a change of control of a licensee shall be made upon forms issued by the superintendent. These forms may be obtained at Banking Department offices [located at Two Rector Street, 21st Fl., New York, NY 10006 and 194 Washington Ave., Albany, NY 12210.] *at the locations specified in Supervisory Policy G-1.* For purposes of this Part, the term person shall include a[n individual,] *natural person or a partnership, corporation, association or any other entity.* The term control shall mean having the power directly or indirectly to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of a licensee, the ownership of voting stock of any corporation which possesses such power or otherwise and shall be presumed to exist if any person, directly or indirectly, owns, controls, or holds with power to vote 10 percent or more of the voting stock of any licensee or any person owning, controlling or holding with power to vote 10 percent or more of the voting stock of any licensee.

(b) Application procedure. Completed applications should be delivered to the Licensed Financial Services Division of the Banking Department [, Two Rector Street, 21st Fl., New York, NY 10006.] *at the New York City office location specified in Supervisory Policy G-1.* An application for a new license for a fixed location or for a mobile unit must be accompanied by a check for the investigation and license fees specified in Banking Law, section 367. An application by a licensee to operate a limited station must be accompanied by a check for the license and investigation fees required by Banking Law, section 370. An application for change of control of a licensee must be accompanied by a check for the investigation fee specified in Banking Law, section 370-a. In each case, the check must be made payable to the order of "Superintendent of Banks of the State of New York". Applicants for a new license seeking to conduct business under a trade name must file a certificate in the office of the county clerk as required by General Business Law, section 130. A certificate of the county clerk stating that such a document has been filed must be submitted with an application for a new license.

A new Subsection (g) shall be added to Section 400.1 of the Superintendent's Regulations as follows:

(g) *The license of a restricted location authorized pursuant to subdivision 1 of the Banking Law shall not be affected by a change of control, pursuant to Section 370-a of the Banking Law, pertaining solely to such restricted location of such licensee, provided that the licensee continues thereafter to engage at that location in the cashing of checks, drafts or money orders only for payees that are other than natural persons and provided further that such license shall bear a legend stating that such location is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons.*

Paragraph (1) of Subsection (a) of Section 400.6 of the Superintendent's Regulation shall be amended to read as follows:

(a) Every licensee shall:

(1) Post and display at all times in a conspicuous place on the premises the license. [and also] *Every licensee that cashes one or more checks, drafts or money orders for any payees that are natural persons must post the schedule of rates to be charged with respect to such transactions involving payees that are natural persons.* The schedule shall be

made of *durable material*, be no less than 30 inches wide and 36 inches high with letters at least 3/4 inch in size and indicate the fee applicable to the full amount of the check to be cashed. *The schedule shall indicate the fee that corresponds to the amount of the check. The amount of the check shall be set forth on the schedule in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule shall also indicate the percentage charge imposed on all checks and the minimum charge of \$1.00 per check.* The schedule shall be in English and in Spanish and posted in the customer's area.

Section 400.12 of the Superintendent's Regulations shall be amended to read as follows:

[The] *Except with respect to the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons, [licensee] a licensee shall be permitted to charge or collect a fee for cashing a check, draft or money order not to exceed (a) 1.5 per centum of the amount of the check, draft or money order, or (b) \$1, whichever is greater. Effective January 1, 2005, and annually thereafter, the maximum per centum fee specified in clause (a) of this section, shall be increased by a per centum amount, based upon an increase in the annual consumer price index for the New York Northern N.J. Long Island, NY NJ CT PA area for all urban consumers (annual CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum per centum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed per centum amount and the result added to such maximum per centum fee. The resulting sum shall be the revised maximum per centum fee, which shall be posted upon the internet site of the Banking Department (www.banking.state.ny.us) by the Superintendent not later than forty-five days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum per centum fee shall be calculated and posted to the nearest one-hundredth of a per centum. Such revised maximum per centum fee shall be effective not later than forty-five days after the Superintendent shall have notified the Majority Leader of the Senate, the Speaker of the Assembly, and the Chairperson of both the Senate and Assembly Committees on Banks of his/her intention to change the maximum per centum fee pursuant to the provisions of Section 372.3 of the Banking Law and shall continue in effect until revised and increased in the next succeeding year based upon an increase in such annual index. If such annual CPI-U does not increase in any one year, the maximum per centum fee in effect during the year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the Superintendent from setting, by regulation, a different maximum per centum fee at any time where the Superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers. No maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.*

Paragraph (3) of Subsection (h) of Section 400.13 of the Superintendent's Regulations shall be amended to read as follows:

(3) that the check casher is licensed and regulated by the New York State Banking Department located at [Two Rector Street, New York, NY 10006] *the New York City office location specified in Supervisory Policy G-1; and*

Section 400.15 of the Superintendent's Regulations shall be amended to read as follows:

Background. Chapter 546 of the Laws of 1994 altered the licensing criteria applicable to check cashers by substantially amending section 369 of the Banking Law to require, among other things, that the superintendent determine whether there is a community need for a new licensee in the proposed area to be served and to prohibit entirely the granting of a license at a location which is less than three-tenths of a mile from an existing licensee. In so acting, the Legislature adopted a specific statutory finding of legislative intent, to wit, "The legislature hereby finds and declares that check cashers provide important and vital services to New York citizens; that the business of check cashers shall be supervised and regulated through the Banking Department in such a manner as to maintain consumer confidence in such business and protect the public interest; that the licensing of check cashers shall be determined in accordance with the needs of the communities they are to serve; and that it is in the public interest to promote the stability of the check cashing business for the purpose of meeting the needs of the communities that are served by check

cashers.” However, the legislation left unamended Banking Law, section 370 which permits a licensee to apply to the superintendent for leave to change its place of business to any other location and which does not make explicit the standards to be applied by the superintendent in granting permission to relocate. A licensee must obtain a new license to conduct business at another location. In order to [preserve the bar against issuance of new licenses within three-tenths of a mile of existing licensees] *promote and maintain the stability of the check cashing business* while accommodating the reasonable needs of current licensees to relocate, [and to prevent evasions of the legislative intent behind chapter 546 of the Laws of 1994,] the following standards shall be applied by the superintendent in determining whether to approve applications for relocation to any site which is within three-tenths of a mile of another licensed location:

Paragraph (a) of Section 400.15 of the Superintendent’s Regulations shall be amended to read as follows:

(a) No relocation shall be permitted to a site within three-tenths of a mile of another *existing* licensee location from a location greater than three-tenths of a mile from such *existing* licensee location [.] *unless such other existing licensee engages in the cashing of checks, drafts or money orders only for payees of such checks, drafts or money orders that are other than natural persons at a restricted location authorized pursuant to subdivision 1 of Section 369 of the Banking Law or at any other licensed location whereat the licensee engages solely in the cashing of checks, drafts or money orders only for payees that are other than natural persons.*

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 July 5, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Sam Abram, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Banking Law Section 37[3] authorizes the Superintendent to require any licensed casher of checks to make such special reports to her at such times as she may prescribe. Section 369 describes the circumstances under which the Superintendent shall issue a license to permit the cashing of checks, drafts and money orders at a specified location or in a specified area. Section 371 authorizes the Superintendent to make such rules and regulations, and such specific rulings, demands and findings, not inconsistent with Article 9-A of the Banking Law, as she may deem necessary for the proper conduct of the business authorized and licensed under, and for the enforcement of, that Article. Section 372 authorizes the Superintendent to establish by regulation the maximum fees which may be charged by a licensed check casher for cashing a check, draft or money order.

2. Legislative objectives:

As more fully described in response to Item 3, “Needs and benefits” below, the amendments to Part 400 of the Superintendent’s Regulations implement, or conform to the regulations of the Banking Department to, recently enacted legislation amending the provisions of the Banking Law governing check cashers. The objective of this legislation was to provide for the regulation of the business of check cashing regardless of whether such check cashing was performed for customers that are natural persons or business or other entities. The amendments to Part 400.6 regarding signage requirements for retail check cashing carry out the legislative objective of consumer protection embodied in the provisions of Section 372 of the Banking Law that require a schedule of the fees and charges permitted under that section to be conspicuously and continuously posted in every licensed location.

3. Needs and benefits:

While the Banking Department has had the authority to regulate check cashers under Article 9-A of the Banking Law, an interpretive policy dating back to the initial regulation of check cashers in 1944 applied such regulation only to the cashing of checks for payees that are natural persons (that is, retail or consumer check cashing). However, the Attorney General recently issued a formal opinion (#2004-F5) that commercial check cashers are subject to licensing and regulation under Article 9-A of the Banking Law. At about the same time, a grand jury impaneled by the New York County Supreme Court issued a report calling on the Legislature to ensure that commercial check cashers are subject to licensing and regulation.

In response to these developments, Chapter 432 of the Laws of 2004, which was approved on September 14, 2004, amended the Banking Law in relation to the cashing of checks for payees who are other than natural

persons. The new legislation provides for the regulation of the business of check cashing by the Banking Department, whether performed for customers who are natural persons or business entities.

The changes to Part 400 all implement, or conform to the regulations of the Banking Department to, specific changes made by the Legislature in Chapter 432, except for certain of the amendments to Part 400.6, which incorporate the provisions of an existing emergency regulation amending the signage requirements of Part 400.6 (BNK-38-04-00001-E). Specifically:

Amendments to Section 400.1(a) make it clear that the requirement that any person engaging in the business of check cashing must first obtain a license from the Superintendent applies whether such activities are conducted for customers who are natural persons or for any business or entity.

New Section 400.1(g) relates to the requirement in Banking Law Section 369 that no license shall be issued for a location which is closer than three tenths of a mile from an existing licensee. Chapter 432 amended Section 369 to make it clear that the Superintendent may permit a location to be licensed which is closer than three tenths of a mile from an existing licensee, so long as the newly licensed location is a “restricted location” as described in subsection 1 of Section 369 of the Banking Law—that is, a location which is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons.

New Section 400.1(g) makes it clear that this exemption will not be affected by a change of control of such restricted location, provided that the licensee continues to engage only in commercial check cashing.

Amendments to Section 400.6(a)(1) deal with the requirement that licensees post a schedule of rates. These amendments make it clear that the signage requirement applies only to retail check cashers, and that the posted rate schedule need only cover transactions involving payees that are natural persons.

The amendments to Part 400.6 also incorporate the provisions of a current emergency regulation amending that section. Previously adopted amendments to Part 400.12 of the Superintendent’s Regulations increased the maximum fee that licensed check cashers may charge and provide for an annual fee adjustment thereafter based on the increase in the consumer price index for the New York metropolitan area, if any. As a result of the amendments to Part 400.12, licensed check cashers need to revise their posted schedules of fees and charges.

In addition to amending the disclosure of the amount of the check cashing fee, the amendment changes the structure of the disclosure to provide more useful information. Previously under Part 400.6, the signage was required to disclose the fee charged in five cent increments. As a result, the corresponding check amounts were often atypical amounts. Under the amendment to Part 400.6, the disclosure will be governed by the amount of the check and the corresponding check cashing fee set forth on the signage according to the amount of the check in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule will also indicate the percentage charge imposed on all checks and the \$1.00 minimum.

Moreover, since the fee may change in the future due to increases in the Consumer Price Index, the amendment allows signs to be made of durable material instead of specifying that the signs must be made of plastic or metal.

Chapter 432 amended Section 372(1) of the Banking Law to make it clear that while the Superintendent shall establish the maximum fees which may be charged by licensees for cashing checks, such maximum fees shall not apply to the cashing of checks for payees that are other than natural persons. The amendments to Part 400.12 provide for a comparable exception in the relevant regulation.

In addition to the foregoing, the amendments revise Part 400.1(a) and (b) and Part 400.15 to update references to the location of the New York City office of the Department.

4. Costs:

Except as noted below, the amendments to Part 400 of the Superintendent’s Regulations are not projected to impose any costs on regulated persons or the state government.

As noted in “Needs and Benefits” above, licensed check cashers will be required periodically to revise their posted schedule of fees and charges as a consequence of previously adopted amendments to Part 400.12. No additional costs will be incurred in complying with the requirement that the new signs reflect the new disclosure structure. Indeed, the new regulations may reduce the costs of compliance by specifying only that the signs be made of a durable material, rather than requiring that they be made of plastic or metal.

5. Local government mandates:

The 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:

Under Chapter 432 of the Laws of 2004, the existing licensing and regulatory requirements in Article 9-A apply to commercial check cashers, except insofar as they are specifically exempted. These requirements include certain reporting and examination requirements applicable to all check cashers. In addition, Chapter 432 added a new subsection (7) to Section 372 of the Banking Law, requiring a licensee to submit to the Superintendent a copy of any suspicious activity reports or currency transactions reports as are required to be submitted to the federal authorities.

7. Duplication:

The rule making will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments. While Chapter 432 of the Laws of 2004 added a new subsection (7) to Section 372 of the Banking Law, requiring a licensee to submit to the Superintendent a copy of any suspicious activity report or currency transactions report that is required to be submitted to the federal authorities, a licensee may submit a copy of the report filed with the federal authorities in satisfaction of this requirement.

8. Alternative approaches:

Except as noted with respect to certain of the changes in Part 400.6, the changes in Part 400 are necessary to conform the regulations to the changes in the Banking Law effected by Chapter 432 of the Laws of 2004. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative. The Banking Department did communicate with the commercial check cashing industry during the process of making recommendations during the legislative process leading to the adoption of Chapter 432.

Consideration was given to leaving the retail check cashing signage provisions Part 400.6 unchanged. However, as the schedule of permissible fees has changed, failing to require changes in the signage would result in inaccurate fee disclosure. Moreover, as noted in "Needs and Benefits" above, it was determined that the need for licensed check cashers to make signage changes to reflect the new fee schedule imposed by the previously adopted amendments to Part 400.12 meant that simultaneously promulgating the changes in the signage requirements contained in the proposed amendments to Part 400.6 would provide an opportunity to improve the quality of disclosure to customers and provide greater flexibility in signage materials without imposing additional costs on licensed entities.

