

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.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Health and Safety Standards for Legally-Exempt Informal Child Care Providers

I.D. No. CFS-01-05-00006-P

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

Proposed action: Amendment of sections 415.4 and 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(f) and 410-x(3)

Subject: Health and safety standards for legally-exempt informal child care providers in New York State.

Purpose: To further enhance the health, safety and welfare of the children that receive subsidized child care from legally-exempt informal child care providers in New York State.

Substance of proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us) The regulations are needed to increase the basic safeguards for the health and safety of children who are arranging for services from legally-exempt informal child care providers.

Paragraph (6) of subdivision (f) of section 415.4 is amended to require that each social service district maintain an automated roster, rather than a list, of current legally-exempt caregivers enrolled with the district including the name and address of each such caregiver.

A new subparagraph (vi) is added to paragraph (7) of subdivision (f) of section 415.4 to require that a legally-exempt caregiver must, upon enrollment or annual re-enrollment, attest and certify in writing that all statements made on the enrollment or annual re-enrollment form and any attachment to the enrollment and re-enrollment forms are true and accurate. Any false information may result in termination of the caregiver's enrollment, cessation of the child care subsidy payments to the caregiver, and the taking of any appropriate legal action by the social services district.

A new paragraph (8) is added to subdivision (f) of section 415.4 to require districts to refer each caregiver of informal child care to the Child and Adult Care Food Program (CACFP). Districts may make participation in CACFP mandatory for each caregiver of informal child care who will be providing an average in excess of 30 hours of care per week to one or more subsidized children, provided the district sets forth this requirement in the district's Consolidated Services Plan or Integrated County Plan.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and, for caregivers of informal family child care, each household member age 18 or older against the county's criminal records for the county that the caregiver is located in, to determine whether any such person has ever been convicted of a misdemeanor or a felony in that county.

The caregiver must furnish the child's caretaker and the social services district with true and accurate information about any crime. The child's caretaker and the social services district must evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child(ren). The district cannot enroll: a caregiver of informal child care who has been convicted of a felony or misdemeanor against children; a caregiver of informal child care that employs an individual or that uses a volunteer who has been convicted of a felony or misdemeanor against children; or, for caregivers of informal family child care, a caregiver whose household includes an individual age 18 or older convicted of such a crime.

A social services district may enroll a caregiver who has been convicted or whose employee, volunteer or household member has been convicted of other felony or misdemeanor offenses, consistent with guidelines issued by the Office for evaluating applicants with criminal conviction records.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care against the district's child welfare data base to determine if the caregiver has ever had his or her parental rights terminated or had a child removed from his or her care by court order under Article 10 of the Family Court Act. The caregiver must provide the parent/caretaker and the social services district with true and accurate information regarding the reasons underlying the loss of parental or custodial rights. A social services district must determine whether to enroll a caregiver who has lost parental or custodial rights based on guidelines issued by the Office.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care against the New York State Office of Children and Family Services' Child Care Facility System to determine whether the caregiver has ever been denied a day care license or registration or had a day care license or registration suspended or revoked. The caregiver must

give the parent/caretaker and the social services district true and accurate information regarding any such denial, revocation or suspension, including a description of the reason for denial, revocation or suspension, the date of the denial, revocation or suspension, and any other relevant information. A social services district must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked based on guidelines issued by the Office.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services. This check will be completed by using the Registry's toll free telephone number. When the New York State Sex Offender Registry reveals that a caregiver, employee, volunteer or household member is listed on the Sex Offender Registry, the social services district may not enroll the caregiver.

Subdivision (h) of section 415.4 is amended to require that social services districts annually conduct, either directly or through purchase of services, on-site inspections of at least twenty percent of the currently enrolled caregivers of informal child care in the district who do not participate in the CACFP to determine whether such caregivers are in compliance with the health and safety and fiscal standards set forth in the regulations.

A social services district that in any calendar year has a non-compliance rate in either health and safety or fiscal standards in excess of ten percent of those caregivers of informal child care who are inspected, will be required to increase the inspection rate for the next calendar year to at least thirty percent of the caregivers of informal child care who do not participate in the CACFP. The district will be required to continue to inspect at least thirty percent of the caregivers of informal child care in the district who do not participate in the CACFP until the non-compliance rate among such caregivers of informal child care inspected drops below ten percent for a calendar year. At that time, the district will again be required to conduct on-site inspections on an annual basis of at least twenty percent of the active caregivers of informal child care in the district who do not participate in the CACFP.

A new subdivision (i) is added to section 415.4 to require each social services district to establish comprehensive fraud and abuse control activities for its child care subsidy program that must include but are not limited to:

(a) identification of the criteria the social services district will use to determine which applications should be referred to the district's front-end detention system;

(b) a sampling methodology to determine in which cases the social services district will seek verification of an applicant's or recipient's continued need for child care including, as applicable, verification of participation in employment, education or other required activities; and

(c) a sampling methodology to determine which providers of subsidized child care services the social services district will review for the purpose of comparing the providers' attendance forms for children receiving subsidized child care services and any CACFP inspection forms to verify that child care was actually provided on the days listed on the attendance forms.

Subdivision (j) of section 415.9 is amended to establish two market rates for the legally-exempt family child care and in-home child care provider, a standard market rate and an enhanced market rate. The enhanced market rate will apply to those caregivers who complete ten or more hours of training annually in the areas set forth in section 390-a(3)(b) of the Social Services Law. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (OCFS) to

establish rules, regulations and policies to carry out the OCFS' powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes local social services officials to provide day care for children at public expense and authorizes OCFS to establish criteria for when such day is to be provided.

Section 410-x(3) of the SSL requires OCFS to establish, in regulation, minimum health and safety requirements that must be met by providers of child care services providing subsidized child care services under the State Child Care Block Grant, who are not required to be licensed or registered under the SSL or the Administrative Code of the City of New York.

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist families in meeting their child care costs in programs that provide for the health and safety of their children. Additionally, the child care subsidy program must safeguard the investment of public funds.

3. Needs and benefits:

An audit conducted by the New York State Office of the Comptroller (OSC) in conjunction with OCFS of legally-exempt informal child care providers serving families receiving publicly funded child care subsidies identified health and safety and fraud issues relating to some of the audited providers. The proposed regulations reasonably address those issues.

Legally-exempt informal child care providers ordinarily care for one or two children in either the children's or the providers' homes. They are exempt from the State's child care licensing requirements but must enroll with the applicable social services district and meet minimum health and safety regulatory standards established by OCFS in order to provide care to children receiving child care subsidies. The proposed regulations are necessary to enhance the health and safety of children receiving subsidized child care services from these informal child care providers and to safeguard the investment of public funds in the child care subsidy program.

The regulations provide for additional background checks of individuals providing informal child care to children receiving child care subsidies to determine whether the providers may pose a risk to the children's health and safety. Social services districts will be required to check the New York State Sex Offender Registry, county criminal records and New York State's child care licensing and registration information system regarding individuals providing subsidized informal child care, their employees and volunteers. Where the care occurs in the providers' homes, the districts also will conduct the same background checks on all individuals 18 years of age or older residing in the providers' homes. Child welfare databases also will be checked to determine whether the providers have ever had their parental rights terminated or had children removed from their care under Article 10 of the Family Court Act. The districts and the children's parents will use the information obtained from these checks to determine whether individuals should be able to provide subsidized child care services.

The proposed regulations also will improve the health and safety of children receiving subsidized informal child care by promoting the use of the federal Child and Adult Care Food Program (CACFP) by their child care providers. Districts will be required to refer all informal child care providers to the CACFP, and may mandate participation in CACFP by those providers who care for subsidized children for 30 or more hours a week. By participating in CACFP, these providers will receive additional funds to purchase meals and snacks for the children in their care. In addition, their programs will receive on-site visits by a CACFP representative to monitor that the care listed on the enrollment form is actually being provided.

Districts will be required to conduct inspections on an annual basis of twenty percent of subsidized informal caregivers who are not participating in CACFP. These inspections will enable districts to assist providers in improving the safety and appropriateness of their child care programs and remove those providers who refuse to comply with the health and safety requirements.

The proposed regulations also will provide incentives to encourage informal providers to improve the quality of the care they provide through training. Research consistently reflects that the quality of child care is directly related to the level of ongoing education and development of the provider. Therefore, the regulations would restructure the market rates available for subsidized informal child care by authorizing a higher rate for providers who annually complete ten or more hours of training and a lower rate for those who do not obtain such training.

Social services districts also will be required to implement enhanced fraud and abuse control activities for their entire child care subsidy pro-

grams. These activities will assist in the preventing inappropriate child care payments to families and to child care providers. Any resulting savings from the reduction in payments to ineligible families and providers will allow more families to receive subsidies.

4. Costs:

The State Department of Health (DOH) administers the federal CACFP in New York. The State receives open-ended federal funds for CACFP program costs so there will be no adverse financial impact to the State resulting from the increase in the number of informal child care providers participating in CACFP.

It is anticipated that the regulations will result in increased costs to social services districts to implement the new background check, inspection and audit requirements set forth in the regulations. The full annual cost to the social services districts to implement the additional background checks is estimated to be \$2.7 million. This amount is based on the anticipated number of full time equivalents staff needed statewide to perform the function times the average county salary and benefit costs for county caseworkers. The full annual costs to social services districts to complete the inspections required by the regulations is estimated to be \$1.1 million dollars. This amount is based on the anticipated number inspectors that will be needed to complete the estimated number of annual initial and follow-up inspections multiplied by the average annual salary and benefit costs for contract staff who conduct day care inspections on OCFS' behalf. In addition, it is anticipated that the first full year costs to the social services districts associated with enhancing their existing fraud and audit activities for their child care subsidy programs will be \$1 million, which is over one and half times more than the districts currently claim for child care audit cost.

OCFS cannot predict the number of informal child care providers that will obtain the annual training needed to be eligible for the enhanced market rates versus the number that will be eligible for the reduced standard market rates. However, OCFS does not anticipate that the market rate changes will result in increased costs to the social services districts during the first year that the regulations are implemented.

The State intends to adjust the social services districts' New York State Child Care Block Grant allocations to reflect implementation of the regulations.

Furthermore, the State intends to make an additional \$500,000 available to local Child Care Resource and Referral programs to provide health and safety grants to informal child care providers caring for subsidized children to improve the health and safety of their child care programs.

There are no additional costs to informal providers to come into compliance with the regulations. Those informal providers who wish to be eligible for the enhanced market rate may incur some costs in attending the necessary training. However, these costs are expected to be minimal as some of the required training is available free of charge by local community groups. In addition, the informal providers may be able to recoup any costs they incur for training through the enhanced market rates they will be eligible to receive.

5. Local government mandates:

Social services districts will be required to conduct additional background checks related to informal child care providers caring for children receiving child care subsidies. Each such caregiver of informal care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care; and, for caregivers of informal family child care, each household member age 18 years or older against the New York State Sex Offender Registry, applicable county criminal records, and the New York State child care licensing and registration information system. Additionally, districts will be required to check each caregiver of informal care against the county's child welfare databases to determine whether the caregiver's parental rights have been terminated or children have been removed under Article 10 of the Family Court Act.

Districts also will be required to refer informal providers to CACFP and to conduct inspections on an annual basis of twenty percent of informal providers not participating in CACFP. In addition, districts will be required to establish comprehensive fraud and abuse control activities for their child care subsidy programs.

Furthermore, districts will need to review existing child care subsidy cases where care is being provided by informal child care providers to determine whether the payments reflect the actual cost of care up to new applicable market rates and make any necessary adjustments to the payments.

6. Paperwork:

Social services districts will be required to track and record the required data base checks, inspections and audit activities. They also will have to provide notice to those child care recipients where the payments amounts for their informal child care providers change.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

In developing this initiative, OCFS considered a variety of options for inspections rates and market rate reimbursement levels as well as which background checks could be performed without statutory changes. The proposed regulations reflect a balance between cost and effectiveness and reasonably address the specific problems identified through the audit conducted by OSC in conjunction with OCFS. These initiatives are necessary to promote the health and safety of children in informal child care settings.

9. Federal standards:

The federal Child Care Development Block Grant Act (42 U.S.C. 9858 *et seq.*), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act, requires states to establish minimum health and safety requirements for all providers of subsidized child care services including legally-exempt child care providers. The regulations set forth those requirements that OCFS has determined are necessary to enhance the health and safety of children receiving subsidized informal child care.