9. Federal standards:

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendments to Part 400 of the Superintendent's Regulations. The federal government does not license or regulate check cashers.

10. Compliance schedule:

The amendments to Part 400 reflect changes to the Banking Law effected by Chapter 432 of the Laws of 2004. Section 6 of that Chapter contains certain transitional provisions for the licensing of commercial check cashers. Except as therein provided, check cashers are currently required to comply with the statutory changes, which have already come into effect.

Regulatory Flexibility Analysis

1. Effect of Rule:

The amendments to Part 400 all implement the legislative determination, embodied in Chapter 432 of the Laws of 2004, that commercial check cashers, as well as retail check cashers, shall be subject to licensing and regulation.

The amendments make it clear that the existing regulatory requirements applicable to retail check cashers are generally also applicable to commercial check cashers. The amendments also reflect the statutory intent to modify the regulatory scheme applicable to retail check cashers to accommodate certain unique aspects of commercial check cashing.

Commercial check cashers service small business entities and are themselves small businesses. Customers of commercial check cashers typically are such small business entities as construction sub contractors, food and sundry suppliers, and garment industry vendors that receive payment in check for goods and services. These businesses many times operate on a cash basis, and the commercial check cashers facilitate the conduct of these businesses. This service enables owners of such businesses to forego the use of fixed banking facilities, which may be far removed from their place of business and operations, in order to convert payment checks to cash. There is no basis upon which to make a meaning-

ful estimate of the number of small business entities serviced by commercial check cashers.

With respect to the commercial check cashing entities themselves, there exists no definitive list of such entities, essentially because such businesses have not heretofore been regulated. The most comprehensive list is provided by the Financial Crimes Enforcement Network (FinCEN), a federal regulatory entity within the Department of Treasury dedicated particularly to enforcement of federal anti-money laundering and related criminal statutes. Under the US PATRIOT Act requirements, money service businesses, such as check cashers, whether or not regulated by any federal or state government, must register with FinCEN. A list provided to the Department's Criminal Investigation Bureau shows 245 entities. This number includes numerous markets, pharmacies, and educational facilities in addition to a few entities already licensing as retail check cashers. The commercial and educational entities would not be subject to licensing and regulation under Part 400 if they cash checks incidental to their businesses and for a fee not exceeding \$1 per check. (It is noted, however, that if such retail vendors are engaging in commercial check cashers with supplier vendors that service these industries, and the activity is more than incidental and the fees charged in excess of the exempted maximum fee of \$1, these retail entities may be potentially subject to licensing by the Department.) Removing these entities from the FINCEN list leaves approximately 120 entities that indicate either by name they are engaged in check cashing or for which no description of the business activity is provided. (In certain instances, these entities may be payment agents for billers and would be exempt from the licensing requirements pursuant to Article 9-A.)

Based upon Department's experience from licensing retail check cashers, it may be assumed these commercial check cashing entities are virtually all small businesses, constituted as sole proprietorships, partnerships, Chapter S corporations or limited liability companies or partnerships. The Department does not believe any of these entities are publicly traded corporations.

In addition to this relatively identifiable universe, it is noted that historically in many instances commercial check cashers have not dealt directly with commercial customers, but rather operated through agents or series of agents. These agents engage in intermediate check cashing, taking checks from commercial entities in exchange for the face amounts minus a fee, subsequently aggregating the checks, and ultimately cashing the checks with a commercial check casher that deposits the checks in a bank account. At that moment, the checks first enter the formal bank payment and clearance process. How many of these agents exist is unknown and cannot be meaningfully estimated at this time. However, the Department assumes all such agents would be small businesses. Under the statutory requirements, these agents would either need to be licensed as check cashers or be employed by a licensed check casher.

The regulatory scheme set forth in the amendments to Part 400 will impose a burden upon commercial check cashers, since these entities have heretofore not been subject to licensing and regulation. However, these amendments all implement, or conform the regulations to, specific changes made by the Legislature in Chapter 432. Retail check cashers already operate under this same basic regulatory scheme, and the statutory amendments made by Chapter 432 included provisions intended to accommodate unique aspects of commercial check cashing.

Certain of the amendments to Part 400 also apply to retail check cashers, including the signage amendments in Part 400.6. However, these amendments will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on such entities. Indeed, by improving the structure of the required disclosures and providing additional flexibility regarding signage materials, these amendments provide an economic benefit and reduce regulatory burden.

The amendments to Part 400 will not impose any adverse economic impact, or reporting, recordkeeping or other compliance requirements on local governments.

2. Compliance Requirements:

As noted above, under the amendments to Part 400, commercial check cashers will be subject to the same licensing and regulation as retail check cashers, except insofar as modifications in the regulatory scheme set forth in Chapter 432 are reflected in the Part 400 amendments. The compliance requirements thus imposed on commercial check cashers are entirely new.

3. Professional Services:

Part 400 imposes extensive reporting and recordkeeping requirements upon check cashers. Commercial check cashers may need to obtain increased services from accountants, attorneys and data processing entities in order to meet these requirements.

4. Compliance Costs:

Since the compliance requirements imposed on commercial check cashers are entirely new, such commercial check cashers will experience increased compliance costs. The amount of such costs will depend on the ease with which the existing business operations and recordkeeping systems of each entity can be adapted to meeting the operational, recordkeeping and reporting requirements imposed by Article 9-A and Part 400. The amount of such costs cannot be estimated per entity or in the aggregate.

5. Economic and Technological Feasibility:

Commercial check cashers presumably have in place a business operational infrastructure that includes an electronic data processing and recordkeeping capability sufficient to meet federal and state tax reporting requirements as well as US PATRIOT Act requirements. Thus, while compliance with the Part 400 regulatory scheme may require some modification of existing programs in order to meet the reporting and recordkeeping requirements, compliance is expected to be technologically and economically feasible.

6. Minimizing Adverse Impact:

To the extent the amendments to Part 400 modify the current regulatory scheme, these modifications are made in recognition of certain peculiar operational characteristics of commercial checking that are not pertinent to retail check cashing or, in the case of the signage amendments to Part 400.6, do address regulatory standards whose modification is of interest to the retail check cashers.

The amendments affecting commercial check cashers conform Part 400 to the statutory modifications to Article 9-A contained in Chapter 432. The statutory amendments accomplish the following: (i) permits both existing and new commercial check cashing locations that are within 3/10s of a mile of an existing licensed check casher, provided such locations engage only in commercial check cashing; (ii) removes the maximum fee per check limitation upon the cashing of commercial checks, whether the cashing is performed by retail or commercial check cashers; (iii) removes the cap on the amount of a check that may be cashed with respect to commercial checks and increases the cap amount for retail checks from \$6,000 to \$15,000; and (iv) authorizes a temporary license for commercial check cashers upon initial application to permit such cashers to continue to operate as their applications are processed and prior to the issuance of a permanent license. Finally, since Chapter 432 excludes commercial checks from the maximum fee per check limitation, Part 400 is amended to limit the signage requirements relating to fees charged by licensed check cashers only to retail checks.

7. Small Business and Local Government Participation:

The Department had numerous discussions with the Financial Service Centers of New York, Inc., the state check casher trade association, which primarily represents retail but also a certain number of commercial check cashers, during the development of the legislative proposal which became Chapter 432. There is no trade association which represents the commercial cashers as a group. The Department communicated with a number of identified commercial check cashers during the two (?) years in which it was developing the legislative proposal in order to determine how the industry operates. In addition, the Department has been contacted by individual commercial check cashers that were concerned about the potential recommendations of a Grand Jury empanelled by the New York County Supreme Court regarding commercial check cashing and the possible resulting enforced activities by the New York County District Attorney. These commercial check cashers expressed an interest in obtaining regulation by the Department.

Because of the need to impose the regulatory regime upon commercial check cashers immediately, the Department adopted the amendments to Part 400 as an emergency rule. The Department expects that the experience of check cashers under the emergency rule may lead to further input from the commercial check cashing industry during the rule making process.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted. The amendments to Part 400 will impose no additional regulatory requirements upon public entities in rural communities.

Upon an examination of the addresses of the commercial check cashing entities culled from the FinCEN list, it appears all such entities are located in either large metropolitan areas or small cities of this state. Based on the experience of the Department in licensing and regulating retail check cashers, in virtually all cases they operate in the same types of urban areas. Therefore, it is anticipated that the emergency rule will not impose any additional regulatory requirements upon private entities in rural communities.

Job Impact Statement

A job impact statement is not submitted. The imposition of the regulatory regime for licensed check cashers upon currently non-regulated commercial check cashers can be expected to cause changes in the business operations of such cashers and this may affect employment within the industry. However, it is impossible to estimate the number of potential licensed commercial check cashers at this time, and therefore the size of the work force in this industry. Consequently, there is no way to meaningfully estimate the effect of any changes in business operations on employment within the industry.

A case in point is the “agent” population, discussed Section 1 of the Regulatory Flexibility Analysis relating to these amendments. The Department has no data at this time as to how many individuals are engaged in this intermediate check cashing activity between commercial customers and commercial check cashers. Under the amendments to Part 400, all such persons would either need to be licensed as check cashers or be employed by a licensed check casher. The extent to which such requirements may adversely affect the size of the agent population cannot be meaningfully estimated.

With respect to existing licensed retail check cashers, the proposed regulations should be economically beneficial and may induce business expansion and job growth.

**EMERGENCY
RULE MAKING**

Regulations Governing Credit Unions

I.D. No. BNK-17-05-00006-E
Filing No. 394
Filing date: April 11, 2005
Effective date: April 12, 2005

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: Regulations governing credit unions.

Purpose: 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:

PART 95
 BORROWINGS BY CREDIT UNIONS
 (Statutory Authority: Banking Law Section 454(9))
 Section 95.2 is REPEALED.

PART 96
 LENDING LIMITS FOR CREDIT UNIONS
 (Statutory authority: Banking Law Section 454(6))
 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.*

(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 unsecured 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.

PART 97
 INVESTMENTS IN CREDIT UNION ORGANIZATIONS
 (Statutory authority: Banking Law Section 454(19))

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

INVESTMENTS BY CREDIT UNIONS IN THE SHARES OF CENTRAL UNIONS LOCATED IN THIS STATE
(Statutory authority: Banking Law Section 454(8))

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.

326.3 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, this section shall be deemed to define net worth as set forth in such section.

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 July 9, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Sam Abram, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1658, 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:

Chapter 679 of the Laws of 2003, which was approved on October 15, 2003, amended the Banking Law in relation to the powers, limitations and operations of credit unions. The purpose of the legislation was to provide state-chartered credit unions with powers comparable to and competitive with federally-chartered credit unions.

The proposed changes all implement, or conform the regulations of the Banking Department to, specific changes made by the Legislature in Chapter 679, except for the proposed adoption of new Superintendent's Regulation Part 327, which addresses safety and soundness concerns which may arise from the repeal of Part 113 of the General Regulations of the Banking Board. Specifically:

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. This part replaces the current requirement that credit unions maintain a surplus account with a requirement that credit

unions maintain a net worth reserve account in the same form as is 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. While the notice is required to be in writing, 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 and 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:

As discussed in detail below, the changes in the regulations are necessary to conform the regulations to changes in the Banking Law. Although, in general, these changes are the result of changes in the law, the Banking Department did communicate its plans to the credit union industry, which is supportive of the changes.

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. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

The amendment to Section 96.1 of the General Regulations of the Banking Board implements the repeal of Section 458 of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

The amendment to Section 96.3 of the General Regulations of the Banking Board updates certain statutory cross-references. One alternative would be to take no action; however failing to provide the proper statutory cross-references was not considered to be a viable alternative.

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. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

New Superintendent's Regulation Part 326 implements new Section 458-a of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

The repeal of Part 113 of the General Regulations of the Banking Board conforms the regulations to Section 454(4) and 456(7) of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

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. 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 the 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.

10. Compliance schedule:

The proposed amendments reflect changes to the Banking Law effected by Chapter 679 of the Laws of 2003. Credit unions are currently required to comply with the statutory changes, most of which have already come into effect.

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 re-

quires 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, record keeping 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, record keeping 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, recordkeeping 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 Part 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.

NOTICE OF ADOPTION

Regulations Governing Lending by Credit Unions

I.D. No. BNK-51-04-00009-A

Filing No. 396

Filing date: April 12, 2005

Effective date: April 27, 2005

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

Action taken: Amendment of section 96.6 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 454 and 454(6)

Subject: Change in the regulations governing lending by credit unions.

Purpose: To permit a credit union to make loans to a single member exceeding \$1,000,000 with the prior approval of the superintendent.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-51-04-00009-P, Issue of December 22, 2004.

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

Text of 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) 709-1658, e-mail: sam.abram@banking.state.ny.us

Assessment of Public Comment

The Department received three comments regarding the proposed amendment. Two of the comments came from New York State chartered credit unions and the other came from a trade association for credit unions in New York.

All three commenters supported the proposed amendment. The New York State chartered credit unions noted that the present limit of \$1,000,000 on loans to a single member has significantly restricted their ability to serve their members. The commenters noted that elimination of the \$1,000,000 cap will bring New York State chartered credit unions closer to parity with federally chartered credit unions and other financial institutions, whose lending limits are based only on a percentage of their capital. By enhancing the viability of the state charter for credit unions, this will help preserve the dual chartering system in New York.

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

Streamlined Forms and Procedures for Certain Branch, Public Accommodation Office and Electronic Facilities Applications

I.D. No. BNK-17-05-00005-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 Part 73; Supervisory Policies G 4 and G 6; and Supervisory Procedures G 104, G 105, G 108, CB 103, SB 101 and SL 101 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 9-d, 14[1], 28, 29, 105-a, 195, 240-a and 396-a; and Executive Law, section 296-a

Subject: Streamlined forms and procedures for certain branch, public accommodation office and electronic facilities applications.