10. Compliance schedule:

The regulations will be effective immediately upon their adoption by OCFS. Social services districts will have to implement the regulatory provisions immediately for those legally-exempt informal providers who seek to become enrolled with the districts on or after the effective date of the regulations. For those legally-exempt informal child care providers who are already enrolled with the districts on the date of the regulations become effective, the districts will have to implement the new provisions no later than the providers' next annual re-enrollment dates. The new market rates for legally-exempt informal child care providers will be effective 30 days after the regulations are adopted. This should provide those informal child care providers serving subsidized who wish to be eligible for the enhanced market rate sufficient time to obtain the necessary training before the new rates become effective.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulations will affect 58 social services districts and the approximately 50,000 informal providers who provide child care to children receiving child care subsidies from those districts.

2. Compliance requirements:

Social services districts will need to take additional actions in order to enroll or re-enroll an informal provider that a family eligible for a child care subsidy has selected to provide child care services. The districts will have to check the database of the State Sex Offender Registry, county criminal records, State child care licensing and registration information, and child welfare systems. Based upon the results of data base checks, the providers may be requested to provide additional information on any criminal history, termination of parental rights or removal of children from their care, or the denial, revocation or suspension of their day care licenses or registrations. This information will be shared with the parent making a choice of a provider, thereby, allowing the parent to make a more informed choice. Based upon the results, the districts must determine whether the providers may be enrolled or re-enrolled to provide subsidized child care services. In addition, districts must conduct on-site inspections on an annual basis of at least 20 percent of the enrolled providers who do not participate in the Child and Adult Care Food Program (CACFP).

The districts also must establish comprehensive fraud and abuse control activities for their child care subsidy programs and provide the details on their programs in their Consolidated Services Plans or Integrated County Plans. The enhanced fraud and abuse control activities conducted by the districts will help prevent inappropriate child care payments to families and to child care providers. Any savings resulting from the reduction in overpayments and payments to ineligible families and providers will allow more families to be served.

The regulations also will affect those small businesses operating legally-exempt informal child care programs that are caring for children receiving child care subsidies. These providers will be subject to inspections, on a random sample basis, by social services districts. Those informal providers who choose to be eligible for the enhanced market rates will need to attend ten or more hours of training annually.

3. Professional services:

Social services districts may need additional eligibility or investigative staff to comply with the proposed regulations. Informal providers seeking to be enrolled with a district will not have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

The State Department of Health (DOH) administers the federal CACFP in New York. The State receives open-ended federal funds for CACFP program costs so there will be no adverse financial impact to the State resulting from the increase in the number of informal child care providers participating in CACFP.

It is anticipated that the regulations will result in increased costs to social services districts to implement the new background check, inspection and audit requirements set forth in the regulations. The full annual cost to the social services districts to implement the additional background checks is estimated to be \$2.7 million. This amount is based on the anticipated number of full time equivalents staff needed statewide to perform the function times the average county salary and benefit costs for county caseworkers. The full annual costs to social services districts to complete the inspections required by the regulations is estimated to be \$1.1 million dollars. This amount is based on the anticipated number inspectors that will be needed to complete the estimated number of annual initial and follow-up inspections multiplied by the average annual salary and benefit costs for contract staff who conduct day care inspections on OCFS' behalf. In addition, it is anticipated that the first full year costs to the social services districts associated with enhancing their existing fraud and audit activities for their child care subsidy programs will be \$1 million, which is over one and half times more than the districts currently claim for child care audit cost.

OCFS cannot predict the number of informal child care providers that will obtain the annual training needed to be eligible for the enhanced market rates versus the number that will be eligible for the reduced standard market rates. However, OCFS does not anticipate that the market rate changes will result in increased costs to the social services districts during the first year that the regulations are implemented.

The State intends to adjust the social services districts' New York State Child Care Block Grant allocations to reflect implementation of the regulations.

Furthermore, the State intends to make an additional \$500,000 available to local Child Care Resource and Referral programs to provide health and safety grants to informal child care providers caring for subsidized children to improve the health and safety of their child care programs.

There are no additional costs to informal providers to come into compliance with the regulations. Those informal providers who wish to be eligible for the enhanced market rates may incur some costs in attending the necessary training. However, these costs are expected to be minimal as some of the required training is available free of charge by local community groups. In addition, the informal providers may be able to recoup any costs they incur for training through the enhanced market rates they will be eligible to receive.

5. Economic and technological feasibility:

The social services districts and child care providers affected by these regulations will have the economic and technological ability to comply with the regulations. As noted in the compliance cost section, the social services districts NYSCCBG allocations will be adjusted to reflect implementation of these regulations. Therefore, they should have the economic ability to comply with the regulations. In addition, the Office of Children and Family Services (OCFS) will provide districts with an automated file that can be used to comply with the requirement to maintain an automated roster of enrolled providers. Those informal subsidized child care providers who incur any costs associated with obtaining the necessary annual training required for the enhanced market rates may be able to recoup those costs through the enhanced rates they will be eligible to receive.

6. Minimizing adverse impact:

The provisions in the regulations were carefully developed to minimize adverse impact on social services districts and legally-exempt informal child care providers while at the same time enhancing the health and safety of children in informal subsidized child care settings. Districts will be required to perform additional activities and there may be some adverse impact on those informal providers that are determined to have backgrounds that have the potential for posing a risk to children or that provide false information on their enrollment forms. However, any additional duties performed by districts or negative consequences on such providers are necessary to protect the health and safety of the children receiving child care services.

As an incentive to promote the quality of care provided in informal subsidized child care settings, the market rates will be restructured to provide a higher reimbursement rate for those informal child care providers who improve their training and skills. Therefore, the proposed regulations will have a positive impact for those informal providers who choose to become eligible for the enhanced market rates by completing ten or more hours of training annually. However, to further emphasize on the importance of developing quality child care programs, the basic market rates will be reduced for those informal providers who do not choose to obtain such training.

7. Small business and local government participation:

The OCFS conducted a focus group on fraud and abuse control activities with representatives from social services districts in June 2002. This group outlined concerns and issues concerning child care services provided by informal caregivers and promoting the program integrity of child care subsidy. The OCFS also met periodically with the New York Welfare Fraud Investigators Association to hear their comments and recommendations on fraud control activities.

The OCFS also consulted with the three districts that participated in the audit conducted by the New York State Office of the Comptroller, in conjunction with OCFS, to assess their local findings and their recommendations for addressing the issues. Furthermore, in October 2003, OCFS surveyed all of the social services districts that had approved plans to impose additional health and safety standards above the existing regulatory provisions on legally-exempt child care providers to determine which ones they felt were most beneficial.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulations will affect the 44 social services districts located in rural areas of the State and those informal providers who provide child care to children receiving child care subsidies from those districts.

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

Social services districts will have additional paperwork requirements associated with implementing the requirements for informal providers that serve families receiving a child care subsidy. The district will need to receive, review and maintain documentation concerning database checks with the State Sex Offender Registry, county criminal records, State child care licensing and registration information, and child welfare systems. Districts will be required to refer informal caregivers to the Child and Adult Care Food Program (CACFP). Districts will be required to conduct inspections on an annual basis of twenty percent of informal caregivers not participating in CACFP. Districts will need to review cases in which an informal provider is caring for children to determine whether the payments reflect the actual cost of care up to the new applicable market rates. Payment adjustments will have to be made, as needed.

Districts are required to establish comprehensive fraud and abuse control activities for the child care subsidy program. These must include, but are not limited to: criteria and procedures for the referral of applications to the district's front end detection system; the sampling methodology to determine cases for verification of the family's continued need for child care; and the sampling methodology to determine the providers the district will verify that care was actually provided by comparing provider attendance forms and CACFP inspection forms.

Districts may need additional eligibility or investigative staff in order to comply with the proposed regulations. Informal providers seeking to be enrolled with a district will not have to hire additional professional staff in order to implement these regulations.

3. Costs:

The State Department of Health (DOH) administers the federal CACFP in New York. The State receives open-ended federal funds for CACFP program costs so there will be no adverse financial impact to the State resulting from the increase in the number of informal child care providers participating in CACFP.

It is anticipated that the regulations will result in increased costs to social services districts to implement the new background check, inspection and audit requirements set forth in the regulations. The full annual cost to the social services districts to implement the additional background checks is estimated to be \$2.7 million. This amount is based on the anticipated number of full time equivalents staff needed statewide to perform the function times the average county salary and benefit costs for county caseworkers. The full annual costs to social services districts to complete the inspections required by the regulations is estimated to be \$1.1 million dollars. This amount is based on the anticipated number inspectors that will be needed to complete the estimated number of annual initial and

follow-up inspections multiplied by the average annual salary and benefit costs for contract staff who conduct day care inspections on OCFS' behalf. In addition, it is anticipated that the first full year costs to the social services districts associated with enhancing their existing fraud and audit activities for their child care subsidy programs will be \$1 million, which is over one and half times more than the districts currently claim for child care audit cost.

OCFS cannot predict the number of informal child care providers that will obtain the annual training needed to be eligible for the enhanced market rates versus the number that will be eligible for the reduced standard market rates. However, OCFS does not anticipate that the market rate changes will result in increased costs to the social services districts during the first year that the regulations are implemented.

The State intends to adjust the social services districts' New York State Child Care Block Grant allocations to reflect implementation of the regulations.

Furthermore, the State intends to make an additional \$500,000 available to local Child Care Resource and Referral programs to provide health and safety grants to informal child care providers caring for subsidized children to improve the health and safety of their child care programs.

There are no additional costs to informal providers to come into compliance with the regulations. Those informal providers who wish to be eligible for the enhanced market rates may incur some costs in attending the necessary training. However, these costs are expected to be minimal as some of the required training is available free of charge by local community groups. In addition, the informal providers may be able to recoup any costs they incur for training through the enhanced market rates they will be eligible to receive.

4. Minimizing adverse impact:

The provisions in the regulations were carefully developed to minimize adverse impact on social services districts and legally-exempt informal child care providers in all areas of the State while at the same time enhancing the health and safety of children in informal subsidized child care settings. Districts will be required to perform additional activities and there may be some adverse impact on those informal providers that are determined to have backgrounds that have the potential for posing a risk to children or that provide false information on their enrollment forms. However, any additional duties performed by districts or negative consequences on such providers are necessary to protect the health and safety of the children receiving child care services.

As an incentive to promote the quality of care provided in informal subsidized child care settings, the market rates will be restructured to provide a higher reimbursement rate for those informal child care providers who improve their training and skills. Therefore, the proposed regulations will have a positive impact for those informal providers who choose to become eligible for the enhanced market rates by completing ten or more hours of training annually. However, to further emphasize on the importance of developing quality child care programs, the basic market rates will be reduced for those informal providers who do not choose to obtain such training.

5. Rural area participation:

In June 2002, the Office of Children and Family Services (OCFS) conducted a focus group on fraud and abuse control activities with representatives from social services districts including representatives from some rural social services districts. This group outlined concerns and issues concerning child care services provided by informal caregivers and promoting the program integrity of child care subsidy. The OCFS also met periodically with the New York Welfare Fraud Investigators Association to hear their comments and recommendations on fraud control activities. Representatives from rural social services districts are part of this association.

Furthermore, in October 2003, OCFS surveyed all of the social services districts that had approved plans to impose additional health and safety standards above the existing regulatory provisions on legally-exempt child care providers to determine which ones they felt were most beneficial. Several rural social services districts were part of this survey.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

The requirements that social services districts check the criminal history and other background information regarding legally-exempt informal child care programs may negatively impact on jobs or employment opportunities of some individuals that currently provide subsidized child care services. The Office of Children and Family Services is unable to predict

the number of jobs or employment opportunities that might be adversely affected by this portion of the regulations. However, it is anticipated that it would be a very small number as the regulations only apply to those legally-exempt informal providers that care for children who receive child care subsidies. Furthermore, any negative impact on jobs or employment opportunities for some legally-exempt informal providers that may result from these new requirements are necessary to protect the health and safety of the State's vulnerable children.

It also is anticipated that any such negative impacts will be offset by the positive impacts the requirements will have on employment for low income families that receive subsidized child care from legally-exempt providers. It is expected that the requirements will improve the quality and stability of care received by the children of such families. These improvements should enable the adults in these low-income families to have better job attendance and performance. As a result, their employment opportunities should improve.

The regulations also are anticipated to result in additional job opportunities in some local social services districts that choose to hire additional staff and/or contract with other agencies to perform the new background checks, inspections and/or audit activities.

State Consumer Protection Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fines for Do Not Call Violations

I.D. No. CPR-01-05-00003-P

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

Proposed action: Amendment of section 4603.4(a) of Title 21 NYCRR.

Statutory authority: Executive Law, section 553(1)(d)

Subject: Rules regarding the fine for Do Not Call violations.

Purpose: To bring the rules into parity with recently amended General Business Law, section 399-z(6).

Text of proposed rule: 4603.4 Adverse decisions and appeal of adverse decisions.

(a) Where it is determined that any person has violated one or more provisions of these regulations or applicable state law, the executive director of the agency, or any person so designated by him or her, may assess a fine not to exceed [five] *eleven* thousand dollars [(\$5,000)] (*\$11,000*) for each violation.

(b) Any alleged violator found to be in violation of these regulations or applicable state law may file an administrative appeal, by certified mail return receipt requested, within twenty (2) days of a decision, to the executive director of the agency, or to any person so designated by him or her.

(c) If an administrative appeal is properly filed, the agency shall stay any fine pending the decision of such appeal.

(d) The executive director of the agency, or any person designated by him or her, shall hear and decide any appeal as soon as practicable. If the appeal, or any part thereof, is found in the alleged violator's favor, that part of the notice of apparent liability shall be dismissed with prejudice.

(e) Any appeal found against the alleged violator shall constitute a final agency decision. If no appeal has been taken within the prescribed time period, the initial determination of the agency shall constitute a final agency decision. Accordingly, any violator shall remit to the agency such fine, with interest, within ten (10) days of the agency's decision or at such time as the agency shall prescribe if good cause is shown. Any alleged violator found to be in violation of these rules or regulations or applicable state law shall make such fine payable to the "State Consumer Protection Board."

Text of proposed rule and any required statements and analyses may be obtained from: Lisa R. Harris, General Counsel, Five Empire State Plaza, Corning Tower, Suite 2101, Albany, NY 12223, (518) 474-3011, e-mail: lisa.harris@consumer.state.ny.us

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Subdivision 1(d) of section 553 of the Executive Law, powers and duties of the board and the executive director, grants general rulemaking authority to the Consumer Protection Board (The Board) to implement other powers and duties by regulation and otherwise as prescribed by any provision of law. Section 399-z(6)(a), which was amended by Chapter 417, of the Laws of 2004, now mandates that where it is determined that there has been a violation of the Do Not Call law, a fine of up to Eleven Thousand and 00/100 (\$11,000.00) Dollars may be assessed. Section 399-z (5) of the General Business Law gives The Board authority to prescribe rules and regulations to administer section 399-z of the General Business Law relating to the Do Not Call program. The proposed rule change simply conforms the regulations to the law.

2. LEGISLATIVE OBJECTIVES:

The objective of the no telemarketing sales calls or Do Not Call law is to give New York residents an effective mechanism for preventing unsolicited and unwanted telemarketing calls. The proposed amendments carry out the intent of the statute by modifying the fine amount in accordance with the recently amended section 399-z 6(2) of the General Business Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendments to these regulations is to enhance and further achieve the statutory objectives of the Do Not Call law. These amendments are needed to comply with the existing law.

4. COSTS:

(a) Costs to State Government. There will be no additional costs to The Board to increase the fines from up to Five Thousand and 00/100 (\$5,000.00) Dollars to up to Eleven Thousand and 00/100 (\$11,000.00) Dollars.

(b) Costs to private regulated parties: The fine increase will impact only those in the telemarketing industry that are determined by The Board to have violated the Do Not Call law. The fine increase is necessary to bring these rules in parity with state and federal law. Currently, nearly five million telephone numbers have been registered by New Yorkers for Do Not Call protection. The amount of participation in this program is evidence that consumers value their privacy and want to eliminate unwanted telemarketing calls. The Board will carefully consider all oral and written comments received as a result of these proposed regulations.

(c) Costs to local governments: The proposed regulations will not impose any costs on local government.

5. LOCAL GOVERNMENT MANDATES:

The proposed rules do not impose any program, service, duty, or responsibility upon local government.

6. PAPERWORK:

No new paperwork requirements will be necessary. Paperwork will continue to be necessary for complaint communications with The Board, to establish internal safe harbor policies for implementation within the telemarketing firm, and to participate in settlement negotiations or administrative hearings for potential violations. There are no reporting requirements to The Board in the proposed regulations.

7. DUPLICATION:

The proposed regulations will bring the New York State Do Not Call rules and regulations in parity with the New York State Do Not Call law as well as the federal fine amount for Do Not Call violations.

8. ALTERNATIVES:

The proposed increase to up to Eleven Thousand and 00/100 (\$11,000.00) Dollars is necessary to comport with federal and state law which establishes a fine amount of eleven thousand dollars. Additionally, with 428,764 Do Not Call complaints filed nationwide and the 17,429 Do Not Call complaints filed in New York alone since the inception of the National Do Not Call program in October 2003, a need still exists to enhance compliance with the Do Not Call law within the telemarketing community. The Board will carefully consider all comments received as a result of these proposed regulations.

9. FEDERAL STANDARDS:

The proposed amendments do not conflict with any federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendments become effective upon the adoption and publication in the *State Register*.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed regulations will have no effect on local governments, and will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis of this finding is that these regulations are directed to telemarketers, and other parties that might be affected, none of which are local governments.

The regulations will have an effect on small businesses, which are defined as employing 100 or less individuals (SAPA § 102 (8)), principally telemarketing firms only if The Consumer Protection Board (The Board) receives complaints from consumers of alleged violations and finds that they have violated the Do Not Call law.

2. COMPLIANCE REQUIREMENTS:

The proposed amendments would mandate a fine of up to Eleven Thousand and 00/100 (\$11,000.00) Dollars for each violation of the Do Not Call law. This represents an increase of Six Thousand and 00/100 (\$6,000.00) Dollars over the previous fine of up to Five Thousand and 00/100 (\$5,000.00) Dollars. There are no reporting requirements to The Board.

3. PROFESSIONAL SERVICES:

The Board believes that affected small businesses will not be required to retain additional professional services to comply with the proposed amendments. In the event of alleged non-compliance with the proposed regulations, telemarketers may incur professional services expenses in connection with Board administrative hearings and possible judicial appeals.

4. COMPLIANCE COSTS:

The cost to any private party, such as a telemarketer, would be a fine up to Eleven Thousand and 00/100 (\$11,000.00) Dollars per each violation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

No technological change would be required.

6. MINIMIZING ADVERSE IMPACT:

The adverse impact has been minimized in the proposed amendments to the regulations by rejecting any higher fine amount. The need for and the success of the Do Not Call program is evident by the nearly five million telephone numbers registered by New Yorkers for Do Not Call protection. Greater incentives to comply with the law are evidenced by the 428,764 Do Not Call complaints filed nationwide and 17,429 Do Not Call complaints filed in New York alone since the inception of the National Do Not Call law program in October 2003.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Board will carefully consider all comments submitted to The Board in response to this notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

Regulated businesses covered by the proposed regulations do business in every county in the State, including rural areas as defined in Section 102 (10) of the State Administrative Procedure Act.

2. REPORTING, RECORDKEEPING OR OTHER COMPLIANCE REQUIREMENTS:

The proposed regulations impose no new reporting requirements.

3. COSTS:

There are no costs that are unique to telemarketers operating in rural areas, nor any special impact on rural areas other than that of the increased fine from Five Thousand and 00/100 (\$5,000.00) Dollars to Eleven Thousand and 00/100 (\$11,000.00) Dollars. For a discussion of costs, see the Costs to Private Regulated Parties under the Regulatory Impact Statement section.

4. MINIMIZING ADVERSE IMPACT:

The regulations apply uniformly to telemarketers that do business in both rural and non-rural areas of New York State. The regulations do not impose any additional burden on persons located in rural areas and The Board does not believe that the proposed regulations will have an adverse impact on rural areas.

5. RURAL AREA PARTICIPATION:

The amendments have no unique features such that rural area participation was required. The Board will carefully consider any comments filed in response to this notice, and make changes to the extent necessary to reflect any impacts on rural areas.

Job Impact Statement

1. JOB IMPACT EXEMPTION (JIE):

The proposed regulations should not have a substantial adverse impact, defined as a decrease of 100 jobs (SAPA § 201-a(6)(c)). The Board estimates that telemarketing firms should be able to comply with the proposed amendments using existing resources. Because it is evident from the nature of these amendments that they would have little impact on the number of

jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required.

2. **JOB IMPACT STATEMENT (JIS):**

This requirement is not applicable. See the Job Impact Exemption section.

3. **JOB IMPACT REQUEST FOR ASSISTANCE (JIRA):**

This requirement is not applicable. See the Job Impact Exemption section.

Education Department

NOTICE OF ADOPTION

Supplementary Certificate in the Classroom Teaching Service

I.D. No. EDU-24-04-00005-A

Filing No. 1432

Filing date: Dec. 21, 2004

Effective date: Jan. 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 80-2.11 and addition of sections 80-5.18 and 80-5.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1) and 3010 (not subdivided)

Subject: Supplementary certificate in the classroom teaching service and relocation of the requirements for teachers of adult, community and continuing education.

Purpose: To establish a new teaching certificate, the supplementary certificate, to enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers; and relocate existing requirements for teachers of adult, community and continuing education to another section of the commissioner's regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-24-04-00005-P, Issue of June 16, 2004.

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

Revised rule making(s) were previously published in the State Register on November 3, 2004.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Qualifications for Teachers and Paraprofessionals

I.D. No. EDU-39-04-00004-A

Filing No. 1433

Filing date: Dec. 21, 2004

Effective date: Jan. 6, 2005

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

Action taken: Addition of section 120.6 to Title 8 NYCRR

Statutory authority: Education Law, sections 101 (not subdivided); 207 (not subdivided); 215 (not subdivided); 305(1) and (2); and 3713(1) and (2)

Subject: Qualifications for teachers and paraprofessionals.

Purpose: To incorporate by reference requirements of the No Child Left Behind Act of 2001 relating to qualifications of teachers and paraprofessionals in order to ensure that local educational agencies are in compliance with this Federal law.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-39-04-00004-P, Issue of September 29, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensure Requirements as a Licensed Master Social Worker and Licensed Clinical Social Worker

I.D. No. EDU-01-05-00009-P

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

Proposed action: Amendment of sections 74.3, 74.4, 74.5, 74.6 and 74.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6507(2)(a) and (3)(a), 7701(1), 7704(2)(b) and (c), 7705(1) and (2), 7706(3) and 7707(2) and (4); and Insurance Law, sections 3221(l)(4)(A) and (D) and 4303(i) and (n)

Subject: Licensure requirements as a licensed master social worker and licensed clinical social worker.

Purpose: To conform the regulatory requirements for licensure in licensed master social work and licensed clinical social work and for the authorization qualifying licensed clinical social workers for certain insurance reimbursement with new requirements established by L. 2004, ch. 230.

Substance of proposed rule (Full text is not posted on a State website): The State Education Department proposes to amend sections 74.3, 74.4, 74.5, 74.6, and 74.8 of the Regulations of the Commissioner of Education relating to requirements for licensure as a licensed master social worker and licensed clinical social worker.

Section 74.3 concerns the experience requirement for licensure as a licensed clinical social worker. It is amended to specify the subject matter of the required experience, "clinical social work experience in diagnosis, psychotherapy, and assessment based treatment plans." The section is also amended to provide that the supervised experience may be obtained in a facility setting or non-facility setting, as defined in the section. The section is amended to clarify the qualifying standards for supervisors of the required experience.