Purpose: To provide an expedited branch application process for well-rated institutions; to provide simplified application forms; to eliminate outdated or unnecessary informational requirements; and to establish more consistent applications requirements for different types of banking institutions.

Substance of proposed rule: Summary of proposed amendments to Part 73 of the General Regulations of the Banking Board and to Supervisory Policies G 4, G 6 and Supervisory Procedures G 104, G 105, G 108, CB 103, SB 101, and SL 101.

Branches of Banks, Trust Companies, Savings Banks, and Savings and Loan Associations

Supervisory Procedures CB 103 (Application for Commercial Bank Branch Offices), SB 101 (Application for Savings Bank Branch Offices) and SL 101 (Application for Savings and Loan Association Branch Offices) are amended to streamline and reduce the informational requirements for all branch applicants. They are also amended to provide for either an expedited or a standard application process.

Institutions eligible for the expedited process would not need to submit certain of the documents required under the standard process, such as financial projections and a copy of the lease for the proposed branch premises. The Department will seek to reach a determination on applications utilizing the expedited process within 21 days from the date on which receipt of the application is posted in the Department's Weekly Bulletin.

An institution would be eligible for the expedited process if it satisfied all of the following criteria:

- (1) Has a composite CAMELS rating of "1" or "2";
- (2) Has at least a satisfactory ("2") rating for management;
- (3) Is well capitalized in accordance with applicable Federal standards;
- (4) Has a CRA rating of "Satisfactory" or better; and
- (5) Has no major unresolved supervisory issues outstanding (as determined by the Banking Department in its discretion).

In addition, CB 103 is amended to provide that application requirements are set forth by the Superintendent. Specific reference to a "Certificate of Merit" has been removed, along with the requirement of a Board of Directors resolution authorizing the application. A new application form has been developed, eliminating the need for applicants to provide most information in written narrative form. The amendments make it clear that an applicant may provide the required information by submitting a federal

or uniform state application, with appropriate cross-references and supplementation where necessary.

The amendments to CB 103 also eliminate the provision for "immediate neighborhood" applications, as this is an outdated concept which is no longer used. The sections on limited purpose branches and branches in foreign countries have been deleted, as these areas are covered in the branch application instructions. A reference to application forms being available on the Department's website has been added.

SB 101 and SL 101 are revised to essentially mirror CB 103.

The amendments to Supervisory Policy G 6 (Branching Policy for Banking Organizations) conform the regulation to the Banking Law and eliminate outdated references.

The amendments to Supervisory Procedure G 108 (Evidence of Compliance With Executive Law, Section 296-a) conform that regulation to the law by removing references to branch and public accommodation office applications. A statutory finding of public convenience and advantage is no longer required to be made for the establishment of such offices, and applicants therefore should no longer be required to submit the documentation called for by G 108.

Public Accommodation Offices

A public accommodation office is a location established within a short distance of a branch of a bank, trust company, savings bank or savings and loan association at which is conducted activity adjunct to the branch's activity. The amendments conform the regulations relating to public accommodation offices to the changes in the branch procedures and to make the application simpler, primarily through the use of a newly developed application form which will be available on the Department's website.

The title of Supervisory Policy G 4 (Public Accommodation Offices, Adjoining Facilities and Adjacent Facilities) has been revised to make it clear that the policy covers three types of banking facilities. The policy sets forth the [Banking Board's] [Superintendent's] policy on the establishment of public accommodation offices and references the application process in Banking Law Article IV-A. The amendments reduce the prior notice period from 60 days to 30 days for those public accommodation offices that are adjacent to an institution's principal or branch office.

The revisions to Supervisory Procedure G 104 (Application for Public Accommodation Office) change outdated references and eliminate the need for certain supporting information. The amended procedure provides that application requirements are set forth by the Superintendent. A reference to the newly developed application forms being available on the Department's website has been added.

Changes of Location

Supervisory Procedure G 105 (Application for a Change of Location or a Change of Designation of Principal Office) has been streamlined to eliminate the requirement for certain supporting information and to add required statements regarding security measures and service levels at the new location. The amendments will also permit applicants to use a newly developed form in lieu of submitting the required information as a written narrative.

The amendment also clarifies the requirement that banks, trust companies, savings banks, and savings and loan associations give 90 days' prior notice to customers when relocating outside the immediate neighborhood of the present office.

Electronic Facilities

An electronic facility is an automated teller machine, point-of-sale terminal or similar facility at which banking business may be conducted. The amendments to General Regulations of the Banking Board Part 73 (Electronic Facilities) allow institutions with a "satisfactory" or better CRA rating to give after-the-fact written notice to the Superintendent of their intent to establish or share an electronic facility. All other banking institutions must provide prior notice. In addition, the amendments eliminate the requirement to submit the following items as part of a notice: a board resolution approving the establishment of the facility, information on the cost of establishing and operating the facility, the names of any initial sharing institutions and a description of the activities to be conducted. Instead, the amendments add a requirement that the notice contain any additional information which the Department may require. The amendments also make it clear that automated teller machines must comply with the security measures and reporting requirements set forth in Article II-AA of the Banking Law and Part 301 of the Superintendent's regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Sam Abram, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

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

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

Consensus Rule Making Determination

The Department has determined that no person is likely to object to the proposed amendments to Part 73 of the General Regulations of the Banking Board, Supervisory Policies G 4 and G 6, or Supervisory Procedures G 104, G 105, G 108, CB 103, SB 101 and SL 101. The amendments will provide an expedited branch application process for well-rated institutions, will provide simplified application forms, eliminate outdated or unnecessary informational requirements and will establish more consistent applications requirements among the different types of banking institutions, to the extent possible. The amendments will also lessen the burden on institutions when submitting certain branch, public accommodations office and electronic facilities applications.

Job Impact Statement

The purpose of the proposed amendments to Part 73 of the General Regulations of the Banking Board and to Supervisory Policies G 4 and G 6, and Supervisory Procedures G 104, G 105, G 108, CB 103, SB 101 and SL 101 is to provide an expedited branch application process for well-rated institutions, to provide simplified application forms, to eliminate outdated or unnecessary informational requirements and to establish more consistent applications requirements among the different types of banking institutions, to the extent possible.

Accordingly, a job impact statement is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Education Department

EMERGENCY RULE MAKING

Homeless Children

I.D. No. EDU-05-05-00013-E

Filing No. 399

Filing date: April 12, 2005

Effective date: April 12, 2005

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

Action taken: Amendment of Parts 275 and 276 and section 100.2(x) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 310 (not subdivided), 311 (not subdivided), 3202(1) and (8), 3209(7) and 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub.L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies the procedures for appeals to the Commissioner of Education pursuant to Education Law section 310, that concern a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

The proposed amendment was adopted at the January 10-11, 2005 Regents meeting, as an emergency measure effective January 18, 2005, to conform the Commissioner's Regulations regarding the procedures for appeals involving homeless children that are brought pursuant to Education Law section 310 to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110], and thereby ensure the rights of homeless individuals consistent with Federal statutes and ensure compliance with requirements for receipt of Federal

funds. A Notice of Emergency Adoption and Proposed Rule Making was published in the *State Register* on February 2, 2005.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their May 16-17, 2005 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act. Pursuant to SAPA section 202(5), the permanent adoption cannot become effective until after its publication in the *State Register* on June 8, 2005. However, the January emergency adoption will expire on April 17, 2005, 90 days after its filing with the Department of State on January 18, 2005. A second emergency adoption is therefore necessary to ensure that the rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Appeals involving homeless children.

Purpose: To modify the procedures concerning appeals involving homeless children and conform the commissioner's regulations to the Federal McKinney-Vento Homeless Education Assistance Act.

Substance of emergency rule: The State Education Department proposes to amend Parts 275 and 276 and section 100.2(x) of the Regulations of the Commissioner of Education, effective April 12, 2005, regarding procedures for appeals to the Commissioner of Education pursuant to Education Law section 310, that concern a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x). The following is a summary of the substantive provisions of the proposed rule.

Section 275.3 is amended to provide that if the petitioner is a parent or guardian of a homeless child or youth or unaccompanied youth as defined in 8 NYCRR section 100.2(x) and if such petitioner submits a form petition prescribed by the commissioner, the pleadings shall be legible but shall not be required to be submitted in typewritten form.

Section 275.4 is amended to provide that if the petitioner is the parent or guardian of a homeless child or youth or unaccompanied youth, the petitioner may, in lieu of endorsing the pleadings with petitioner's name, post office address and telephone number, endorse all pleadings and appeal papers with the name, post office address and telephone number of the local educational liaison for homeless children and youth.

Section 275.5 is amended to provide that the parent or guardian of a homeless child or youth or unaccompanied youth, in lieu of verifying the pleadings, may include a signed statement in the pleading indicating that based on information and belief the information contained in the pleading is true to the best of his/her knowledge and an acknowledgment that to knowingly offer a false instrument for filing is a violation of Offering a False Instrument for Filing in the 2nd Degree, a Class A Misdemeanor, pursuant to Penal Law section 175.30.

Section 275.7 is amended to provide that, in lieu of an affidavit, a parent or guardian of a homeless child or youth may provide a signed statement that the information contained in the pleading is true to the best of his/her knowledge and an acknowledgment that to knowingly offer a false instrument for filing is a violation of Penal Law section 175.10.

Section 275.8 is amended to establish criteria for the alternative service of pleadings in appeals regarding the education of a homeless child or youth, including provisions for service upon the local educational agency liaison for homeless children and youth on behalf of a school district, officer and/or employee named as a party.

Section 275.9 is amended to establish filing criteria for appeals regarding the education of homeless children or youth, and to specify that no fee shall be required in appeals regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 275.13 is amended to establish alternative criteria for the service of the answer and supporting papers in an appeal regarding the education of a homeless child or youth.

Section 275.14 is amended to establish criteria for the service of a reply in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x), including a provision that the reply shall be served in the manner set forth in section 275.8(b) or (e).

Section 276.3 is amended to provide that the petitioner in an appeal regarding the education of a homeless child or youth may elect to provide notice of an application for an extension of time to reply to an answer by delivering a written application, postmarked not later than five days prior to the date on which the time to reply will expire, to the local educational agency liaison for homeless children and youth, who shall mail the application to all parties and the State Education Department's Office of Counsel.

Section 276.4 is amended to establish alternative criteria for the service of petitioner's memorandum of law.

Section 276.5 is amended to establish alternative criteria for the service of additional affidavits, exhibits and other supporting papers.

Section 276.7 is amended to provide that a copy of the Commissioner's decision shall also be forwarded to the local educational liaison for homeless children or youth in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 276.8 is amended to establish criteria for the service of an application to reopen a prior Commissioner's decision in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 100.2(x)(7)(iv) is relettered (ii) and a new clause (c) is added to require school districts, as part of the dispute resolution process for homeless children and youth, to delay for thirty days the implementation of a final determination to decline to either enroll in and/or transport a homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty days of the final determination, the child or youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

Section 100.2(x)(7)(v) is relettered (iii) and clause (c) is added to prescribe the duties of the local educational agency liaison to assist the parent or guardian of a homeless child or youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation, including: providing a form petition; assisting in the completion of the form petition; arranging for copying of the form petition, without cost; accepting service of the form petition; providing a signed and dated acknowledgment verifying receipt of the form petition; and transmitting the form petition and other pleadings to the State Education Department's Office of Counsel; accepting service of subsequent pleadings or papers, including any appeal correspondence, if the parent or guardian so elects. The school district shall ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-05-05-00013-EP, Issue of February 2, 2005. The emergency rule will expire June 10, 2005.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

Education Law section 215 provides the Commissioner with authority to require schools to submit reports containing such information as the Commissioner may prescribe.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 310 provides that an aggrieved party may appeal by petition to the Commissioner of Education in consequence of certain specified actions by school districts and school officials.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals to the Commissioner brought pursuant to Education Law section 310.

Education Law section 3202(1) specifies the school district of residence as the school district in which children residing in New York State are entitled to attend school without the payment of tuition. That section is

intended to assure that each child residing within the State is able to attend school on a tuition-free basis in accordance with Article XI, section 1 of the New York State Constitution. Moreover, it is the policy of the Legislature, as expressed in Education Law section 3205(1) to require instruction for each child of compulsory school age within the State.

Education Law section 3202(8) establishes the right of homeless children whose families are placed in temporary housing by a local social services district or runaway and homeless youth housed in a residential program for runaway and homeless youth to designate either the school district of last attendance or the school district of current location as the school district such children or youth will attend. Paragraph (a) of subdivision (8) specifically authorizes and requires the Commissioner to adopt regulations defining the terms "homeless child," "runaway youth," and "school district of last attendance" for the purposes of the statute, and otherwise implementing the provisions of the statute.

Education Law section 3209 sets forth requirements for the education of homeless children. Subdivision (7) of section 3209 authorizes the Commissioner to promulgate regulations to carry out the provisions of the statute.

Education Law section 3713(1) and (2) authorizes the State and school districts to accept Federal law making appropriations for educational purposes and authorizes the Commissioner to cooperate with Federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes to regulate the practice and procedures to be followed in Education Law section appeals, and is necessary to ensure State compliance with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. Law 107-110]. The proposed amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310 to ensure the rights of homeless individuals consistent with Federal statutes.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of the McKinney-Vento Act, as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State and local governments are required to comply with the Federal statutes as a condition to its receipt of Federal funding. The proposed amendment will not impose any costs on the State or local governments beyond those imposed by State and Federal statutes. The proposed amendment applies to school districts and does not impose any costs or compliance requirements on private parties.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and Federal statutes. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310 that involve the education of homeless children, to ensure the rights of homeless individuals consistent with Federal statutes. The State and school districts are required to comply with these Federal statutes as a condition to their receipt of Federal funding.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school or origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or

unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

The proposed amendment also requires the local educational agency liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the of a final determination regarding enrollment, school selection and/or transportation.

6. PAPERWORK:

The proposed amendment imposes no additional reporting, forms or other paperwork requirements. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

The proposed amendment also requires the local educational agency liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the Commissioner of a final determination regarding enrollment, school selection and/or transportation including providing and assisting in the completion of a form petition; arranging for the copying of the form petition and supporting documents; accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail; providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents; transmitting the form petition or any pleading or paper to the State Education Department; providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents to the Office of Counsel; and accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects, and making such correspondence available to the parent or guardian or unaccompanied youth.

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and Federal rules or requirements, and is necessary to conform to the Commissioner's Regulations to ensure the State's compliance with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

8. ALTERNATIVES:

There were no significant alternatives. The proposed amendment is necessary to conform to the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the Federal government for the same or similar subject areas. The proposed amendment conforms to the Commissioner's Regulations to ensure the State's compliance with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date. The proposed amendment conforms to the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any compliance requirements beyond those required by State and Federal statutes.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to procedures for appeals involving homeless children that are brought pursuant to Education Law section 310, and does not apply to small businesses since they are not parties to such proceedings. The proposed amendment will not impose any additional reporting, recordkeeping or other compliance requirements on small businesses, nor will it have any adverse economic impact on small businesses. Because it is evident from the nature of the rule that it does not apply to small businesses, no further steps were needed to ascertain that fact and none were taken. Therefore, a regulatory flexibility analysis is not required, and one has not been prepared.

Local Governments:

EFFECT OF PROPOSED RULE :

The proposed amendment is applicable to all public school districts in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform to the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on local governments beyond those imposed by Federal and State statutes.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school or origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

School districts shall require the local educational agency liaison for homeless children and youth to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation by:

- (1) providing the parent or guardian or unaccompanied youth with a form petition prescribed by the Commissioner;
- (2) assisting the parent or guardian or unaccompanied youth in completing the form petition;
- (3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;
- (4) accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;
- (5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days of after the service of the form petition or any pleading or paper to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234;

(7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234; and

(8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent or guardian or unaccompanied youth and making such correspondence available to the parent or guardian or unaccompanied youth;

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

PROFESSIONAL SERVICES:

The proposed amendment will not increase the level of professional services needed by local governments to comply with its requirements.

COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of the McKinney-Vento Act, as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the Federal statutes as a condition to its receipt of Federal funding. The proposed amendment will not impose any costs on school districts beyond those imposed by State and Federal statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on local governments. Economic feasibility is addressed under the compliance costs section above.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on local governments beyond those imposed by Federal and State statutes.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At present 2 school districts and 11 BOCES serve rural areas.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on rural areas beyond those imposed by Federal and State statutes. The proposed amendment will not increase the level of professional services needed to comply with its requirements.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school or origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

School districts shall require the local educational agency liaison for homeless children and youth to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation by:

(1) providing the parent or guardian or unaccompanied youth with a form petition prescribed by the Commissioner;

(2) assisting the parent or guardian or unaccompanied youth in completing the form petition;

(3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;

(4) accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days of after the service of the form petition or any pleading or paper to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234;

(7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234; and

(8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent or guardian or unaccompanied youth and making such correspondence available to the parent or guardian or unaccompanied youth;

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of the McKinney-Vento Act, as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the Federal statutes as a condition to its receipt of Federal funding. The proposed amendment will not impose any costs on school districts beyond those imposed by State and Federal statutes.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed

amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310. The proposed amendment does not impose any additional reporting, record-keeping or other compliance requirements on rural areas beyond those imposed by Federal and State statutes. Because these Federal and State requirements are applicable State-wide, it was not possible to prescribe lesser requirements for rural areas.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to Education Law section 310 appeal procedures involving homeless children and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Homeless Children

I.D. No. EDU-05-05-00013-RP

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

Revised action: Amendment of Parts 275 and 276 and section 100.2(x) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 310 (not subdivided), 311 (not subdivided), 3202(1) and (8), 3209(7) and 3713(1) and (2)

Subject: Appeals involving homeless children.

Purpose: To modify the procedures concerning appeals involving homeless children and conform the commissioner's regulations to the Federal McKinney-Vento Homeless Education Assistance Act.

Substance of revised rule: The State Education Department proposes to amend Parts 275 and 276 and section 100.2(x) of the Regulations of the Commissioner of Education, effective July 14, 2005, regarding procedures for appeals to the Commissioner of Education pursuant to Education Law section 310, that concern a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x). The proposed rule was published in the State Register on February 2, 2005 and has been revised in response to public comment. The following is a summary of the substantive provisions of the revised proposed rule.

Section 275.3 is amended to provide that if the petitioner is a parent or guardian of a homeless child or youth or unaccompanied youth as defined in 8 NYCRR section 100.2(x) and if such petitioner submits a form petition prescribed by the commissioner, the pleadings shall be legible but shall not be required to be submitted in typewritten form.

Section 275.4 is amended to provide that if the petitioner is the parent or guardian of a homeless child or youth or unaccompanied youth, the petitioner may, in lieu of endorsing the pleadings with petitioner's name, post office address and telephone number, endorse all pleadings and appeal papers with the name, post office address and telephone number of the local educational liaison for homeless children and youth.

Section 275.5 is amended to provide that the parent or guardian of a homeless child or youth or unaccompanied youth, in lieu of verifying the pleadings, may include a signed statement in the pleading indicating that based on information and belief the information contained in the pleading is true to the best of his/her knowledge and an acknowledgment that to knowingly offer a false instrument for filing is a violation of Offering a False Instrument for Filing in the 2nd Degree, a Class A Misdemeanor, pursuant to Penal Law section 175.30.

Section 275.7 is amended to provide that, in lieu of an affidavit, a parent or guardian of a homeless child or youth may provide a signed statement that the information contained in the pleading is true to the best of his/her knowledge and an acknowledgment that to knowingly offer a false instrument for filing is a violation of Penal Law section 175.10.

Section 275.8 is amended to establish criteria for the alternative service of pleadings in appeals regarding the education of a homeless child or youth, including provisions for service upon the local educational agency liaison for homeless children and youth on behalf of a school district, officer and/or employee named as a party.

Section 275.9 is amended to establish filing criteria for appeals regarding the education of homeless children or youth, and to specify that no fee shall be required in appeals regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 275.13 is amended to establish alternative criteria for the service of the answer and supporting papers in an appeal regarding the education of a homeless child or youth.

Section 275.14 is amended to establish criteria for the service of a reply in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x), including a provision that the reply shall be served in the manner set forth in section 275.8(b) or (e).

Section 276.3 is amended to provide that the petitioner in an appeal regarding the education of a homeless child or youth may elect to provide notice of an application for an extension of time to reply to an answer by delivering a written application, postmarked not later than five days prior to the date on which the time to reply will expire, to the local educational agency liaison for homeless children and youth, who shall mail the application to all parties and the State Education Department's Office of Counsel.

Section 276.4 is amended to establish alternative criteria for the service of petitioner's memorandum of law.

Section 276.5 is amended to establish alternative criteria for the service of additional affidavits, exhibits and other supporting papers. Section 276.5(b) has been revised to provide for alternative service of affidavits, exhibits and other supporting materials in accordance with section 275.8(e), in addition to section 275.8(b) and section 275.13(b).

Section 276.7 is amended to provide that a copy of the Commissioner's decision shall also be forwarded to the local educational liaison for homeless children or youth in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 276.8 is amended to establish criteria for the service of an application to reopen a prior Commissioner's decision in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 100.2(x)(7)(iv) is relettered (ii) and a new clause (c) is added to require school districts, as part of the dispute resolution process for homeless children and youth, to delay for thirty days the implementation of a final determination to decline to either enroll in and/or transport a homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty days of the final determination, the child or youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application. Section 100.2(x)(7)(ii)(b), as relettered, has been revised to require that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

Section 100.2(x)(7)(v) is relettered (iii) and clause (c) is added to prescribe the duties of the local educational agency liaison to assist the parent or guardian of a homeless child or youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation, including: providing a form petition; assisting in the completion of the form petition; arranging for copying of the form petition, without cost; accepting service of the form petition; providing a signed and dated acknowledgment verifying receipt of the form petition; and transmitting the form petition and other pleadings to the State Education Department's Office of Counsel; accepting service of subsequent pleadings or papers, including any appeal correspondence, if the parent or guardian so elects. The school district shall ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations. Section 100.2(x)(7)(iii)(b), as relettered, has been revised to require that each school district shall ensure that the local educational agency liaison provides an unaccompanied youth with the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

Revised rule compared with proposed rule: Substantial revisions were made in sections: 276.5(b), 100.2(x)(7)(ii)(b) and (iii)(b).

Text of revised proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Education Department, Office of Counsel, Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Kathy A. Ahearn, Chief of Staff and Counsel and Deputy Commissioner for Legal Affairs, Education Department, Education Bldg., Rm. 148, Albany, NY 12234, (518) 474-6400, e-mail: legal@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on February 2, 2005, the proposed rule has been substantially revised in response to public comment as follows:

Section 276.5(b) has been revised to correct an inadvertent omission by providing for alternative service of affidavits, exhibits and other supporting materials in accordance with section 275.8(e), in addition to section 275.8(b) and section 275.13(b).

Section 100.2(x)(7)(ii)(b) has been revised to require that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation. This will ensure that parents and guardians will be able to contact the local educational liaison for assistance in appealing a school district's final determination.

Section 100.2(x)(7)(iii)(b) has been revised to require that each school district shall ensure that the local educational agency liaison provides an unaccompanied youth with the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation. This will ensure that unaccompanied youths will be able to obtain the assistance of the local educational liaison in appealing a school district's final determination.

Nonsubstantial revisions were also made in section 100.2(x)(7)(iii)(c)(4), (5) and (6) to correct grammatical and typographical errors.

The above revisions to the proposed rule require that the Local Government Mandates and Paperwork sections of the previously published Regulatory Impact Statement be revised as follows:

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and Federal statutes. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310 that involve the education of homeless children, to ensure the rights of homeless individuals consistent with Federal statutes. The State and school districts are required to comply with these Federal statutes as a condition to their receipt of Federal funding.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

The proposed amendment also requires the local educational agency liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

School districts shall ensure that the local educational agency liaison provides an unaccompanied youth with the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

6. PAPERWORK:

The proposed amendment imposes no additional reporting, forms or other paperwork requirements. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

The written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

The proposed amendment also requires the local educational agency liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the Commissioner of a final determination regarding enrollment, school selection and/or transportation including providing and assisting in the completion of a form petition; arranging for the copying of the form petition and supporting documents; accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail; providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents; transmitting the form petition or any pleading or paper to the State Education Department; providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents to the Office of Counsel; and accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects, and making such correspondence available to the parent or guardian or unaccompanied youth.

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on February 2, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement.

The revisions to the proposed rule require that the Compliance Requirements section of the previously published Regulatory Flexibility Analysis be revised as follows:

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on local governments beyond those imposed by Federal and State statutes.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursu-

ant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

The written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

School districts shall require the local educational agency liaison for homeless children and youth to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation by:

(1) providing the parent or guardian or unaccompanied youth with a form petition prescribed by the Commissioner;

(2) assisting the parent or guardian or unaccompanied youth in completing the form petition;

(3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;

(4) accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days of after the service of the form petition or any pleading or paper to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234;

(7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234; and

(8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent or guardian or unaccompanied youth;

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on February 2, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement.

The revisions to the proposed rule require that the Reporting, Record-keeping and other Compliance Requirements; and Professional Services section of the previously published Rural Area Flexibility Analysis be revised as follows:

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

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal

No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on rural areas beyond those imposed by Federal and State statutes. The proposed amendment will not increase the level of professional services needed to comply with its requirements.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school or origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

The written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

School districts shall require the local educational agency liaison for homeless children and youth to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation by:

(1) providing the parent or guardian or unaccompanied youth with a form petition prescribed by the Commissioner;

(2) assisting the parent or guardian or unaccompanied youth in completing the form petition;

(3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;

(4) accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days of after the service of the form petition or any pleading or paper to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234;

(7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234; and

(8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent

or guardian or unaccompanied youth and making such correspondence available to the parent or guardian or unaccompanied youth;

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on February 2, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement.

The proposed amendment, as so revised, relates to Education Law section 310 appeal procedures involving homeless children and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the revised rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on February 2, 2005, the State Education Department received the following public comment:

1. COMMENT:

To better ensure that parents, guardians, and unaccompanied youth experiencing homelessness are able to contact the local educational agency (LEA) liaison to request assistance with an appeal, section 275.3 should be revised to require school districts to include the name, address, and telephone number of the LEA liaison on the form petitions.

DEPARTMENT RESPONSE:

Placing information regarding a specific LEA liaison on a form petition runs the risk of having such information become outdated if the person assigned as liaison leaves such position or changes his or her address or telephone number, and school districts would face additional expense to reprint and distribute petitions with updated information. The Department believes that the intent of the comment may be satisfactorily addressed by revising section 100.2(x)(7)(ii)(b) of the proposed rule to require that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the LEA liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation. The proposed rule has been revised accordingly. In addition, section 100.2(x)(7)(iii)(b) has been revised to require that school districts ensure that the LEA liaison provides the form petition to unaccompanied youths.

2. COMMENT:

In addition to requiring that the petition forms be made available at the LEA liaison's office, the regulations should also require that the forms be available in all schools, district offices, locations where families apply for shelter, places where they receive shelter, and programs serving homeless and runaway youth. Since many parents, guardians, and unaccompanied youth never have contact with the LEA liaisons or are unaware that there is an LEA liaison, it is imperative that the form petitions be distributed more widely.