Section 74.4 concerns limited permits to practice licensed master social work and licensed clinical social work. Subdivision (a) of this section concerns limited permits to practice licensed master social work. It is amended to require the limited permit holder to practice under the general supervision of a licensed master social worker or a licensed clinical social worker. Paragraph (1) of this subdivision is amended to specify that the applicant satisfy all requirements for licensure as a licensed master social worker, except the examination requirement. Paragraph (2) of this subdivision is amended to specify that the practice setting must not be a private practice owned or operated by the applicant. Paragraph (3) of the subdivision defines general supervision of the permit holder, as follows: "For purposes of this subdivision, general supervision shall mean that the supervising licensed master social worker or licensed clinical social worker is available for consultation, assessment and evaluation, has authorized the permit holder to provide the services, and exercises the degree of supervision appropriate to the circumstances." Paragraph (4) of this subdivision is amended to provide that the limited permit shall be valid for not more than 12 months and shall not be renewable.

Subdivision (b) of this section concerns limited permits to practice licensed clinical social work. It is amended to require the limited permit holder to practice under the general supervision of a licensed clinical social worker. Paragraph (1) of this subdivision is amended to specify that the applicant satisfy all requirements for licensure as a licensed clinical social worker, except the examination requirement. Paragraph (3) of the subdivision defines general supervision of the permit holder, as follows:

"(3) An individual practicing licensed clinical social work under a limited permit shall be under the general supervision of a licensed clinical social worker. For purposes of this subdivision, general supervision shall

mean that supervision of practice under the limited permit shall consist of contact between the permit holder and supervisor during which:

- (i) the permit holder apprises the supervisor of the diagnosis and treatment of each client;
- (ii) the permit holder's cases are discussed;
- (iii) the supervisor provides the permit holder with oversight and guidance in diagnosing and treating clients;
- (iv) the supervisor regularly reviews and evaluates the professional work of the permit holder; and
- (v) the supervisor provides at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that no more than 50 percent of the required hours of in-person supervision may be group clinical supervision."

Paragraph (4) of this subdivision is amended to provide that the limited permit shall be valid for not more than 12 months and shall not be renewable.

Section 74.5 concerns the authorization qualifying licensed clinical social workers for certain insurance reimbursement. The section is amended to delete requirements for the three-year credential. The title "six-year credential" is removed, and the requirements are amended for the credential that would permit insurance reimbursement pursuant to Insurance Law, section 3221(l)(4)(D) or 4303(n).

Section 74.6 is amended to provide that a licensed master social worker may provide clinical social work services under supervision in a non-facility setting as well as a facility setting. The subdivision (a) of this section is amended to add a definition of non-facility setting. Subdivision (b) is amended to clarify required qualifications for supervisors.

Section 74.8 relates to special provisions for licensure. Subdivision (a) specifies special provisions for licensure as a licensed master social worker. It provides that for an applicant who on September 1, 2004 possessed a master of social work degree shall be licensed as a licensed master social worker without having to pass the licensure examination, provided that the applicant meets all requirements of paragraph (2) of this subdivision by September 1, 2005, including among other requirements filing an application for licensure with the Department by that date.

Subdivision (b) of this section relates to special provisions for licensure as a licensed clinical social worker for an applicant who was licensed as a certified social worker on September 1, 2004, but had not received an authorization for insurance reimbursement pursuant to section 74.5 of this Part. The requirements are clarified to provide that the applicant must meet all of the requirements established in paragraph (2) of this subdivision by September 1, 2005. Also, the supervised experience requirement is amended to provide that the supervised experience for licensure as a licensed clinical social worker, as prescribed in section 74.3 of this Part, may be used to satisfy the special provision requirement as well as the experience used for the credential authorization insurance reimbursement, as prescribed in section 74.5 of this Part.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Subdivision (1) of section 7701 of the Education, as amended by Chapter 230 of the Laws of 2004, defines the practice of licensed master social work and authorizes licensed master social workers to practice

clinical social work under supervision in accordance with Commissioner's Regulations.

Paragraphs (b) and (c) of subdivision (2) of section 7704 of the Education Law, as amended by Chapter 230 of the Laws of 2004, authorizes the State Education Department to establish implementing standards for the education and experience requirements that must be met to qualify for a license as a licensed clinical social worker.

Subdivisions (1) and (2) of section 7705 of the Education Law, as amended by Chapter 230 of the Laws of 2004, authorizes the State Education Department to issue limited permits to practice licensed clinical social work and licensed master social work and to charge a fee for such permits.

Subdivision (3) of section 7706 of the Education Law provides an exemption, permitting a licensed master social worker to practice within the scope of practice of a licensed clinical social worker in a facility or acceptable setting and under supervision, in accordance with Commissioner's Regulations.

Subdivisions (2) and (4) of section 7707 of the Education Law, as amended by Chapter 230 of the Laws of 2004, establishes special provisions for certain licensees to be licensed as a licensed master social worker or licensed clinical social worker.

Subparagraphs (A) and (D) of paragraph (4) of subsection (l) of section 3221 of the Insurance Law and subsections (i) and (n) of section 4303 of the Insurance Law, all as amended by Chapter 230 of the Laws of 2004, authorizes licensed clinical social workers with satisfactory experience to qualify for reimbursements under certain group health insurance policies for psychotherapy services.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish standards for licensure as a licensed master social worker or as a licensed clinical social worker, in accordance with changes in these requirements established by Chapter 230 of the Laws of 2004.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to conform the regulatory requirements for licensure in licensed master social work and licensed clinical social work and for the authorization qualifying licensed clinical social workers for certain insurance reimbursement with new requirements established by Chapter 230 of the Laws of 2004.

The amendment is needed to conform the experience requirement for licensure in licensed clinical social work to the requirements prescribed in section 7704 of the Education Law, as amended by Chapter 230 of the Laws of 2004. Specifically, the regulation provides that the experience must be clinical social work experience in diagnosis, psychotherapy, and assessment-based treatment plans.

The amendment is needed to modify the requirements for limited permits to be consistent with the new requirements established in section 7705 of the Education Law, as amended by Chapter 230 of the Laws of 2004. The amendment requires the limited permit holder in licensed master social work to be under the general supervision of a licensed master social worker or licensed clinical social worker, and requires the limited permit holder in licensed clinical social work to be under the general supervision of a licensed clinical social worker, and defines general supervision in each case. The amendment also limits the duration of the limited permits to 12 months, and provides that they are non-renewable.

The amendment changes requirements authorizing qualifying licensed clinical social workers for certain insurance reimbursement, in accordance with amendments in Insurance Law made by Chapter 230 of the Laws of 2004. Specifically, requirements for the three-year credential are deleted from regulation because Insurance Law provides that individuals licensed as licensed clinical social workers pursuant to Article 154 of the Education Law would qualify for certain types of insurance reimbursement prescribed in the Insurance Law. Also, the requirements for the six-year credential were changed to conform to the new statutory requirements. Licensed clinical social workers will have to complete three or more additional years of experience in psychotherapy beyond that required for licensure as a licensed clinical social worker to qualify for certain types of insurance reimbursement.

The amendment also changes the special provision requirements for licensure as a licensed master social worker prescribed in section 74.8(a) of the Commissioner's regulations. In accordance with section 7707(2) of the Education Law, as amended by Chapter 230 of the Laws of 2004, the amendment requires the applicant to apply for licensure under the special provision by September 1, 2005. The amendment permits applicants under this special provision additional time to meet the requirements in section 74.8(a)(2). Applicants will have to meet these requirements by September

1, 2005, consistent with the deadline for applying under the special provision.

The amendment also clarifies the timeframes for meeting the requirements for licensure as a licensed clinical social worker under the special provisions prescribed in section 74.8(b).

4. COSTS:

(a) Costs to State government. The proposed regulation implements statutory requirements and establishes standards as directed by statute. The regulation will not impose any additional cost on State government, beyond the cost imposed by the statutory requirements.

(b) Cost to local government. There are no costs to local government attributable to the proposed regulation.

(c) Cost to private regulated parties. The amendment imposes no costs on applicant for licensure as a licensed master social worker or licensed clinical social worker or any other regulated party beyond costs attributable to the statutory requirements, which the regulatory amendment implements.

(d) Cost to the regulatory agency. As stated above in Costs to State government, the proposed amendment does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements statutory requirements relating to licensure and practice for licensed master social workers and licensed clinical social workers. It does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment does not impose any additional reporting, recordkeeping or other paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of licensed master social workers or licensed clinical social workers.

10. COMPLIANCE SCHEDULE:

The proposed regulation implements and clarifies statutory requirements. Applicants must comply with the regulation on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment concerns standards that individuals must meet to be licensed as licensed master social workers and licensed clinical social workers. It does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to 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. The proposed regulation will affect all licensed master social workers and licensed clinical social workers in New York State. Currently, there are 40,892 licensed master social workers and licensed clinical social workers registered to practice in New York State, of whom about 11 percent, about 4,500, reside in rural areas of New York State.

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

The purpose of the proposed amendment is to conform the regulatory requirements for licensure in licensed master social work and licensed clinical social work and for authorization qualifying licensed clinical social workers for certain insurance reimbursements with new requirements established by Chapter 230 of the Laws of 2004.

The amendment conforms the experience requirement for licensure in licensed clinical social work to the requirements prescribed in section 7704 of the Education, as amended by Chapter 230 of the Laws of 2004. Specifically, the regulation provides that the experience must be clinical

social work experience in diagnosis, psychotherapy, and assessment-based treatment plans.

The amendment modifies the requirements for limited permits to be consistent with the new requirements established in section 7705 of the Education Law, as amended by Chapter 230 of the Laws of 2004. The amendment requires the holder of limited permit in licensed master social work to be under the general supervision of a licensed master social worker or licensed clinical social worker, and requires the limited permit in licensed clinical social work to be under the general supervision of a licensed clinical social worker. In each case, the amendment defines what is meant by "general supervision." Also in accordance with statutory requirements, the amendment provides that the duration of the limited permits is 12 months, and is not renewable.

The amendment also changes requirements authorizing qualifying licensed clinical social workers for certain insurance reimbursement, in accordance with amendments in Insurance Law made by Chapter 230 of the Laws of 2004. Specifically, requirements for the three-year credential are deleted from regulation because Insurance Law provides that individuals licensed as licensed clinical social workers pursuant to Article 154 of the Education Law would qualify for certain types of insurance reimbursement through such licensure. Also, the requirements for the six-year credential were changed to conform to the new statutory requirements. Licensed clinical social workers will have to complete three or more additional years of experience in psychotherapy beyond that required for licensure as a licensed clinical social worker to qualify for prescribed types of insurance reimbursement.

The amendment also changes the special provision requirements for licensure as a licensed master social worker prescribed in section 74.8(a) of the Commissioner's regulations. In accordance with section 7707(2) of the Education Law, as amended by Chapter 230 of the Laws of 2004, the amendment requires the applicant to apply for licensure under the special provision by September 1, 2005. The amendment permits applicants under this special provision additional time to meet the requirements in section 74.8(a)(2). Applicants will have to meet these requirements by September 1, 2005, consistent with the deadline for applying under the special provision. The amendment also clarifies the timeframes for meeting the requirements for licensure as a licensed clinical social worker under the special provisions prescribed in section 74.8(b) of Commissioner's regulations.

The amendment does not impose any additional recordkeeping or reporting requirements or a need for regulated parties to hire professional services.

3. COSTS:

The amendment imposes no costs on applicant for licensure as a licensed master social worker or licensed clinical social worker or any other regulated party beyond costs attributable to the statutory requirements, which the regulatory amendment implements.

4. MINIMIZING ADVERSE IMPACT:

The proposed regulation implements statutory standards for licensure as a licensed master social worker or as a licensed clinical social worker. The statutory requirements do not make exceptions for applicants for licensure who live or work in rural areas. The Department has determined that the proposed regulation's requirements should apply to all applicants for licensure regardless of their geographic location to ensure that applicants across the State are uniformly held to high licensure standards. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulations were solicited from statewide organizations representing all parties having an interest in the practice of licensed master social work and licensed clinical social work. Included in this group were the State Board for Social Work and professional associations representing the social work profession. These groups have members who live or work in rural areas. Also, the Department solicited comment from all colleges and universities in the State that offer licensure-qualifying social work programs, and public and private entities, including state and local government, that employ individuals that live or work in rural areas among others. Each organization has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

The purpose of the proposed amendment is to conform the regulatory requirements for licensure in licensed master social work and licensed clinical social work and for the authorization qualifying licensed clinical social workers for certain insurance reimbursement with new statutory requirements established by Chapter 230 of the Laws of 2004.