DEPARTMENT RESPONSE:

The Department believes that the proposed change is unnecessary and could be detrimental. Pursuant to amended 8 NYCRR § 100.2(x)(7)(iii)(c)(1), the LEA liaison is required to provide the homeless parent or guardian or unaccompanied youth with the form petition and assist homeless families and unaccompanied youths at all phases of the appeal process. The Department is concerned that a required wider dissemination of the form petition would undermine the ability of the LEA liaison to assist homeless families and unaccompanied youths with the appeal process by encouraging the filing of appeals without the LEA liaisons' assistance. Without the assistance of the LEA liaisons, it is likely that a number of these appeals will be dismissed on procedural grounds because the homeless families or unaccompanied youths will be unaware of all of the procedural requirements for commencing appeals. The Department believes the intent of this comment can be satisfactorily addressed through the proposed revision of section 100.2(x)(7)(ii)(b), as discussed in the Department's response to Comment #1 above, to require that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the LEA liaison and the form petition for

commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

3. COMMENT:

Part 275.8(e) creates a significant barrier to the delivery of educational services to homeless children and youth by only allowing parents to deliver the pleadings to the LEA liaison. We recommend that the proposed rule be amended to allow parents to deliver or mail the pleadings to the LEA liaison, or deliver the pleadings to the principal or assistant principal at the school where the dispute arose.

DEPARTMENT RESPONSE:

As part of its efforts to improve homeless families' and unaccompanied youths' access to the appeal process, the Department designed the amendments to require the LEA liaisons to assist homeless families and unaccompanied youths at all phases of the appeal process. Allowing homeless families and accompanied youth to mail the petition to either the LEA liaisons or principals or assistant principals would undermine the aforementioned purpose of the amendments because homeless families and accompanied youths would not have to meet with the LEA liaisons in order to commence appeals. Without the assistance of the LEA liaisons, it is likely that a number of these appeals will be dismissed on procedural grounds because the homeless families or unaccompanied youths will be unaware of all of the procedural requirements for commencing appeals. Furthermore, it would also be too burdensome on school districts' administration to require principals and assistant principals to accept service of the petition and any supporting documents. Additionally, the amendments do not require principals and assistant principals to assist homeless families and unaccompanied youths in commencing appeals. Therefore, it is in the homeless families' and unaccompanied youths' best interests to commence an appeal by delivering the petition to the LEA liaisons who have a duty to assist them throughout the process. Finally, if homeless families and unaccompanied youths were permitted to deliver the petition to principals or assistant principals, it would make it difficult for the LEA liaisons to maintain the required record of all appeals of enrollment, school selection and transportation determinations (see, 8 NYCRR § 100.2[x][7][iii][8][d]).

4. COMMENT:

There may have been an oversight in section 276.5(b), regarding additional affidavits, exhibits and other supporting papers, because it does not include the alternative service method for petitioners provided under section 275.8(e). The regulation should be amended to provide for service of affidavits, exhibits and other supporting materials in accordance with either section 275.8(b) or (e) or section 275.13(b).

DEPARTMENT RESPONSE:

The Department agrees with the comment and has revised section 276.5(b) to include alternative service under 275.8(e).

5. COMMENT:

In order to ensure that schools actually enroll students before the dispute resolution process begins, in conformity with the McKinney-Vento Act, 42 U.S.C. § 11432(g)(3)(E)(i), the proposed regulation should be revised to require each school district to immediately admit the homeless child or youth to the school in which enrollment is sought if a dispute arises over school selection or enrollment in a school.

DEPARTMENT RESPONSE:

The proposed amendment is unnecessary because both Education Law § 3209(2)(e)(1) and 8 NYCRR § 100.2(x)(4)(1) state that, after receiving the designation form, the designated school district must immediately admit the homeless child or youth.

6. COMMENT:

The proposed regulation conflicts with the McKinney-Vento Act to the extent it requires that parents, guardians, and unaccompanied youth make an additional application for a stay along with their appeal and that they only receive pendency until a decision is rendered on the stay application. Under the McKinney-Vento Act, children and youth are entitled to remain in the school in which enrollment is sought pending resolution of the dispute, not any stay application, 42 U.S.C. § 11432(g)(3)(E)(i). The regulation should be revised to provide that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310, the school district shall delay the implementation of a final determination and permit the child or youth to continue to attend the school he or she is enrolled in until the Commissioner renders a decision on the section 310 appeal.

DEPARTMENT RESPONSE:

8 NYCRR § 100.2(x)(7)(ii)(c) is not in conflict with 42 U.S.C. § 11432(g)(3)(E)(i). The public comment misinterprets the pendency re-

quirements of 42 U.S.C. § 11432(g)(3)(E)(i). 42 U.S.C. § 11432(g)(3) only discusses local educational agency requirements, not state educational agency requirements. Thus, 42 U.S.C. § 11432(g)(3)(E)(i) only requires that the homeless child or youth continue to attend the school that he or she is enrolled pending resolution of the enrollment dispute at the local educational agency/school district level, not the state educational agency/SED level. Additionally, the United States Department of Education's Non-Regulatory Guidance of the Education of Homeless Children and Youth Program ("Non-Regulatory Guidance") states that the homeless child or youth must continue to be enrolled in the school pending the local educational agency's/school district's resolution of the enrollment dispute (see, Non-Regulatory Guidance, Section G-5, p. 14). Consequently, no change needs to be made to this amendment.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational Harvest and Possession of Marine Fish Species

I.D. No. ENV-17-05-00004-EP

Filing No. 391

Filing date: April 8, 2005

Effective date: April 8, 2005

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0340, 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 section 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.

ECL sections 11-0303, 13-0340, 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of striped bass, bluefish, summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the FMPs for these species adopted by ASMFC. Under the FMPs for striped bass, bluefish, 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. ASMFC recently amended the FMPs for striped bass, bluefish, summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. These FMP amendments authorize states to relax certain existing regulations pertaining to minimum size limits, possession limits and open seasons.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to authorize appropriate utilization of resources consistent with the FMPs for striped bass, bluefish, summer flounder, scup, and black sea bass. Failing to make changes to summer flounder, scup, striped bass, and bluefish and black sea bass recreational fishing regulations would place New York's anglers at a disadvantage with neighboring states' anglers. The department is adopting these changes by emergency rule making in order to effectively give recreational anglers relief during 2005 from unnecessarily restrictive regulations. Moreover, these

amendments will provide economic relief to businesses that depend on the recreational fishing industry.

Subject: Regulation of the recreational harvest and possession of marine fish species (striped bass, bluefish, 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 consistent with conservation requirements identified in regional FMPs and the needs of the recreational fishing industry.

Text of emergency/proposed rule: Part 40 of Title 6 of the Official Compilation of New York Codes, Rules and Regulations, entitled "Marine Fish," is amended to read as follows:

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	<i>Licensed Party/</i>	2
		<i>Charter Boat anglers</i>	
		28" TL "	
		All other anglers 28" to 40" TL	1
		>40" 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	[May 15 - Sept. 6] Apr. 29 - Oct. 31	[18"] 17.5 TL	[3] 5
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 14" Tail Length #	No limit
Weakfish	All year	16" TL 10" Fillet length + 12" Dressed length**	6
Bluefish	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	[10] 15, no more than 10 of which shall be less than 12" TL.
Winter Flounder	Third Saturday in March to June 30 and Sept. 15 to Nov. 30	11" TL	15
Scup (porgy) Licensed Party/ Charter Boat anglers	July 1 - Aug. 31	10.5" TL	25
	Sept. 1 - Oct. 31	10.5" TL	60

Scup (porgy) All other anglers	[June 16 - Oct. 17 and Nov. 1 - Nov. 30] July 1 - Oct. 31	[11"] 10.5" TL	[20] 25
Black Sea Bass	[Jan. 1 - Sept. 7 and Sept. 22 - Nov. 30] Jan. 1 - Nov. 30	12" TL	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 Bellemeade Road, East Setauket, New York, 11733.
- **** See *Special Regulations contained in 6 NYCRR 40.1(h)(3)*.

Section 40.1(h) is amended as follows:

(h) Summer Flounder and Scup recreational fishing - special regulations.

No changes - Section 40.1(h)(1) and (2).

Add new Section 40.1(h)(3) to read as follows:

(3) *Party and Charter Boat License holders must provide each customer who possess more than 25 scup during the period of September 1 through October 31 with a commercially printed, dated original fare receipt, bearing the vessel's name and the permit number. The customer of any Party/Charter boat who lands or possesses more than 25 scup during the period of September 1 through October 31 must possess an original receipt from a licensed Party or charter boat.*

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 6, 2005.

Text of rule and any required statements and analyses may be obtained from: Bryon Young, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, E. Setauket, NY 11733, (631) 444-0435, e-mail: bhyoung@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: Pursuant to the requirements of art. 8 of the Environmental Conservation Law, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Section 11-0303, 13-0340, 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 and catch limits, possession and sale restrictions, and manner of taking for striped bass, bluefish, summer flounder, scup and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited statutory authority that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (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.

ECL Sections 11-0303, 13-0340, 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of striped bass, bluefish, summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the FMPs for these species adopted by ASMFC. Under the FMPs for striped bass, bluefish, 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. ASMFC recently amended the FMPs for striped bass, bluefish, summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. These FMP amendments authorize states to relax certain existing regulations pertaining to minimum size limits, possession limits and open seasons.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to authorize appropriate utilization of resources consistent with the FMPs for striped bass, bluefish, summer flounder, scup, and black sea bass. Failing to make changes to summer flounder, scup, striped bass, and bluefish and black sea bass recreational regulations would place New York's anglers at a disadvantage with neighboring states' anglers. The Department is adopting these changes by emergency rulemaking in order to effectively give recreational anglers relief during 2005 from unnecessarily restrictive regulations. Moreover, these amendments will provide economic relief to businesses that depend on the recreational fishing industry.

The text of the proposed rulemaking and the emergency regulations adopted herein include the following items:

Striped Bass

Implement a possession limit for all recreational anglers, other than those fishing from party/charter boats, of one striped bass between 28" and 40" total length and one striped bass greater than 40" total length. The current possession limit for such anglers is 1 striped bass with a minimum size limit of 28" total length.

Bluefish

Implement a possession limit of fifteen (15) bluefish, however only ten of these fish can be less than twelve inches in total length. The current possession limit is ten (10) bluefish with no minimum size limit.

Summer Flounder

Implement an open season of April 29 through October 31 for the summer flounder recreational fishery. The current fishing season for summer flounder is May 15 through September 6. Increase the recreational possession limit from 3 fish per person per trip to 5 fish per person per trip. Decrease the recreational minimum size limit from 18 to 17.5 inches total length.

Scup

Implement an open season from July 1 through October 30 for the scup recreational fishery. The current season is open from June 16 through October 17 and November 1 through November 30 for the scup recreational fishery. Implement a possession limit for shore based anglers and private boat anglers of 25 scup in possession. For anglers fishing aboard licensed Party/Charter boats the possession limit is 25 scup from July 1 through August 31 and 60 scup from September 1 through October 31. The current possession limit is 20 scup in possession. Decrease the recreational minimum size limit from the current 11 inches to 10.5 inches total length.

Black sea bass

Implement an open season for black sea bass from January 1 through November 30. The current season is open from January 1 through September 7 and from September 23 through November 30 for the recreational black sea bass fishery.

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.

(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 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 alternatives have been considered by the Department and rejected for the reasons set forth below:

(1) Do not amend Part 40.

Failing to make the proposed changes to striped bass, bluefish, summer flounder, black sea bass and scup recreational regulations would place New York's anglers at an extreme disadvantage to anglers in neighboring states and unnecessarily continue the adverse economic conditions associated with current restrictions.

9. Federal standards:

These amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs for striped bass, bluefish, summer flounder, scup and black sea bass.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of the regulations:

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. ASMFC recently amended the FMPs for striped bass, summer flounder, bluefish, summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. New York could have maintained a more conservative stance with its regulations but has chosen to amend them consistent with the FMP standards.

There were 492 licensed party/charter vessels operating in New York during 2004 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in 2004. The proposed regulations will implement a limited relaxation of current regulations; therefore, many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, should benefit by these regulations. The regulations will likely result in some economic recovery as a result of adjustments to allowable catch or availability of marine fisheries resources for the affected parties. Failing to take these appropriate actions to protect our natural resources could cause the 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.

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.

5. Minimizing adverse impact:

The purpose of these regulations is to constrain the recreational harvest of these species by controlling the length of the fishing season, the minimum size limits, and possession limits consistent with the standards established in any Fishery Management Plan (FMP) and neighboring states. Since these regulatory amendments relax current regulations and are consistent with federal and interstate fishery management plans, the Department anticipates limited or no adverse impacts. New York could take a conservation equivalency approach to comply with the provisions of the FMPs. However, such an approach would offer little, if any, improvement over the FMP standards.

Ultimately, 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. Failing to take these

appropriate actions to protect our natural resources could cause the 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.

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 striped bass, bluefish, 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 and in fact may augment jobs and employment. Therefore, a job impact statement is not required.

There were 492 licensed party/charter vessels operating in New York during 2004 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in 2004. Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. The regulations will likely result in a short term economic gain resulting from a relaxation in allowable catch and availability of marine fisheries resources for the affected parties. There still may be some continued adverse affect on the number of fishing trips and/or lower bait and tackle sales during the upcoming fishing season as a result of the proposed regulatory amendments.

The purpose of these regulations is allow appropriate harvest and to constrain the harvest of certain marine fish species to maintain fishing mortality at prescribed levels and to continue to rebuild or maintain stock biomass. The potential impact of these regulations may be that some recreational party and charter boat owners experience continued reductions in customers, and bait and tackle businesses could continue to lose sales revenue from a decline in bait and tackle sales during the proposed fishing season. However, based on outreach with members of the recreational striped bass, bluefish, fluke, scup and black sea bass fisheries, the Department anticipates that there will be a positive impact on 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 striped bass, bluefish, fluke, scup and black sea bass fisheries is essential to the survival of the party and charter boat operations and bait and tackle businesses that support 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, any 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 while allowing appropriate harvest, to prevent over-harvest and to continue to rebuild or maintain them for future utilization.

Based on the above and Department staff's knowledge and past experience with the adoption of finfish rules, 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

Regulating Sulfur Content of Motor Vehicle Diesel Fuel

I.D. No. ENV-44-04-00013-A

Filing No. 392

Filing date: April 8, 2005

Effective date: 30 days after filing

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

Action taken: Amendment of section 200.9 and addition of Subpart 225-4 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Regulating the sulfur content of motor vehicle diesel fuel.

Purpose: To establish a backstop to Federal motor vehicle diesel fuel sulfur content regulations.

Text of final rule: (Section 200.1 through 200.8 remains unchanged)

Section 200.9, Table 1 is amended to read as follows:

225-4.2(b)	40 CFR 80.2(z) (July 1, 2003) page 580 as amended by 68 FR pages 56780-56781 (October 2, 2003)	+++
	40 CFR 80.2(nn) (July 1, 2003) page 581	*
	40 CFR 80.2(t) (July 1, 2003) pages 579-580	*
	40 CFR 80.2(w) (July 1, 2003) page 580	*
	40 CFR 80.2(x) (July 1, 2003) page 580	*
	40 CFR 80.2(l) (July 1, 2003) page 579	*
	40 CFR 80.2(r) (July 1, 2003) page 579	*
	40 CFR 80.2(y) (July 1, 2003) page 580	*
	40 CFR 80.2(xx) (July 1, 2003) page 581	*
	40 CFR 80.2(i) (July 1, 2003) page 579	*
	40 CFR 80.2(h) (July 1, 2003) page 579	*
	40 CFR 80.2 (n) (July 1, 2003) page 579	*
	40 CFR 80.2(k) (July 1, 2003) page 579	*
	40 CFR 80.2(j) (July 1, 2003) page 579	*
	40 CFR 80.2(bb) (July 1, 2003) page 580	*
	40 CFR 80.2(ss) (July 1, 2003) page 581	*
	40 CFR 80.2(o) (July 1, 2003) page 579	*
225-4.3	40 CFR Part 80, Subpart I (July 1, 2003) pages 826-865	*

+++ Available from the U.S. Government Printing Office website, <http://www.gpoaccess.gov/fr/index.html>

A new subpart 225-4 is adopted as follows:

225-4.1 Applicability

This subpart applies to motor vehicle diesel fuel, and additives blended into, or intended to be blended into motor vehicle diesel fuel.

225-4.2 Definitions

(a) *For the purposes of this subpart the general definitions of Part 200 apply.*

(b) *For the purposes of this subpart the following definitions apply:*

(1) *'Aromatic content' means aromatic content as defined in 40 CFR 80.2(z) (see Table 1, section 200.9 of this Title).*

(2) *'Batch of motor vehicle diesel fuel' means batch of motor fuel as defined in 40 CFR 80.2(nn) (see Table 1, section 200.9 of this Title).*

(3) *'Carrier' means carrier as defined in 40 CFR 80.2(t) (see Table 1, section 200.9 of this Title).*

(4) *'Cetane index or "Calculated cetane index"' means 'Cetane index or "Calculated cetane index"' as defined in 40 CFR 80.2(w) (see Table 1, Section 200.9 of this Title).*

(5) *'Diesel fuel' means diesel fuel as defined in 40 CFR 80.2(x) (see Table 1, section 200.9 of this Title).*

(6) *'Distributor' means distributor as defined in 40 CFR 80.2(l) (see Table 1, section 200.9 of this Title).*

(7) *'Importer' means importer as defined in 40 CFR 80.2(r) (see Table 1, section 200.9 of this Title).*

(8) *'Motor vehicle diesel fuel' means motor vehicle diesel fuel as defined in 40 CFR 80.2(y) (see Table 1, section 200.9 of this Title).*

(9) *'Motor vehicle diesel fuel additive' means motor vehicle diesel fuel additive as defined in 40 CFR 80.2(xx) (see Table 1, section 200.9 of this Title).*

(10) *'Refiner' means refiner as defined in 40 CFR 80.2(i) (see Table 1, section 200.9 of this Title).*

(11) *'Refinery' means refinery as defined in 40 CFR 80.2(h) (see Table 1, section 200.9 of this Title).*

(12) *'Reseller' means reseller as defined in 40 CFR 80.2(n) (see Table 1, section 200.9 of this Title).*

(13) *'Retailer' means retailer as defined in 40 CFR 80.2(k) (see Table 1, section 200.9 of this Title).*

(14) *'Retail outlet' means retail outlet as defined in 40 CFR 80.2(j) (see Table 1, section 200.9 of this Title).*

(15) *'Sulfur percentage' means sulfur percentage as defined in 40 CFR 80.2(bb) (see Table 1, Section 200.9 of this Title), except that any sulfur test method acceptable to the Administrator may be used.*

(16) *'Tank truck' means a tank truck as defined in 40 CFR 80.2(ss) (see Table 1, section 200.9 of this Title).*

(17) *'Wholesale purchaser-consumer' means wholesale purchase-consumer as defined in 40 CFR 80.2(o) (see Table 1, section 200.9 of this Title).*

225-4.3 Motor Vehicle Diesel Fuel and Motor Vehicle Diesel Fuel Additive Standards

No Motor Vehicle Diesel Fuel may be sold or supplied in New York State unless it complies with applicable provisions of 40 CFR Part 80, Subpart I (see Table 1, Section 200.9 of this Title) commencing June 1, 2006 for all refiners and importers supplying diesel fuel to the State of New York, commencing July 15, 2006 for locations in the diesel fuel distribution system downstream from refineries and import facilities except retail outlets and wholesale purchaser-consumer facilities, and commencing September 1, 2006 for retail outlets and wholesale purchaser-consumer facilities.

225-4.4 Severability

Each provision of this Subpart shall be deemed severable, and in the event that any section of this Subpart is held to be invalid, the remainder of this Subpart shall continue in full force and effect.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 200.9 Table 1.

Text of rule and any required statements and analyses may be obtained from: David Barnes, Department of Environmental Conservation, 625 Broadway, 2nd Fl., Albany, NY 12233-3255, (518) 402-8292, e-mail: dlbarnes@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to art. 8 of the (State Environmental Quality Review Act), a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file. This rule was approved by the Environmental Board.

Regulatory Impact Statement

There were no changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

A spelling error was corrected on page 3, in section 7. The misspelling of the word "participate" has been corrected. The effect of the regulations remains the same.

Rural Area Flexibility Analysis

There were no changes to the previously published Rural Area Flexibility Analysis.

Job Impact Statement

There were no changes to the previously published Job Impact Statement.

Assessment of Public Comment

The only comments received by the Department regarding this proposed regulation were from the Air Force Regional Environmental Office, Eastern Region, on behalf of the Department of Defense.

Comment. The commentator notes that proposed Subpart 225-4 regulates military fuels such as JP-5 and JP-8 as motor vehicle diesel fuel, when used in highway motor vehicles. They state that such a requirement would compromise military readiness if applied to military tactical vehicles, and request an exemption for diesel fuel used in military tactical vehicles.

Military tactical vehicles are intended to support combat or tactical operations. They may be specialized military designs, modified commercial designs, or in some cases commercially available vehicles. JP-8 (alternatively JP-5) is the designated "Single Fuel of the Battlefield" and tactical vehicles will use this fuel during overseas deployments. Using a different fuel in the U. S. could compromise military readiness.

DEC Response. The Department agrees with the commentator that the same specification fuel should be used in military tactical vehicles regardless of whether they are at their home base, or deployed overseas. Thus an exemption for military tactical vehicles is appropriate.

40 CFR 80.602 (as of July 1, 2003) (January 18, 2001 *Federal Register*, page 5151) provides exemption from the diesel fuel standards for two classes of vehicles. The first is vehicles covered by an EPA national security exemption from motor vehicle emissions standards. The second is military tactical vehicles not subject to a national security exemption that need to be fueled on the same fuel as vehicles that are covered by a national security exemption. We believe that 40 CFR 80.602 (as of July 1, 2003) adequately addresses the requested exemptions. Because that provision is incorporated by reference into proposed Subpart 225-4 we believe that no changes to the express terms are necessary.

Office of General Services

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

Automated External Defibrillation Program for State Institutions and Buildings

I.D. No. GNS-16-05-00001-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of proposed rule making, I.D. No. GNS-16-05-00001-E, printed in the *State Register* on April 20, 2005.

Regulatory Impact Statement

1. Statutory authority: Chapter 510 of the Laws of 2004 amended the Public Buildings Law by creating a new subdivision two of section 140, requiring that State institutions and buildings be equipped with automated external defibrillators (AEDs), and requiring the Commissioner of the Office of General Services to prescribe and promulgate regulations concerning the appropriate number of AEDs for each size and class of public building, the training of personnel and use of AEDs, and “any other matter deemed necessary” to effectuate the duty created by law. The aforementioned provisions of Public Building Law require that the Commissioner of General Services promulgate such regulations on or before the effective date of the amendment, April 1, 2005.

2. Legislative objectives: The New York State Senate—Introducer’s Memorandum In Support filed for the bill that was adopted as Chapter 510 of the Laws of 2004 states: “Defibrillators save lives. A probe conducted by the Senate Investigations Committee found that the greater acquisition, deployment, and use of automated external defibrillators (AEDs) in New York can save thousands of people from otherwise certain death from heart attacks. In recent years the Legislature has enacted laws relating to expanding the use of AEDs: in 1999, the legislature approved a \$500 tax credit for purchase of AEDs (Chapter 407 of the laws of 1999); and in 1998, the Legislature eliminated obstacles to permitting non-medical providers to use AEDs (Chapter 552 of laws of 1998).” Chapter 510 of the Laws of 2004 amended the Public Buildings Law to provide for a program of public access defibrillation in each of the institutions and buildings of the State, and directed that the Commissioner of General Services promulgate regulations providing for a phased-in schedule for implementation of the public access defibrillation program, such regulations addressing the appropriate numbers of AEDs for the public buildings—based upon size or occupancy; the training of personnel and use of AEDs; and any other matter deemed necessary by the Commissioner of General Services to effectuate the duty prescribed by that section of the law.

3. Needs and benefits: This addition of Part 303 to 9 NYCRR is necessary to provide for the phased-in implementation of a public access defibrillation (PAD) program for State institutions and buildings. The Legislature has recognized that use of automated external defibrillators (AEDs) in New York can save thousands of people from otherwise certain death from heart attacks, and has amended the Public Buildings Law to create a duty of each superintendent or chief executive officer of each of the public institutions and buildings of the state to equip each public building with an AED. The Commissioner of General Services was charged with the promulgation of regulations providing for a phased-in

schedule for implementation of a PAD program for public buildings on or before the effective date of the Public Buildings Law amendment, April 1, 2005. These regulations require that State agencies prepare a PAD plan for each of the buildings and facilities operated under their authority, and permit substantial flexibility in the formulation of individual PAD plans. This flexibility is intended to accommodate both the distinct missions and circumstances of agencies; the unique features of the State’s varied public buildings; and to permit the Agencies’ management of financial aspects of their AED programs. This flexibility is balanced by the incorporation of critical elements of guidelines published by nationally recognized authorities on PAD (e.g., American Heart Association; National Center for Early Defibrillation; American College of Occupational and Environmental Medicine), thereby vindicating the Legislature’s public health objectives.

4. Costs: a. Costs to State government will turn on determinations to be made by agencies in the formulation of their PAD plans and, accordingly, cannot be calculated with precision at this point. Any treatment of costs should consider that the subject regulations provide for a phased process of implementation, *i.e.*, over a period of five (5) years. The Office of General Services has, however, developed some assumptions in connection with estimating PAD costs for its own program. These assumptions are based upon current state contracts, and include: a.) initial cost (*i.e.*, AED acquisition, installation, and initial CPR/AED training), \$4,000 per unit; and b.) post-acquisition annual cost (*i.e.*, CPR/AED (re)training and equipment maintenance), \$500 per unit per year. Funding for implementation of the provisions of the regulations is addressed in the legislation, *i.e.*, Chapter 510 of the Laws of 2004 specifies that “The moneys necessary to carry out the provisions of this section shall be supplied from the moneys annually appropriated for the maintenance of the above described institutions.” At the time of this writing, the Division of Budget has advised that approximately \$5 million will be made available for PAD programs in the 2005-06 fiscal year, and the Office of General Services is working on developing a methodology for allocating and distributing these funds among state agencies.

b. Costs to local governments. The regulations do not apply to local government and do not impose any costs on local government.

c. Costs to private regulated parties. The regulations do not apply to private parties and do not impose any costs on private to private parties.

d. Costs to the regulatory agency. As stated in the above section “Costs to State Government,” the Office of General Services will incur certain costs in connection with the acquisition, deployment and maintenance of AEDS, as will every regulated agency. In this regard, and to the extent that OGS’s PAD plans are not complete, costs cannot be calculated with precision at this point. As regulatory agency, OGS plans to meet its responsibilities by reorganizing and reassigning its present staff; accordingly, OGS expects no additional costs in connection with its role as regulatory agency.

5. Local government mandates: The subject regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: The subject regulations require that each state agency prepare an initial written report, due on or by April 1, 2006, and then, commencing April 1, 2007, annual updates of these reports. Additionally, agencies will be required to develop and enter into written agreements (“collaborative agreements”) with Emergency Health Care Providers, and agencies will also be required to comply with provisions of Public Health Law respecting preparation and filing of notices, *e.g.*, to Regional Emergency Medical Services Councils. All agencies will incur certain paperwork responsibilities related to equipment acquisition, documentation of equipment maintenance, documentation of AED usage, etc. And some agencies may incur paperwork in connection with contracting for AED equipment maintenance and support services.