This amendment simply implements statutory requirements for licensure in the field of social work and requirements that licensed clinical social workers must meet for certain insurance reimbursement. The amendment will not negatively affect the number of jobs in social work available in New York State. Because it is evident from the nature of the proposed amendment that it would have no impact on the number of jobs and employment opportunities in the field of social work, 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.

Department of Health

EMERGENCY RULE MAKING

Part-Time Clinics

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

Filing No. 1405

Filing date: Dec. 16, 2004

Effective date: Dec. 16, 2004

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

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

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

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

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

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

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

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

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

Subject: Part-time clinics.

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

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

Section 703.6 Part-time clinics

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

- (1) *provide services which shall be limited to low-risk (as determined by prevailing standards of care and services) procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility. Such services may include health screening (such as blood pressure screening), preventive health care and other public health initiatives, procedures and examinations (such as well child care, the provision of immunizations and screening for chronic or communicable conditions which are treatable or preventable by early detection or which are of public health significance);*
- (2) *be located at a site that has adequate and appropriate space and resources to provide the intended services safely and effectively and is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised; and*
- (3) *not be located at a private residence or apartment, an intermediate care facility, congregate living arrangements (not including an individualized residential alternative, a shelter for adults or other group shelter operated by governmental or other organizations to provide temporary housing accommodations in a safe environment to at-risk populations), an area within an adult home, a residence for adults or enriched housing program as defined in section 2 of the Social Services Law unless the part-time clinic is an outpatient mental health program approved by the Office of Mental Health, or the private office of a health care practitioner or group of practitioners licensed by the State Education Department, except if the private office space is leased for a defined period of time*

and on a regular basis for the provision of services consistent with paragraph (l) of this subdivision.

(b) Department approval and/or notification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) disposal of solid wastes and sharps;

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

(vi) a fire plan consistent with local laws;

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

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

(ix) utilization review;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) smoking is prohibited within patient care areas.

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

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

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

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

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

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

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

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

(4) Proposals not requiring an application.

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

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

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

* * *

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-32-04-00007-P, Issue of August 11, 2004. The emergency rule will expire February 13, 2005.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

Part-time clinics were established as a separate category of service to encourage the provision of basic preventive health care in community-based settings easily accessible to the general public and to groups targeted for particular services (e.g., senior citizens). Consequently, the approval process for these clinics is simpler than that for extension clinics of hospitals and diagnostic and treatment centers, whose services are more elaborate and hours of operation less restricted. The initial authority for a hospital or diagnostic and treatment center to operate part-time clinics

requires administrative approval under the Certificate of Need (CON) process. However, the subsequent opening of individual clinic sites previously required only a letter of notification to the appropriate area office of the Department of Health, submitted a minimum 15 business days in advance of the proposed commencement of service. Environmental requirements for part-time clinics are minimal, calling only for compliance with prevailing standards for life safety, sanitation and infection control. Some 300 hospitals and diagnostic and treatment centers are authorized to operate part-time clinics.

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

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

An emergency regulation addressing part-time clinics was adopted effective August 15, 2000. Additional emergency regulations were adopted effective on November 13, 2000, February 12, 2001, May 14, 2001, August 10, 2001, November 8, 2001, February 7, 2002, May 6, 2002, August 1, 2002, October 29, 2002, January 27, 2003, April 25, 2003, July 24, 2003, October 22, 2003, January 20, 2004, April 20, 2004, July 19, 2004 and October 19, 2004. The last emergency adoption is scheduled to expire on December 17, 2004. This new emergency regulation will repeal and/or amend the regulations which would have gone back into effect upon the expiration of the October 19, 2004 emergency regulation.

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

A more detailed description of the types of services permitted in part-time clinics.

Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.

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

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

A requirement for prior limited review of new part-time clinic sites and proposed relocations of existing clinics. Requests for prior limited review must be submitted to the Department's central office at least 45 days in advance of the proposed commencement of service, instead of the 15 business days required for notification to the appropriate Department regional office.

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

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

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

Both part-time clinics in existence at the time of the original emergency regulations and any new part-time clinics will be subject to the prior

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

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

Cost to State and Local Government:

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

Cost to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternative Approaches:

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

Federal Requirements:

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

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. Part-time clinics in operation at that time must have submitted requests to continue operating within 90 days of the effective date of the adoption of the first emergency regulation (issued August 15, 2000) but may continue to operate until and unless DOH issues

a written denial of approval to operate. If the governing body of a primary delivery site wishes to open a new part-time clinic site after the effective date of the regulation, it must submit an application. If the proposal is acceptable, DOH will so notify the applicant within 45 days of acknowledgement of receipt of the request.

Regulatory Flexibility Analysis

Effect of rule:

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

Compliance requirements:

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

Professional services:

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

Compliance costs:

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

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

Economic and technological feasibility:

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

Minimizing adverse impact:

In developing the regulation, the Department considered the approaches set forth in section 202-b(1) of the State Administrative Procedure Act. The Department considered requiring all current and proposed part-time clinics to undergo the full administrative review process rather than the prior limited review process. That option was rejected in order to permit a streamlined review process for part-time clinics and to permit facilities to avoid the \$1,250 filing fee required for full or administrative reviews. The Department also has developed a standardized electronic form to minimize the paperwork burden for requests for approval to operate specific sites under the prior limited review process. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at-risk or medically underserved patients to obtain needed care and services which would be otherwise unavailable or difficult to access.

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

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

Small business and local government participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements

This regulation should not adversely affect current rural part-time clinics that are providing quality services in appropriate settings. The new

regulations will provide facilities with clarified operating standards that will enable them to operate in conformance with the law and meet generally accepted standards for quality care and safety of patients. Operators of part-time clinics in the State (including rural areas) must obtain written approval from the Department to continue operation, relocate, or open new part-time clinics in accordance with the Department's prior limited review process as outlined in section 710.1(c)(6)(v) of 10 NYCRR.

Professional Services

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

Compliance Costs

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

Minimizing Adverse Impact

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

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

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

Opportunity for Rural Area Participation

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

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a(2) of the State Administrative Procedure Act, because it is apparent from

the nature and purpose of these proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities for those part-time clinics which provide appropriate services in appropriate locations. Those clinics which provide services in locations the Department deems unacceptable will be given an opportunity to relocate to an appropriate setting. The proposed amendments will help to ensure that qualified people provide clinical care and services. Appropriately operating part-time clinics will be allowed to continue providing care and services and newly-proposed sites will be permitted to open provided they can meet the standards established in the regulation. Thus, the jobs of people qualified to provide services, and currently doing so, will not be negatively impacted.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Payment for Psychiatric Social Work Services

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

Filing No. 1407

Filing date: Dec. 16, 2004

Effective date: Dec. 16, 2004

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

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

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

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

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

Based upon the Department's interpretation of 10 NYCRR 86-4.9(c), social work services have not been considered billable threshold visits in Article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by federal law. Failure to comply with these mandates could lead to federal sanctions and the loss of federal dollars. Additionally, allowing Medicaid reimbursement for clinical social worker services is expected to increase access to needed mental health services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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. HLT-32-04-00008-P, Issue of August 11, 2004. The emergency rule will expire February 13, 2005.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

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

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

Needs and Benefits:

For some time, the Department of Health (DOH) has interpreted existing regulation 10 NYCRR Part 86-4.9(c) as restricting threshold reimbursement for medical social work services in Article 28 outpatient and diagnostic and treatment center (D&TC) clinics. Advocacy groups (e.g., United Cerebral Palsy (UCP), Community Health Care Association of New York (CHCANYS)) have challenged this policy interpretation arguing that the prohibition only relates to the provision of social work services coincident to medical care, not to medical/behavioral health services provided by certified social workers.

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

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

Costs:

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

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

Cost to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

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

Job Impact Statement

Nature of Impact:

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

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

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

Self-Employment Opportunities:

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

Assessment of Public Comment

Four comments were received by the Department of Health on the proposed amendments to Part 86 of Title 10 of the New York Code of Rules and Regulations, which allows Medicaid reimbursement for individual social work services provided in Federally Qualified Health Centers (FQHCs). A letter was also received from the Human Resources Adminis-

tration of the City of New York. That letter stated that they had reviewed the proposed regulation but had no comments.

Comment:

The Community Health Care Association of New York State (CHCANYS), and the Cerebral Palsy Associations of New York State (CP of NYS), recommended that the proposed regulation be amended to eliminate the prohibition on billing for services at FQHC part-time clinics and on billing for group psychotherapy services in FQHCs.

Comment:

The Medical and Health Research Association of New York City, Inc. comments addressed the regulation's limitation of allowing Medicaid payment only for services provided at Article 28 clinics that are designated as Federally Qualified Health Centers. Likewise, Family Planning Advocates of New York State, recommended that psychotherapy services provided by a certified licensed clinical social worker should be reimbursed as a threshold visit in all clinic settings, and not just FQHCs as the regulation proposes.

Response:

All of the above issues are currently under discussion by the Department.

NOTICE OF ADOPTION

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

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

Filing No. 1429

Filing date: Dec. 21, 2004

Effective date: April 1, 2005

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

Action taken: Amendment of sections 763.13 and 766.11 and addition of a section 400.23 to Title 10 NYCRR and amendment of section 505.14 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201, 2803 and 3612

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

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

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-07-04-00027-P, Issue of February 18, 2004.

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

Revised rule making(s) were previously published in the State Register on October 27, 2004.

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

Assessment of Public Comment

Upon re-publication in the *State Register*, public comments were received from 25 individuals and organizations regarding the revised proposed regulations requiring federal criminal background checks of unlicensed direct caregivers working in nursing homes and home care agencies. These revisions were made to the original proposed regulations by the Department upon internal review and discussion of the 94 comments received upon the initial publication of the proposed regulations in the *State Register*. The following issues were raised during the most recent public comment period:

ISSUES:

Several issues that were addressed in the summary of public comments for the original proposed regulations were raised again by commentors. These include:

1. The proposed regulations should be expanded to require criminal background checks for all health care provider types (hospitals, adult homes, assisted living facilities, etc.) and/or additional employee classifications (all caregivers, all employees) including consumer-directed care to fully protect vulnerable people receiving care throughout the full range of health care settings.
2. Temporary staffing agencies should be able to request and obtain criminal history record checks and provide this information to the facilities or agencies using their staff.

3. Employers should be able to share this information among themselves or the Department should be able to retain the information in an accessible database for a couple of years so that an immediate screen could eliminate some individuals from having repeat FBI checks every time they change employers.

RESPONSE:

As stated in the previous summary of public comments, the provisions of the enabling federal law (PL 105-277) specifically limit the ability to obtain FBI criminal background history information to nursing homes and home care agencies to request for potential direct caregivers and those who supervise residents/clients. Further PL 105-277 specifically precludes the retaining of any FBI criminal history information by the Department or the sharing of this information between employers.

ISSUE:

The provisions of the regulations, even after the revision, will create an unfair financial burden on providers for this new state mandate. The revised proposed regulatory language prohibits the costs for criminal background checks from inclusion on Medicaid cost reports, unless funds are specifically appropriated in any given fiscal year for such Medicaid reimbursement. Given the current fiscal climate and political concerns related to Medicaid expenses, it is unlikely that funding for additional costs will be specifically appropriated any time in the near future. The commentors indicate this will result in an additional unfunded mandate and reiterated their position that the costs associated with these regulations must be reimbursable.

RESPONSE:

As stated before, the Department believes the costs associated with the criminal background check are a cost of doing business which will have a minimal impact on expenditures for the facilities/program; however, if funds are specifically appropriated in any given fiscal year for such Medicaid reimbursement, then for the purposes of determining an operator's rate of payment for such fiscal year, the amount of the fee and the cost of obtaining the fingerprint card shall be reimbursable cost to be reflected in such rates as timely as practical based on budgeted costs and subsequently prospectively adjusted to reflect actual costs.

ISSUE:

Several commentors expressed concerns on the new language for provisional employment, added to the proposed regulations [400.23(e)(1)], establishing a period of provisional employment of up to 60 days, with a 60 days extension possible, while the Department is processing the provider's request for the criminal background history. Provisional employment status does require specific supervision of the individual by the employer.