7. Duplication: The subject regulations do not duplicate other existing Federal or State requirements.

8. Alternatives: During the several months preceding adoption of the regulations (*i.e.*, beginning in October, 2004, and continuing through the date of adoption, April 1, 2005), the Office of General Services solicited the participation and or comments of numerous state agencies in the development of these regulations. All such agency input was considered in the formulation of draft regulations, however the broad scope of application of the regulations and the substantial differences among the regulated agencies precluded inclusion of all agency comments in the emergency regulations. Instances of OGS rejection of agency proposals include: a.) a provision that would entail OGS granting approvals or waivers for agencies unable to achieve compliance (see, § 303.2(i)) was rejected because of concerns that such a scheme of approval or waiver of noncompliance would diminish agency incentive to achieve compliance, would present

unwieldy administrative issues for OGS, and would tend to undermine the public health objectives of the Legislature; and b.) a proposal that the definition of Public Buildings be revised to explicitly exclude certain classes of public buildings, e.g., group homes, was rejected because the scheme of the regulations is to recognize the expertise of agencies, to afford maximum flexibility and discretion to agencies, and because other provisions of the regulations permit agencies to effectively exempt certain of their public buildings (see, §§ 303.1(a)(2); 303.2(i)). Instances of OGS accommodation of Agency comments include the following: a.) § 303.1(2), definition of Public Building excludes “any building that has limited use or a nominal number of assigned staff,” relieving agencies of compliance at, e.g., storage facilities; b.) § 303.2(c) permits a 5-year period for phased-in installation of AED equipment, and accommodates the presence of agency- or facility-specific extraordinary circumstances which may result in noncompliance with or exemption from the regulations; c.) § 303.2(e) & (f) accommodate the circumstances of agencies located in buildings owned or managed by OGS, and agencies located in buildings owned or managed by another agency--by OGS pursuant to agreement with another agency; d.) § 303.2(g) accommodates agencies operating a medical facility and providing alternative defibrillation services, and provides that such alternative defibrillation services approved by the Department of Health will be deemed to have fulfilled the requirements of latter sections of the regulations (i.e., §§ 303.5, 303.6, 303.7 and 303.8); e.) § 303.2(i) anticipates agencies that are unable to fulfill requirements of the regulations due to insufficient staff or other restrictive conditions, and permits such agencies to either develop an alternative implementation defibrillation program or provide an explanation for the inability of implementing an AED program at particular public building(s); f.) § 303.3 presents guidelines for agency determinations of appropriate placement and numbers of AED equipment—rather than prescribing rules or formulas for placement and numbers; g.) § 303.3(b)(1) permits mobile deployment of AED units, to accommodate circumstances in which agency buildings are in a campus atmosphere; h.) § 303.4 accommodates agencies in which operators of AED equipment may not be volunteer employees, but may be assigned operators, e.g., in medical facilities, in corrections facilities; and i.) § 303.5(3) permits agency designation of AED coordinators on regional or geographic bases—rather than on a building by building basis—to accommodate agencies with numerous public buildings.

9. Federal standards: The regulations are consistent with Federal standards for PAD.

10. Compliance schedule: The regulations provide for a period of five (5) years, during which it is anticipated that all state agencies will be able to achieve substantial compliance with the regulations.

Regulatory Flexibility Analysis

The subject regulations apply to public institutions and buildings of the State only, and do not affect any small business or local government by way of any adverse economic impact or reporting, recordkeeping, document creation, or other compliance requirements. Based upon the foregoing facts and the nature of the regulations, no further steps were needed to ascertain any adverse impacts and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and has not been prepared.

Rural Area Flexibility Analysis

These regulations apply to public institutions and buildings of the State only, and will not impose any adverse impact, reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The regulations require that state agencies develop and implement a program of Public Access Defibrillation at state operated public buildings, and as such, the regulations are not burdensome, time consuming or costly to any private entity. Based upon the foregoing facts and the nature of the regulations, no further steps were taken to analyze impacts on public and private interests in rural areas; a rural area flexibility analysis is not required and has not been prepared.

Job Impact Statement

1. Nature of impact: The subject regulations could, pending the responses of regulated state agencies and the availability of state funding, possibly result in the creation of jobs. Such jobs would likely be related to administration of the Public Access Defibrillation program implemented by the regulations, and could be jobs within the regulated agencies or in the private sector, e.g., jobs with vendors supplying AED equipment and related services. The regulations do not require the creation of any jobs, and it is not anticipated that the regulations could result in the loss of any jobs or employment opportunities.

2. Categories and numbers affected: The categories and numbers of jobs affected by the subject regulations will turn on the approaches taken

by the regulated agencies and cannot be projected with any precision at this juncture.

3. Regions of adverse impact: There are no adverse job or employment impacts of the subject regulations in any region of the State.

4. Minimizing adverse impact: Inapplicable; there are no adverse job or employment impacts of the subject regulations in any region of the State.

5. Self-employment opportunities: Due to the nature of the regulations (i.e., medical/technical), it is not anticipated that these regulations will have a measurable impact on opportunities for self-employment.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Rate/Fee Setting

I.D. No. MRD-07-05-00024-A

Filing No. 400

Filing date: April 12, 2005

Effective date: April 27, 2005

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

Action taken: Amendment of sections 635-10.5 and 681.14 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services and in intermediate care facilities for persons with developmental disabilities.

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs and establish supplemental trend factors to be applied within the context of the referenced reimbursement methodologies, effective Feb. 1, 2005.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. MRD-07-05-00024-EP, Issue of February 16, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Conditional License Eligibility

I.D. No. MTV-17-05-00008-P

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

Proposed action: Amendment of Part 134 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 1196(4) and (7)

Subject: Conditional license eligibility.

Purpose: To conform conditional license requirements to comply with Zero Tolerance Law.

Text of proposed rule: Subdivision (a) of Part 134.1 is amended to read as follows:

(a) Intent. Article 21 of the Vehicle and Traffic Law as added by chapter 291 of the Laws of 1975, and recodified in Article 31 by chapter 47 of the Laws of 1998, provides for the establishment of an alcohol and drug rehabilitation program for the purpose of providing rehabilitation to drivers convicted of alcohol or drug-related driving offenses or persons who have been adjudicated youthful offenders for alcohol or drug-related traffic offenses *or persons found to have been operating a motor vehicle after having consumed alcohol in violation of section 1192-a of the Vehicle and Traffic Law* to alleviate the threat to the lives and well-being of the citizens of this State posed by alcohol and drug-related driving. Although this article provides for the issuance of conditional licenses to persons enrolled in such program, this provision is incidental to the primary purpose of the legislation, highway safety. This Part is intended to implement the legislative intent by establishing criteria for eligibility of persons for entrance into such programs, issuance and use of conditional licenses, procedures to be followed by the courts, the Department of Motor Vehicles and motorists in conjunction with such programs, as well as the curricula to be used in such programs and the qualifications of persons who will be conducting such programs.

Paragraphs (2), (3), (4) and (5) of subdivision (a) of Part 134.7 are amended to read as follows:

(2) The conviction, *adjudication or finding* upon which eligibility for a rehabilitation program is based involved a fatal accident.

(3) The person does not have a currently valid New York State driver's license. This paragraph shall not apply to a person whose New York State driver's license has expired, but is still renewable, nor to a person who would have a currently valid New York State driver's license except for the revocation or suspension which resulted from the conviction, *adjudication or finding* upon which his eligibility for the rehabilitation program is based, nor to a person who would have a currently valid New York State driver's license except for a suspension or revocation which resulted from a chemical test refusal arising out of the same incident as such conviction, *adjudication or finding of a violation of section 1192-a of the Vehicle and Traffic Law Section*.

(4) The person has been convicted of an offense arising from the same event which resulted in the current alcohol related conviction, *adjudication or finding* which conviction would, aside from the alcohol-related conviction, *adjudication or finding*, result in mandatory revocation or suspension of the person's driver's license.

(5) The person has had two or more revocations and/or suspensions of his driver's license, other than the revocation or suspension upon which his eligibility for the rehabilitation program is based within the last three years. This subdivision shall not apply to suspensions which have been terminated by performance of an act by the person, nor to a suspension or revocation resulting from a chemical test refusal, if the person had been convicted of a violation of section 1192 of the Vehicle and Traffic Law *or found to be in violation of section 1192-a of such law* arising out of the same incident.

Subdivision (c) of Part 134.9 is amended to read as follows:

(c) A conditional license issued to a person convicted of, *or adjudicated a youthful offender for*, a violation of any subdivision [or] of section 1192 of the Vehicle and Traffic Law *or found to have violated section 1192-a of such law* shall not be valid for the operation of commercial motor vehicles as defined in section 501-a of such law or taxicabs as defined in section 148-a of such law.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 1196(4) establishes criteria for enrollment in the Drinking Driver Program (DDP). VTL section 1196(7)(a) provides that the commissioner, in his or her discretion, may establish eligibility criteria for the issuance of a conditional license.

2. Legislative objectives: Chapter 196 of the Laws of 1996 established the Zero Tolerance Law, which imposed fines and penalties for driver's license holders under the age of 21 who operate motor vehicles with a BAC of .02 to .07. This proposed regulation is consistent with this law because, as prescribed by statute, it denies enrollment in the DDP if the licensee has an alcohol-related conviction within the preceding five years and it denies eligibility for a conditional license in a manner consistent with current eligibility requirements for those convicted of drunk driving. The Legislature enacted the Zero Tolerance Law to curb youthful drunk driving. This proposal is in accordance with the objectives of that law.

3. Needs and benefits: Chapter 196 of the Laws of 1996 established the Zero Tolerance Law, which imposed fines and penalties for driver's license holders under the age of 21 who operate motor vehicles with a BAC of .02 to .07. This law is primarily codified in Vehicle and Traffic Law sections 1192-a, 1194 and 1194-a.

A person charged with a violation of section 1192-a is referred to the Department of Motor Vehicles (DMV) for an administrative hearing. The Administrative Law Judge (ALJ) either dismisses the charge or makes a finding of a violation of section 1192-a. This is considered an administrative finding, not a conviction. Part 134.7 of the Commissioner's regulations sets forth criteria for the issuance of a conditional license. Such a license is issued to motorists either convicted of VTL section 1192 (DWI, DWAI) or found to have violated 1192-a (Zero Tolerance), and who participate in the DDP. When the Zero Tolerance law was enacted, conforming amendments were not made to Part 134.7, so that eligibility requirements for issuance of a conditional license would be the same regardless of whether the person was convicted of DWI or DWAI or found to have violated Zero Tolerance. Thus, currently a person found, pursuant to a DMV administrative hearing, to have violated the Zero Tolerance Law may obtain a conditional license even if the incident arose out of fatal accident, though a person convicted of DWI or DWAI would be denied a conditional. This proposed amendment will eliminate the inconsistencies related to issuance of a conditional license, regardless of whether the issuance/denial is based upon an administrative finding or a court conviction.

Section 1196(4) specifically provides that a person found in violation of the Zero Tolerance Law may not enroll in the DDP if such person had a Zero Tolerance finding within the preceding five years. Part 134.1 is amended to conform to this statutory requirement. A second conforming amendment is necessary to provide that persons adjudicated youthful offenders may enroll in the DDP.

These amendments are necessary to hold persons adjudicated in violation of the Zero Tolerance Law to the same standard as those convicted of alcohol-related violations. This will benefit the general motoring public by denying conditional licenses to all persons adjudicated/convicted of alcohol-related offenses.

4. Costs: There are no costs associated with this proposal to the state, local governments, or to the general public. DMV systems are already programmed to accommodate these changes.

5. Local government mandates: The proposal does not impose any mandates on local governments.

6. Paperwork: The proposal does not impose any additional paper requirements on the Department.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: No significant alternatives were considered. A no action alternative was not considered.

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

10. Compliance schedule: Compliance is immediate.

Regulatory Flexibility Analysis

A RFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A RAFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-03-05-00015-P	January 19, 2005
PSC-03-05-00016-P	January 19, 2005
PSC-03-05-00017-P	January 19, 2005
PSC-03-05-00018-P	January 19, 2005
PSC-03-05-00019-P	January 19, 2005
PSC-06-05-00009-P	February 9, 2005

NOTICE OF ADOPTION

Franchising Process by the Village of Tarrytown

I.D. No. PSC-51-04-00015-A
Filing date: April 7, 2005
Effective date: April 7, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-V-1462 approving the Village of Tarrytown’s request for a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising process.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission granted the Village of Tarrytown (Westchester County) a waiver of 9 NYCRR, Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-1462SA1)

NOTICE OF ADOPTION

Franchising Process by the Village of Cedarhurst

I.D. No. PSC-51-04-00016-A
Filing date: April 7, 2005
Effective date: April 7, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-V-1465 approving the Village of Cedarhurst’s request for a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising process.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission granted the Village of Cedarhurst (Nassau County) a waiver of 9 NYCRR, Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-1465SA1)

NOTICE OF ADOPTION

Franchising Process by the Town of Greenburgh

I.D. No. PSC-51-04-00018-A
Filing date: April 7, 2005
Effective date: April 7, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-V-1479 approving the Town of Greenburgh’s request for a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising process.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission granted the Town of Greenburgh (Westchester County) a waiver of 9 NYCRR, Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-1479SA1)

NOTICE OF ADOPTION

Transmission and Distribution of Gas

I.D. No. PSC-01-05-00012-A
Filing No. 393
Filing date: April 8, 2005
Effective date: April 8, 2005

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

Action taken: Amendment of Parts 10 and 255 of Title 16 NYCRR.

Statutory authority: Public Service Law, section 66(1)

Subject: Transmission and distribution of gas.

Purpose: To bring the commission’s pipeline safety regulations into compliance with recent amendments to the Federal regulations contained in 49 CFR part 192.

Text or summary was published in the notice of proposed rule making, I.D. No. PSC-01-05-00012-P, Issue of January 5, 2005.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204, Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Assessment of Public Comment

The agency received no public comment.
(04-G-1016SA1)

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

Intercarrier Agreement between Verizon New York Inc. and Northland Networks Ltd.

I.D. No. PSC-17-05-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Northland Networks Ltd. to revise the interconnection agreement effective on Jan. 13, 2005.