The commentors indicated that this language:

- 1) provides too long a period to allow homebound clients to be at risk prior to obtaining the CBC results,
- 2) is not long enough as the Department does not know how long it will actually take to process and receive the criminal background history reports,
- 3) requires providers to hire, train, and supervise a workforce that has a high likelihood of leaving during or soon after the completion of the criminal background check,
- 4) requires the employer to utilize limited staff to provide direct supervision, resulting in additional costs and limited usefulness of the potential new employee, and
- 5) should not require the employer to document the Department's delay in providing the FBI information.

RESPONSE:

It is true that the Department can only estimate how long the process will take to request and receive the FBI criminal history information, however, it is believed that 120 days (4 months) is a sufficient period. Estimates received from other states indicate that a 6 to 8 week (2 months) turnaround is average. The Department understands the immediacy of this information and the need to return the FBI reports to the employer as soon as possible.

ISSUE:

Commentors continue to request providers be given immunity from liability for decisions made in the good faith application of the provisions of these regulations including the shall not hire rules and application of Correction Law, Article 23-A standards. This liability would be in addition to the liability currently provided in the proposed regulations related to the accuracy or incompleteness of the FBI information.

RESPONSE:

The Department has no authority to provide such immunity. The Department has added language [400.23(g)(3)] which repeats the language in federal PL 105-277, which states that an operator who, in denying employ-

ment, reasonably relies upon information provided by the U.S. Attorney General pursuant to PL 105-277, shall not be liable in any action brought by the applicant based on an employment determination resulting from the incompleteness or inaccuracy of the information.

ISSUE:

Several issues were raised pertaining to the Department's implementation process. Commentors believe there will be difficulty securing accurate fingerprint cards for all prospective employees, especially in the New York City area and question the inefficiencies through duplicating the responsibilities and activities of the Division of Criminal Justice Services (DCJS) in the Department of Health. Commentors also suggested that the Department consider giving employers the option of using electronic fingerprinting and/or direct submission of information to the FBI to obtain the report within 48 hours. Comments questioned the extend of the population covered by these regulations and wanted specific job title categories identified for employees covered by these regulations.

RESPONSE:

The Department is investigating all available options, including electronic fingerprinting, to implement these state regulations consistent with the provisions of the federal Public Law 105-277. Implementation of these regulations shall be accomplished with the input of the provider community and other relevant stakeholders. It is anticipated that an advisory group shall be convened very soon to identify and develop the implementation process. As a part and result of this process, the Department shall issue implementation guidelines that shall provide direction and instruction for the implementation of these regulations.

ISSUE:

Commentors raised concern that these regulations, which supersede local laws, would prevent agencies from obtaining the more timely (reported within 24 hours) criminal background information they currently receive thorough DCJS or local law enforcement agencies.

RESPONSE:

The regulations were written to supersede local law to reduce duplicate background checks and additional costs to the health care providers covered by the regulations.

NOTICE OF ADOPTION

Emergency Department/Services Data Collection by SPARCS

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

Filing No. 1406

Filing date: Dec. 16, 2004

Effective date: Jan. 5, 2005

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

Action taken: Amendment of sections 400.18 and 405.27; repeal of Appendix C-4 and addition of Appendix C-5 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2816

Subject: Emergency department/services data collection by SPARCS.

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

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-32-04-00002-P, Issue of August 11, 2004.

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

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

Revised Regulatory Impact Statement

Statutory Authority:

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

PHL Section 2816 specified that certain requirements must be included in the SPARCS regulations. Specification of data elements and format to be utilized include: (1) data related to inpatient hospitalization data from general hospitals; (2) ambulatory surgery data from hospital-based ambulatory surgery services and all other licensed ambulatory surgery facilities; and (3) emergency department (ED) data from general hospitals. This law also requires standards to assure protection of patient privacy and standards for the publication and release of data reported. Section

2803(2)(a)(v) contains the authority of the State Hospital Review and Planning Counsel to adopt, subject to the approval of the Commissioner, rules and regulations relating to hospital operating certificates.

Legislative Objectives:

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

Needs and Benefits:

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

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

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

Costs:

Cost to State and Local Governments:

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

Costs to the Department of Health:

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

Costs to Regulated Entities:

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

Local Government Mandates:

This regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

Efforts to collect this ED data will be built on systems that facilities already have in place for other purposes such as billing and current reporting requirements. There will be a need for facilities to develop procedures to route ED data submissions to SPARCS. SPARCS will work with the hospital industry to conform to the federal Health Insurance Portability and Accountability (HIPAA) Act of 1996 to standardize the reporting system. These issues should be offset by the ensuing enhanced data set that will allow hospital administrators to manage and plan more effectively. All of DOH's security and data protection procedures now in place for inpatient data will be applied to the use of ED data. Individual patient record security will be maintained utilizing an identity shielded unique personal identifier. Privacy and confidentiality regulations now in effect for SPARCS inpatient data will protect the patient's privacy and confidentiality by restricting access to any sensitive information in SPARCS and insuring a review of all such requests by an independent review board. The SPARCS Notification Letter, which informs patients that all acute care hospitals are required to submit to SPARCS certain billing and medical information, will remain in "Your Rights as a Hospital Patient" booklet. Chapter 187 of the Laws of 1997 mandates the distribution of this booklet by hospitals to patients upon submission. SPARCS will verify, on an annual basis, the inclusion of the SPARCS Notification Letter with the Health Department Bureau that maintains this document. The proposed regulations will contain specific data elements to be collected and in what format.

Duplication:

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

Alternative Approaches:

The collection of emergency department/services data has been mandated by law. Therefore, no practical alternative could be considered for this data submission. However, every effort has been made to address any concerns the hospitals may have in the collection of this data. SPARCS notifies facilities of proposed emergency department implementation through the e-mailing of bulletins and pursues statewide outreach through the hospital associations, the New York Health Information Management Association (NYHIMA), the New York State Chapter of the American College of Emergency Physicians (ACEP) and other organizations. Input from these organizations has been taken into consideration and reflected in the regulations and proposed data elements. In an effort to insure statewide participation in the development of these emergency department regulations contact was made with hospital associations and information management associations throughout New York State. HANYS and NYHIMA sponsored regional meetings between SPARCS and hospital representatives. These meetings provided forums for the industry to comment and react to the Department of Health's development activities. These meetings helped SPARCS to redefine several emergency department data elements and made sure that SPARCS requirements were aligned with provider capabilities. In addition, meetings with emergency department physicians allowed us to modify the tracking of physician care. Ongoing information about the development of the emergency department data collection system was made publicly available in the SPARCS information bulletins starting in December 2001. These bulletins are published on the SPARCS public web site and have provided updated information to the industry and other interested parties as the project progressed. The SPARCS Information Bulletins can be accessed at: <http://www.health.state.ny.us/nysdoh/sparcs/info.htm>.

Federal Requirements:

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

Compliance Schedule:

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minimum Wage Allowances

I.D. No. LAB-01-05-00008-EP

Filing No. 1431

Filing date: Dec. 21, 2004

Effective date: Dec. 21, 2004

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

Action taken: Amendment of Parts 137, 138, 141, 142, 143 and 190 of Title 12 NYCRR.

Statutory authority: Labor Law, art. 19, section 652; and art. 2, section 21

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

Specific reasons underlying the finding of necessity: The amendments are effective on Jan. 1, 2005 pursuant to statute. The statute does not provide all of the necessary information, therefore the wage orders must be amended to supplement the statute. The wage orders are necessary to give the employers and the public accurate information.

Subject: Minimum wage allowances to conform with the statutory amendments set forth in L. 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A

Purpose: To conform the wage orders with statutory amendments.

Substance of emergency/proposed rule (Full text is not posted on a State website): 12 NYCRR Parts 137 and 138, the minimum wage and minimum wage allowances for the restaurant and hotel industries, are amended to incorporate the increase in the minimum wage enacted pursuant to the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A and the statutorily required amendments to the minimum wage allowances (i.e., tips, uniforms, meals and lodging).

12 NYCRR Part 141 (building service industry), Part 142 (miscellaneous industries and occupations), Part 143 (non-profitmaking institutions), are amended to incorporate the increase in the minimum wage enacted pursuant to the Laws of 2004 and the statutorily required amendments to the minimum wage allowances.

12 NYCRR Part 190 (farm workers) is amended to incorporate the increase in the minimum wage enacted pursuant to the Laws of 2004.

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 March 20, 2005.

Text of rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Department of Labor, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: diane.wehner@labor.state.ny.us

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

Public comment will be received until: 60 days after publication of this notice.

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

Regulatory Impact Statement

1. Statutory authority: Article 19 §§ 651, 652 and 653, Article 2 § 21(11) and Article 19-A §§ 673(1), 673(2) and 674 of the Labor Law require the Commissioner of Labor to issue rules and regulations modifying wage orders to reflect increases in the minimum wage and any related allowances.

2. Legislative objectives: The legislature found it necessary to increase basic wages to guarantee adequate maintenance of the employees and their families. At the time of the last increase to the minimum wage payable within this state to \$5.15 per hour, the legislature noted that existing wage orders in this state permit employers of certain tipped employees working

in certain industries to pay an amount that is less than the minimum wage. The legislature adjusted the effect of such wage orders for food service workers. The legislature acknowledged that the food and beverage service industry is highly competitive and that tipping employees who serve customers in food and beverage establishments is a common practice. It is also common that the total income earned by employees in this industry, when tips are combined with the wages required under existing wage orders of the department of labor, frequently exceed the mandated minimum wage. The legislature modified the impact of the existing state wage order for food service workers in order to obtain a balance between the need to protect the rights and income of the workers against the prices paid by consumers for food and beverage in restaurants, grills, diners and other establishments. Current legislation continues this modification.

3. Needs and benefits: The amendments to Parts 137, 138, 141, 142, 143 and 190 (which set forth minimum wage orders) are needed to conform the regulations to Section 652 of the Labor Law. Section 652(1) was amended effective January 1, 2005 to increase the minimum wage from \$5.15 per hour to \$6.00 per hour; on January 1, 2006 to increase the minimum wage from \$6.00 per hour to \$6.75 per hour; and January 1, 2007 to increase the minimum wage from \$6.75 per hour to \$7.15 per hour. Additionally, Section 652(2) requires that these minimum wage orders be modified by the Commissioner of Labor to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage. The modified minimum wage orders are to be promulgated by the Commissioner without a public hearing, and without reference to a wage board, and become effective on the effective date of such increases in the minimum wage. Therefore, these amendments are needed to provide employers with the correct wage allowances to avoid confusion in the employer community and promote compliance with the statutory amendments to Section 652 (The Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A).

4. Costs: The department of labor recognizes that the increase in the minimum wage will increase costs to employers. However, these changes to the wage orders are required by sections 652 and 673 of the Labor Law.

5. Local government mandates: This regulation imposes no mandates on local governments because employees of the Federal, State or municipal government or a political subdivision thereof are excluded from coverage of the provisions of Parts 137 (section 137-3.2(b)), 138 (section 138-4.4(b)), 141 (section 141-3.2(b)(3)) and 190 (section 190-1.3(b)(3)). In addition, Part 143 is not applicable to local governments because this part is only applicable to employees in nonprofit making institutions that have not elected to be exempt from coverage under a minimum wage order.

6. Paperwork: This regulation will not require any additional paperwork.

7. Duplication: None.

8. Alternatives: The Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A amended the minimum wage thereby requiring the Commissioner of Labor to modify the wage orders set forth in 12 NYCRR Parts 137, 138, 141, 142, 143 and 190. The Commissioner has no discretion to amend the rules other than as set forth therein. Section 652 of the Labor Law requires the Commissioner of Labor to issue rules and regulations modifying wage orders to reflect increases in the minimum wage and any related allowances.

9. Federal standards: The federal Fair Labor Standards Act (FLSA) provides for minimum wage allowances and salary thresholds for exempt employees. Generally, Parts 137, 138, 141, 142 and 143 are more restrictive than similar provisions found in the FLSA. The FLSA allows for fair market value for wage allowances for meals and lodging while the wage allowances set forth in the proposed amendments are more restrictive. The Wage Board established these standards many years ago and the Labor Law requires that the wage allowances be modified in proportion to any increase in the minimum wage. In addition, the FLSA has a tip allowance that requires a cash wage of \$2.13 per hour plus tips to equal the minimum wage of \$5.15 per hour. The proposed regulations add a new category of worker, a food service worker, and require a cash wage of \$3.30 per hour provided that the tips of such a worker, when added to that cash wage, equal or exceed the minimum wage of \$5.15 per hour.