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

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

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Northland Networks Ltd. in January 2005. The companies subsequently have jointly filed amendments to clarify the provisions regarding Intercarrier compensation. The Commission is considering these changes.

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

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

(99-C-0657SA3)

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

Intercarrier Agreement between Verizon New York Inc. and RNK Inc.

I.D. No. PSC-17-05-0010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and RNK Inc. to revise the interconnection agreement effective on Dec. 20, 2004.

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

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

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and RNK Inc. in December 2004. The companies subsequently have jointly filed amendments to clarify the provisions regarding Intercarrier compensation. The Commission is considering these changes.

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

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

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

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

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

(03-C-0222SA2)

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

Form of Application for Construction of Excess Distribution Facilities by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-17-05-00011-P

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

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

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

Subject: Form of application for construction of excess distribution facilities.

Purpose: To provide the customer the option to pay the company's estimated taxes and annual maintenance (including replacements) charges on such excess distribution facilities in a lump sum payment rather than in an annual charge.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. proposes to amend its Form of Application for Construction of Excess Distribution Facilities by providing the customer the option to pay the company's estimated taxes and annual maintenance (including replacements) charges on such excess distribution facilities in a lump sum payment rather than in an annual charge.

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

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

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

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

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

(05-G-0412SA1)

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

Daily Metered Transportation Requirements by New York State Electric & Gas Corporation

I.D. No. PSC-17-05-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 88.

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

Subject: Daily metered transportation requirements.

Purpose: To clarify that deliveries through the company's system are subject to the physical limitations of the company's delivery system.

Substance of proposed rule: The Commission is considering New York State Electric & Gas Corporation's request to clarify its tariff that deliveries through its system are subject to the physical limitations of the company's delivery system for reliability purposes.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0416SA1)

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

Delivery and Storage Redelivery Service by Rochester Gas & Electric Corporation

I.D. No. PSC-17-05-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Rochester Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 16.

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

Subject: Delivery and storage redelivery service.

Purpose: To revise the company’s delivery and storage redelivery service under its Retail Access Capacity Program.

Substance of proposed rule: The Commission is considering Rochester Gas & Electric Corporation’s request to revise its Retail Access Capacity Program regarding the Delivery and Storage Redelivery Service (DSR) to clarify that an Energy Services Company (ESCO) buying another ESCO’s book of business will assume that ESCO’s DSR Service choice; clarify the process for newly qualified ESCOs to elect DSR service; and delete DSR Service provisions specific to September 2004 that are now obsolete.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0417SA1)

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

Residential Distributed Generation Rates by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-17-05-00014-P

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

Proposed action: Consolidated Edison Company of New York, Inc. (Con Edison) filed tariff leaves, effective on a temporary basis, pursuant to the Commission’s Aug. 4, 2004 order in Case 02-M-0515, which established gas rates and services related to residential distributed generation. The commission is considering whether to approve Con Edison’s tariff filing and whether to adopt the rates and provisions related to residential distributed generation service and related matters. The commission may adopt, modify or reject, the tariff filing in whole or in part.

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

Subject: Residential distributed generation rates.

Purpose: To approve the rates.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. (Con Edison) filed tariff leaves, effective on a temporary basis,

pursuant to the Commission’s August 4, 2004 order in Case 02-M-0515, which established gas rates and services related to residential distributed generation. The Commission is considering whether to approve Con Edison’s tariff filing and whether to adopt the rates and provisions related to residential distributed generation service and related matters. The Commission may adopt, modify or reject, the tariff filing in whole or in part.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (02-M-0515SA15)

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

Rehearing and Clarification of Commission Order by Birch Hill Water Supply Corporation

I.D. No. PSC-17-05-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Birch Hill Water Supply Corporation for rehearing and clarification of the commission’s order issued Feb. 22, 2005.

Statutory authority: Public Service Law, sections 22, 89(c)(10)(b)

Subject: Rehearing and clarification of commission order.

Purpose: To consider the petition.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Birch Hill Water Supply Corporation for rehearing and clarification of the Commission’s Order issued February 22, 2005.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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-0430SA4)

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

Transfer of Water Plant Assets between Valley Water Works Company, Inc. and the Town of Hunter

I.D. No. PSC-17-05-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a joint petition filed by Valley Water Works Company, Inc. and the Town of Hunter for approval of the sale of the water plant assets by Valley Water Works Company, Inc. to the Town of Hunter, Greene County.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water plant assets.

Purpose: To transfer the water plant assets of Valley Water Works Company, Inc. to the Town of Hunter, Greene County.

Substance of proposed rule: On March 29, 2005, the Valley Water Works Company, Inc. (Valley Water) and the Town of Hunter (Town) filed a joint petition for approval of the sale of the water plant assets of Valley Water to the Town for the sum of \$31,000. Valley Water currently provides water service to 35 customers and is located in the Town of Hunter, Greene County. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(05-W-0379SA1)

Department of Taxation and Finance

EMERGENCY RULE MAKING

Signature Requirements Applicable to Tax Return Preparers

I.D. No. TAF-14-05-00002-E

Filing No. 398

Filing date: April 2, 2005

Effective date: April 2, 2005

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

Action taken: Amendment of sections 153.6 and 158.12 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 658(g) and 697(a)

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

Specific reasons underlying the finding of necessity: These amendments remove the manual signature requirement for tax return preparers from the personal income tax regulations. The rule conforms New York State requirements to the corresponding Federal requirements, which were amended in 2004 and are in effect for the current income tax filing season, and will save time and labor for tax return preparers. The rule was adopted as an emergency measure on Feb. 1, 2005 so that it became effective immediately and tax return preparers could take advantage of it in the current income tax filing season. The rule was proposed as a permanent rule on March 22, 2005 and the permanent rule will become effective when the Notice of Adoption is published in the *State Register*. Because the earliest date that the Notice of Adoption can be published is June 8, 2005, and the emergency adoption will expire on May 1, 2005, this emergency readoption is necessary to continue the rule until the permanent adoption becomes effective.

Subject: Signature requirements applicable to tax return preparers.

Purpose: To remove the manual signature requirement for tax return preparers from the personal income tax regulations.

Text of emergency rule: Section 1. The unlettered paragraph in section 153.6 of these regulations is amended to read as follows:

An individual who is an income tax return preparer (see section 158.12(d)(1) of this Title), with respect to a New York State income tax return or a claim for refund, must [manually] sign such return or such claim

for refund in accordance with the provisions of section 158.12 of this Title and forms [and], instructions, or other appropriate guidance of the Department of Taxation and Finance.

Section 2. Paragraph (1) of subdivision (a) of section 158.12 of these regulations is amended to read as follows:

(1) For purposes of section 658(g)(1) of the Tax Law, which requires the signature of a tax return preparer on certain returns and claims for refund, such tax return preparer must [manually] sign such return or claim for refund (which may be a duplicate) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. *The preparer shall sign the return or claim for refund in the manner prescribed in forms, instructions, or other appropriate guidance of the Department of Taxation and Finance.* Also, in accordance with section 658(g)(2) of the Tax Law, which requires tax return preparers to include identifying numbers on certain returns and claims for refund, any such return or claim for refund prepared by a tax return preparer shall bear such identifying number (i.e., social security number, federal preparer tax identification number and/or employer identification number) necessary for securing proper identification of such preparer, such preparer's employer, or both, as may be required by forms and instructions of the Department of Taxation and Finance. [An individual preparer may not satisfy these requirements by use of a facsimile signature stamp or signed gummed label.] Where the preparer is unavailable for signature, another preparer must review the entire preparation of the return or claim for refund and then must [manually] sign such return or claim for refund and furnish the identifying number(s) required by section 658(g)(2) of the Tax Law.

Section 3. Subparagraphs (i) and (ii) of paragraph (4) of subdivision (a) of such section is amended to read as follows:

(4)(i) The [manual] signature requirement of this subdivision may be satisfied by a photocopy of a duplicate of the New York State income tax return or claim for refund, which duplicate is [manually] signed by the preparer after completion of such return's or such [claim's] claim for [refund] preparation. After a duplicate of the New York State income tax return or claim for refund is signed by the preparer and before such return or such claim for refund is photocopied, no person other than the preparer may alter any entries on such duplicate other than to correct arithmetical errors discernible on such return or such claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the [manually] signed duplicate of the New York State income tax return or claim for refund. A record of any arithmetical errors corrected must be retained by the person required to retain the [manually] signed duplicate of the New York State income tax return or claim for refund and be made available upon request by the Department of Taxation and Finance.

(ii) Where mechanical preparation of the New York State income tax return or claim for refund is accomplished by computer not under the control of the individual preparer, then the [manual] signature requirement of this subdivision may be satisfied by a [manually] signed attestation by the individual preparer attached to such return or such claim for refund that all the information contained in such return or such claim for refund was obtained from the taxpayer and is true and correct to the best of such preparer's knowledge, but only if such information (including any supplemental written information provided and signed by such preparer) is not altered on such return or such claim for refund by another person. For purposes of the preceding sentence, the correction of arithmetical or clerical errors discernible from the information submitted by the preparer does not constitute an alteration. The information submitted by the preparer must be retained by the employer of the preparer or by the partnership in which the preparer is a partner, or by the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer). A record of any arithmetical or clerical errors corrected must be retained by the person required to retain the information submitted by the preparer and be made available upon request by the Department of Taxation and Finance.

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 proposed rule making, I.D. No. TAF-14-05-00002-P, Issue of April 6, 2005. The emergency rule will expire June 10, 2005.

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 658(g)(1) provides that a tax return preparer that prepares any return or claim for refund, must sign such return or claim for refund in accordance with regulations or instructions prescribed by the Commissioner, section 697(a) provides the authority for the Commissioner to make such rules and regulation that are necessary to enforce the personal income tax.

2. Legislative objectives: This regulation contains amendments which demonstrate the Commissioner's ability to take regulatory action when it is warranted. Regulatory action is necessary to conform the personal income tax regulations to federal regulations regarding signatures of tax return preparers.

3. Needs and benefits: Section 658(g)(1) of the Tax Law provides that a tax return preparer must sign any returns or claims for refund that they prepare in accordance with regulations or instructions prescribed by the Commissioner.

The regulations previous to the amendments made by emergency adoption in January 2005 provided that a tax return preparer must manually sign the return or claim for refund and that the use of a facsimile signature stamp or signed gummed label was not acceptable (20 NYCRR 158.12(a)). These prior regulations followed the federal regulations before the federal regulations were recently amended to eliminate the manual signature requirement. This emergency readoption will continue to conform the regulations to the new federal regulations and will allow tax return preparers to use the same tax preparation process for New York State returns and save time and labor. These amendments will also help reduce any confusion that might exist about the New York State rule.

This rule was adopted as an emergency measure on February 1, 2005 and proposed as a permanent rule on March 22, 2005. The permanent rule will become effective when the Notice of Adoption is published in the *State Register*. Because the earliest date that the Notice of Adoption can be published is June 8, 2005, and the emergency adoption will expire on May 1, 2005, this emergency readoption is necessary to continue the rule until the permanent adoption becomes effective.

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

5. Local government mandates: There are no mandates imposed on local governments by this action.

6. Paperwork: This action does not impose any new paperwork or reporting requirements.

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

8. Alternatives: The only alternative considered was to not amend the regulations and leave in place the requirements that tax return preparers must manually sign returns and claims for refund. However, we have decided that this action was preferable in order to obtain the benefits listed in section 3 above.

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

10. Compliance schedule: None.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because this rule will not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The rule does not distinguish between different types and sizes of regulated parties. The rule does not distinguish between regulated parties located in different geographical areas.

This rule making removes the manual signature requirement for tax return preparers from the personal income tax regulations. The rule making conforms New York State requirements to the corresponding federal requirements, which were amended in 2004.

The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the Small Business Council of the New York State Business Council, the Division of Small Business of Empire State Development, the National Federation of Independent Businesses, the Retail Council of New York State, the New York State Association of

Counties, the Association of Towns of New York State, the New York Conference of Mayors, and the Office of Local Government and Community Services of the New York State Department of State.

Rural Area Flexibility Analysis

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

This rule making removes the manual signature requirement for tax return preparers from the personal income tax regulations. The rule making conforms New York State requirements to the corresponding federal requirements, which were amended in 2004.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because the rule will have no adverse impact on jobs and employment opportunities. This rule making removes the manual signature requirement for tax return preparers from the personal income tax regulations. The rule conforms New York State requirements to the corresponding federal requirements, which were amended in 2004.

NOTICE OF ADOPTION**Fuel Use Tax on Diesel Fuel and Diesel Motor Fuel**

I.D. No. TAF-08-05-00002-A

Filing No. 397

Filing date: April 12, 2005

Effective date: April 12, 2005

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

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

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

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

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

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-08-05-00002-P, Issue of February 23, 2005.

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

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

Assessment of Public Comment:

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

Workers' Compensation Board**EMERGENCY
RULE MAKING****Independent Medical Examinations**

I.D. No. WCB-17-05-00001-E

Filing No. 388

Filing date: April 6, 2005

Effective date: April 6, 2005

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137
Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Recent decisions issued by board panels have interpreted the current regulation as requiring reports of independent medical examinations (IMEs) be received by the board within 10 calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the board is not open on legal holidays, Saturdays and Sundays, and that U.S. Post Offices are not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is precluded and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the board, workers' compensation insurance carrier/self-insured employer, claimant's treating provider and representative, and the claimant it is not possible to send the report by facsimile or electronic means. The recent decisions have greatly, negatively impact the professionals who conduct IMEs, the IME entities, insurance carriers and self-insured employers. When untimely reports are precluded, the insurance carriers and self-insured employers are prevented from adequately defending their position. Accordingly, emergency adoption of this rule is necessary.

Subject: Filing written reports of independent medical examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the board and furnished to all others.

Text of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 4, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 473-8626, e-mail: OfficeofGeneralCounsel@wcb.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in

2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local government mandates:

Approximately 2,511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.