10. Compliance schedule: Regulated entities should be able to achieve immediate compliance with the regulations because the requirements are well known as the department of labor has publicized the rate change, updated their website to advise of the change and is assisting employers as needed.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule increases the minimum wage and the minimum wage orders and allowances as required by the amendments to sections 652 of the Labor Law enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A. In addition, the minimum wage for farm workers is increased as required by the amendment to section 673 of the Labor Law enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A. There will be no additional fees or recordkeeping requirements as a result of the changes to these rules. These regulations have no effect on local governments.

2. Compliance requirements: These regulations impose no new requirements on small business or local governments because the increases in the minimum wage and the minimum wage orders and allowances are statutorily required by the amendments to section 652 and 673 of the Labor Law enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A.

3. Professional services: These regulations will not require small businesses or local governments to obtain additional professional services.

4. Compliance costs: There are no additional costs to be incurred as a result of these regulations.

5. Economic and technological feasibility: Compliance with these regulations will be economically and technologically feasible since the procedures for minimum wage allowances have been in existence for a number of years.

6. Minimizing adverse impact: There will be no adverse impact on small businesses or local governments. In some cases, these regulations will increase the minimum wage allowances that affected businesses are currently permitted to take. The regulations do not impose any new paperwork or recordkeeping requirements.

7. Small business and local government participation: Copies of the regulations will be furnished to the Business Council of New York, Inc., the New York State Department of Economic Development, the National Federation of Independent Business, the New York State Restaurant Association and the New York State Hospitality & Tourism Association.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: These regulations apply to all employers in rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements: There are no additional reporting, recordkeeping or compliance for regulated entities.

3. Costs: There are no additional compliance costs for regulated entities because the increases in the minimum wage and the minimum wage orders and allowances are statutorily required by the amendments to section 652 of the Labor Law (enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A) and section 673 of the Labor Law (enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A).

4. Minimizing adverse impact: There is no adverse impact to entities in rural areas.

5. Rural area participation: Copies of this regulation will be provided to the Business Council of New York, Inc., the New York State Department of Economic Development, the National Federation of Independent Business, the New York State Restaurant Association and the New York State Hospitality & Tourism Association.

Job Impact Statement

1. Nature of Impact: These regulations should be no significant impact on present employment opportunities because they are conforming the Department of Labor's Wage Orders and allowances to amendments to Labor Law, section 652 (The Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A) and Labor Law, section 673 (The Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A).

2. Categories and number affected: These regulations should not have any effect on employment.

3. Regions of adverse impact: There will be no adverse impact on employment opportunities as a result of these regulations in any region of the State.

4. Minimizing adverse impact: There will be no adverse impact on employment opportunities as a result of these regulations.

State Liquor Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Increase in the Amount of Retail Bonds

I.D. No. LQR-01-05-00005-P

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

Proposed action: Amendment of Part 81 of Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, section 112

Subject: Increase in amount of retail bonds.

Purpose: To impose a larger bond claim in situations where a licensee has defaulted and gone out of business after charges have been brought.

Text of proposed rule: Promulgated by the State Liquor Authority pursuant to Section 112 of the Alcoholic Beverage Control Law:

1. Requirement of bond. Each licensee and each permittee of the kinds and classes hereinafter prescribed shall file with the Liquor Authority a bond to the people of the State of New York, issued by a surety company approved by the Superintendent of Insurance as to solvency and responsibility, and authorized to transact business in this state, in the penal sum hereinafter prescribed, conditioned that such licensee or permittee will not suffer or permit any violation of the provisions of the Alcoholic Beverage Control Law or the rules of the State Liquor Authority. All bonds shall undertake that any costs taxed or allowed in any action or proceeding will be paid to the extent of \$2500 in addition to the penal sums specified in this rule.

2. Filing bond. The bond prescribed by this rule shall accompany the application for the license or permit.

3. Penal sum of bonds.

(a) Licenses. The following is the schedule of penal sums of bonds to be filed in support of the various licenses:

Manufacturer	Bond
Cider Producer	[1,000] 2,500
Farm winery	[1,000] 2,500
Vendor	[1,000] 2,500
Retail (Off-Premises)	
Beer (Grocery, Drug Store, Supply Ship)	[1,000] 2,500
Wine (Wine Store)	[1,000] 2,500
Liquor (Liquor Store)	[1,000] 2,500
Retail (On-Premises)	
Beer	
Club, Hotel, Eating Place or Ball Park-Stadium	[1,000] 2,500
Railroad Car, other than Option C	None
Vessel (including Fishing Vessel)	[1,000] 2,500
Summer Licenses (Club, Hotel, or Eating Place)	[1,000] 2,500
Wine and Beer	
Club, Hotel or Restaurant	[1,000] 2,500
Special	[1,000] 2,500
Liquor, Wine and Beer	
Bottle Club	[1,000] 2,500
Special	[1,000] 2,500
Restaurant, Hotel, Club, Luncheon Club,	
Catering Establishment or Vessel	[1,000] 2,500
Railroad Car, other than Option C	None
Railroad Car, Option C only	[1,000] 2,500
Summer Licenses (Club, Hotel, Restaurant or Vessel)	[1,000] 2,500
Aircraft	[1,000] 2,500

(b) Permits. The following is the schedule of penal sums of bonds to be filed in support of the various permits:

	Bond
Broker (Annual)	[1,000] 2,500
Solicitors	[1,000] 2,500
Trucking (regardless of number of vehicles operated by permittee)	[1,000] 2,500

4. Filing bond rider. Before a license or permit certificate is endorsed or any change is made on the face of the certificate or to the licensed premises for any of the following reasons, a bond rider, covering such endorsement or change, must first be obtained from the surety company which issued

the bond filed in support of the license or permit, and filed with the appropriate zone office of the Liquor Authority.

a. Endorsement of a license pursuant to Section 122.

b. Removal of the premises to another location.

c. Additional space included in the licensed premises, whether such additional space includes a new house number or not. (This shall apply to any outdoor space, including a sidewalk cafe.)

d. Change of name of an individual licensee as the result of marriage, court order or otherwise.

e. Change of corporate name upon a certificate issued by the Secretary of State.

f. Transfer of employment by a solicitor.

5. Return of bond. Where a license or permit has been issued by the Authority, the bond filed in support of the license or permit shall not be returned to the licensee or permittee. A bond may not be returned even though the license or permit was immediately surrendered for cancellation and refund and was never actually used. A bond filed in support of a license or permit may be returned only to a person whose application was disapproved or disapproved without prejudice.

6. Rule inapplicable to governmental agency. This rule shall not apply to any license or permit issued to any department, board, commission or other agency of the state or to any political subdivision of the state.

7. Replacement and restoration of bonds. (a) No license shall be issued to any person and no licensee shall traffic in alcoholic beverages unless there is in effect and on file with the Authority a surety company bond as required by this rule.

(b) Where payment of the full amount of a surety company bond has been directed or claimed by the Authority in disciplinary proceedings, the licensee shall file a new bond. Where payment of a part of the bond has been directed or claimed by the Authority in disciplinary proceedings, the licensee shall file with the Authority a rider of the surety company certifying that the full amount of the bond has been restored and is effective. Such new bond or rider shall be filed within 10 days from the date of the Authority's order. Failure of the licensee to comply shall constitute good and sufficient cause for the revocation, cancellation, suspension, recall or non-renewal of the license. The requirements of this paragraph shall not apply when the license period during which the surety bond was effective has expired.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara J. Lord, Associate Attorney, State Liquor Authority, 317 Lenox Ave., New York, NY 10027, (212) 961-8342

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 112 of the Alcoholic Beverage Control Law.

2. Legislative Objectives:

To permit the Authority to impose a larger bond claim in situations where a licensee has defaulted and gone out of business after charges were brought.

3. Needs and Benefits:

This will assist the Authority to impose a bond claim more commensurate with serious violations of the Alcoholic Beverage Control Law.

4. Costs: To regulated parties: A minimal increase in the cost of the bond.

To local governments: None.

To the State Liquor Authority: None.

5. Local Government Mandates:

No program, service, duty, or responsibility is imposed by the proposed amendment upon any county, city, town, village school district, fire district, or other special district.

6. Paperwork:

The proposed amendment does not impose any new paperwork or recordkeeping requirements.

7. Duplication:

There are no rules or other legal requirements of the State and Federal governments which duplicate, overlap, or conflict with the amendment.

8. Alternatives:

No viable alternative that would achieve the same result.

9. Federal Standards:

The proposed amendment does not exceed any minimum standard of the Federal government for the same or similar subject area.

10. Compliance Schedule:

The proposed amendment imposes a slight increase in the bond premium.

The proposed amendment does not impose any additional compliance requirements on regulated parties.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendment directs that bonds currently required by the Alcoholic Beverage Control Law continue to be filed with the State Liquor Authority. The proposed amendment increases the amount to be paid for the bond required by the Alcoholic Beverage Control Law.

2. Compliance requirements:

The proposed amendment has no effect on compliance requirements on regulations on regulated parties and does not affect local governments.

3. Professional services:

No professional services will be needed by a small business or local government to comply with the proposed amendment.

4. Compliance costs:

A slight initial capital cost and continuing costs will be incurred by a regulated business or industry. Local government will have no additional costs in connection with the proposed amendment.

5. Economic and technological feasibility:

The proposed amendment reduces the amount of paperwork required. The proposed amendment will not have an adverse economic impact upon small businesses or local governments. The proposed amendment does not require that small businesses or local governments adopt any new or additional technology or expend any funds for new or additional technology.

6. Minimizing adverse impact:

The proposed amendment will have a minimal adverse effect upon small businesses and none for local governments. The proposed amendment will have no effect on the volume of paperwork required.

7. Small business and local government participation:

There have been no discussions with the staff of the Authority, and local governments or small businesses.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendment will apply equally to all of the rural areas of the State, as well as all urban areas.

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

Regulated parties will not have to undertake any additional reporting, recordkeeping, or other affirmative acts to comply with the proposed amendment. No professional services will be needed in a rural area to comply with the proposed amendment.

3. Costs:

Capital costs or continuing costs will be incurred by a regulated business or industry in connection with the proposed amendment. The current cost of the bond, which is approximately \$50 for one year, \$75 for two years and \$100 for three years, may increase by 2-1/2 times subject to the rate approved by the Department of Insurance. The insurance companies which issue the penal bonds will petition the New York State insurance Department for an increase on the premium rate. No local area will have additional costs in connection with the proposed amendment.

4. Minimizing adverse impact:

The proposed amendment will have a minimal adverse effect on businesses in rural areas. The proposed amendment will have no effect on the volume of paperwork required. Currently and historically, the amounts of bonds required to be posted are a level amount, not based on geographical location of the licensee. Since the amount of the bonds is uniform statewide and unlike the license fees, is not based on the population of the locality where the premises are located, there is nothing that can be done to minimize any adverse impact on businesses in rural areas.

5. Rural area participation:

Because the bond amount to be posted does not vary by the geographical location of the licensee, there was minimal reason for discussions with licensees or trade associations. The cost of the license and requirements related thereto are not incumbent upon the amount of sales or the number of employees the establishment has.

Job Impact Statement

The State Liquor Authority finds that the proposed amendment will have no impact on jobs and employment.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Responsibility for Home Health Aide and Personal Care Services in Certain Residential Facilities and Day Care Programs

I.D. No. MRD-43-04-00004-A

Filing No. 1408

Filing date: Dec. 17, 2004

Effective date: Jan. 5, 2005

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

Action taken: Amendment of sections 635-9.1, 635-9.2, 635-10.4, 635-10.5, 671.5, 686.13 and 690.7 of Title 14 NYCRR.

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

Subject: Responsibility for home health aide and personal care services in certain residential facilities and day programs.

Purpose: To require that certain residential facilities and day programs be responsible for Medicaid-reimbursable home health aide and personal care services provided to participants in those settings.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-43-04-00004-P, Issue of October 27, 2004.

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

OMRDD received one letter of comment from a residential provider association which stated its disagreement with the basic premise that home health aide and personal care services would no longer be available as separately billed Medicaid services.

In response, OMRDD would point out that this change was implemented by the Department of Health and the proposed regulation follows through on the department's action as announced in its June 2004 Medicaid Update.

The writer also objected to the changes because they would preclude the separate Medicaid billing of home health aide and personal care services, particularly in emergency, "home-from-the-hospital" services or services for medical emergencies of a short term nature. The letter stated that, since the OMRDD provider is now responsible for paying for these services, the burden would be on the provider to pursue a lengthy process to retrospectively appeal the fee during which the provider's finances could be strained. While the comments recognized that OMRDD had reached out to providers in an effort to administratively address these issues through a fast track appeal process, the writer observed that the funding adjustments provided for under amended paragraph 635-10.5(c)(3) would be insufficient in that such funding adjustments would not be immediate.

OMRDD would respond that, in planning the implementation of this change in Medicaid policy, it recognized a potential additional fiscal responsibility placed on providers, and examined all possibilities for lessening this burden. To this end, OMRDD amended its current policy to offer the ongoing special "fast track" processing of requests for additional funding to cover home health aide and personal care services. This special process is designed to reduce, as much as administratively possible, the amount of time between a provider's request for additional funding and the adjudication of the request.

Paragraph 635-10.5(c)(3) in no way creates a more burdensome price adjustment process, but merely uses, for day habilitation, the same appeals process which applies to other programs. The “fast track” process is a policy that is not referred to in the regulations.

Department of Motor Vehicles

NOTICE OF ADOPTION

Dealers and Transporters

I.D. No. MTV-42-04-00009-A

Filing No. 1428

Filing date: Dec. 21, 2004

Effective date: Jan. 5, 2005

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

Action taken: Amendment of Part 78 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 202(2)(a)

Subject: Dealers and transporters.

Purpose: To amend search fees for certain documents.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-42-04-00009-P, Issue of October 20, 2004.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transportation of Logs and Other Materials

I.D. No. MTV-01-05-00007-P

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

Proposed action: This is a consensus rule making to amend section 48.1 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 377

Subject: Transportation of logs and other materials.

Purpose: To make conforming amendments to Part 48 to reflect recent amendments to 17 NYCRR section 820.5.

Text of proposed rule: Section 48.1 is amended to read as follows:

Section 48.1 Transportation of logs and other materials. The Commissioner of Motor Vehicles adopts 17 NYCRR section [820.12] 820.5 as it relates to rules for protection against shifting or falling cargo for all vehicles.

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.

Consensus Rule Making Determination

On February 21, 2001, the Department of Motor Vehicles repealed Part 48 and adopted a new Part 48 providing that the “Commissioner of Motor Vehicles adopts 17 NYCRR Part 820.12 as it relates to rules for the protection against shifting or falling cargo.” Part 820.12 of the Department of Transportation regulations incorporated by reference 49 C.F.R. Part 393.100 *et. seq.* of the Federal regulations dealing with load securement.

NYS DOT recently amended their regulations to provide that 17 NYCRR Part 820.5 now incorporates by reference the Federal regulation. DMV, by this regulation, is merely adopting this DOT regulation in our Part 48. The substance of the DOT regulation has not changed, merely its point of reference.

In addition, Part 48 makes clear that our regulation applies to all vehicles, not just commercial motor vehicles. Although this was emphasized in the impact statements submitted with the 2001 rulemaking, it seems appropriate to add clarifying language to this consensus rule.

Job Impact Statement

A Job Impact Statement is not submitted with this consensus rulemaking, because there shall be no adverse impact on job development or job opportunities in the State.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Retail Renewable Portfolio Standard

I.D. No. PSC-01-05-00004-EP

Filing date: Dec. 16, 2004

Effective date: Dec. 16, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted on an emergency basis an order in Case 03-E-0188 approving facility certification and procurement solicitation methods to allow the Renewable Portfolio Standard Program to take advantage of Federal tax incentives.

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

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

Specific reasons underlying the finding of necessity: Recent enactment of Federal law requires expedited or “fast-track” measures for facility certification and procurement solicitation to enable the Renewable Portfolio Standard Program to leverage the benefits of Federal tax incentives and allow New York ratepayers to save tens of millions of dollars.

Subject: Retail Renewable Portfolio Standard (RPS).

Purpose: To minimize costs to ratepayers and help promote development of the renewable generation industry in New York State.

Substance of emergency/proposed rule: The Commission adopted as an emergency rule, pursuant to SAPA § 202(6), expedited or “fast-track” facility certification and procurement solicitation processes for immediate implementation by New York State Energy Research and Development Authority to take advantage of the one-year extension of the Production Tax Credit, subject to the terms and conditions set forth in the order.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire March 15, 2005.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-0188SA5)

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-45-04-00018-P	November 10, 2004
PSC-45-04-00019-P	November 10, 2004

NOTICE OF ADOPTION**Commodity Adjustment Clause Reconciliation Mechanism by Niagara Mohawk Power Corporation**

I.D. No. PSC-28-03-00015-A
Filing date: Dec. 20, 2004
Effective date: Dec. 20, 2004

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

Action taken: The commission, on Nov. 10, 2004, adopted an order in Case 03-E-0886 allowing Niagara Mohawk Power Corporation (Niagara Mohawk) to make audit adjustments to its commodity adjustment clause.

Statutory authority: Public Service Law, section 66

Subject: Commodity adjustment clause (CAC).

Purpose: To credit \$2.797 million of CAC overcharges for the benefit of Niagara Mohawk's ratepayers.

Substance of final rule: The Commission directed Niagara Mohawk Power Corporation (Niagara Mohawk) to credit to its deferral account for the benefit of ratepayers \$2.797 million of Commodity Adjustment Clause (CAC) overcharges, instead of granting Niagara Mohawk's request to recover from ratepayers approximately \$11.815 million, and include associated carrying charges on the credit from the date of this Order to the date that the funds are used for the benefit of ratepayers, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-0886SA1)

NOTICE OF ADOPTION**Waivers of Filing Requirements by Rochester Gas & Electric Corporation**

I.D. No. PSC-44-03-00012-A
Filing date: Dec. 16, 2004
Effective date: Dec. 16, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 03-T-1385 granting Rochester Gas & Electric Corporation (RG&E) a waiver of certain filing requirements and approving RG&E's application for a certificate of environmental compatibility and public need for the construction of the Rochester Transmission Project.

Statutory authority: Public Service Law, sections 4(1) and 122(1)

Subject: Rochester Transmission Project (RTP).

Purpose: To waive certain filing requirements of the commission's rules.

Substance of final rule: The Commission approved a request from Rochester Gas & Electric Corporation (RG&E) for waivers of 16 NYCRR § 86.3(a)(1)(i) and § 86.3(a)(2) in its application for a Certificate of Environmental Compatibility and Public Need to reinforce the overall RG&E 115 kV electric transmission system and its interface with the New York State transmission system, and to ensure adequate and reliable service to the Rochester area, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-T-1385SA1)

NOTICE OF ADOPTION**Lightened Regulation by Flat Rock Window Power II, LLC**

I.D. No. PSC-25-04-00015-A
Filing date: Dec. 20, 2004
Effective date: Dec. 20, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-E-0643 allowing Flat Rock Windpower II LLC (Flat Rock) to be regulated under a lightened regulatory regime.

Statutory authority: Public Service Law, sections 4(1), 69, 70 and 110

Subject: Order for lightened regulatory regime.

Purpose: To grant Flat Rock lightened regulation as an electric corporation.

Substance of final rule: The Commission issued an order providing for lightened regulation of Flat Rock Windpower II LLC as an electric corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0643SA1)

NOTICE OF ADOPTION**Two-Meter and Time-Differentiated Metering Options by Central Hudson Gas & Electric Corporation**

I.D. No. PSC-33-04-00015-A
Filing date: Dec. 15, 2004
Effective date: Dec. 15, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-E-0546 approving the metering options proposed by Central Hudson Gas and Electric Corporation (Central Hudson).

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

Subject: Net metering special provisions within Central Hudson's Service Classification No. 1—residential service and Service Classification No. 6—residential time-of-use service.

Purpose: To offer additional metering options to residential photovoltaic and farm waste net metering customers.

Substance of final rule: The Commission approved the additional metering configurations proposed by Central Hudson Gas & Electric Corporation's (Central Hudson), the two-meter and time differentiated metering options for residential photovoltaic and farm waste net metering customers of Central Hudson, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0546SA2)

NOTICE OF ADOPTION

Two-Meter and Time-Differentiated Metering Options

I.D. No. PSC-33-04-00017-A

Filing date: Dec. 15, 2004

Effective date: Dec. 15, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-E-0917 directing major electric utilities to file tariff revisions regarding the additional metering configurations proposed by Central Hudson Gas & Electric Corporation.

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

Subject: Net metering of residential photovoltaic and farm waste customer-generators.

Purpose: To offer additional metering options.

Substance of final rule: The Commission directed all major electric utilities to file tariff provisions to their residential and non-demand Time-of-Use Service classes containing the two additional metering options recommended for Central Hudson Gas & Electric Corporation's residential photovoltaic and farm waste net metering customers, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0917SA1)

NOTICE OF ADOPTION

Sublease of Real Property by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan), et al.

I.D. No. PSC-34-04-00025-A

Filing date: Dec. 17, 2004

Effective date: Dec. 17, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-G-0949 approving the sublease agreement between The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpanNY) and Allstate Insurance Company (Allstate).

Statutory authority: Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8), (9), (10), (11), (12) and 70

Subject: Sublease agreement.

Purpose: To allow KeySpanNY to sublease office space to Allstate.

Substance of final rule: The Commission authorized The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to sublease office space at One Metro Tech Center, Brooklyn, New York to Allstate Insurance Company (Allstate) and approved the accounting and rate treatment for the transaction.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-0949SA1)

NOTICE OF ADOPTION

Correction of Tariff Errors by the Village of Silver Springs

I.D. No. PSC-37-04-00015-A

Filing date: Dec. 16, 2004

Effective date: Dec. 16, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-E-0269 allowing the Village of Silver Springs (Silver Springs) to amend its schedule for electric service—P.S.C. No. 1.

Statutory authority: Public Service Law, sections 65, 66(1), (12) and (12-a)

Subject: Tariff filing by Silver Springs.

Purpose: To correct tariff errors contained in Silver Springs' minor rate filing.

Substance of final rule: The Commission approved a request by the Village of Silver Springs (Silver Springs) to correct errors contained in its March 2, 2004 rate filing and directed Silver Springs to file tariff leaves incorporating the corrected rates, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0269SA2)

NOTICE OF ADOPTION

Inter-Carrier Telephone Service Quality Measure and Standards by the Carrier Working Group

I.D. No. PSC-38-04-00004-A

Filing date: Dec. 16, 2004

Effective date: Dec. 16, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 97-C-0139 approving modifications to the inter-carrier service quality guidelines for hot cut measurements and standards.

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

Subject: Service quality standards for telephone companies.

Purpose: To establish modifications to the inter-carrier service quality guidelines for hot cut measurements and standards.

Substance of final rule: The Commission adopted modifications to the Inter-Carrier Service Quality Guidelines that incorporate hot cut measurements and standards developed by the consensus determination of the Carrier Working Group, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(97-C-0139SA21)

NOTICE OF ADOPTION**License Agreement of Real Property by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and M&M Parking Systems****I.D. No.** PSC-39-04-00008-A**Filing date:** Dec. 17, 2004**Effective date:** Dec. 17, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-G-1029 authorizing the transfer of the leasehold interest and the accounting proposed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpanNY) and M&M Parking Systems (M&M).

Statutory authority: Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8), (9), (10), (11), (12) and 70

Subject: Joint petition for a lease agreement.

Purpose: To allow KeySpanNY to sublease a portion of Coney Island Service Station to M&M.

Substance of final rule: The Commission approved the terms and conditions of a lease agreement between The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpanNY) and M&M Parking Systems (M&M) to lease approximately 25,000 square feet of KeySpanNY's Coney Island Service Station located at 817 Neptune Avenue, Brooklyn, New York to M&M and approved the proposed accounting and rate treatment for the transaction.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-G-1029SA1)

NOTICE OF ADOPTION**Loan Agreement between Fishers Island Water Works Corp. and Citizens Bank of Connecticut****I.D. No.** PSC-39-04-00011-A**Filing date:** Dec. 16, 2004**Effective date:** Dec. 16, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-W-1073 allowing Fishers Island Water Works Corporation (Fishers Island) to enter into a loan agreement for \$530,000 of long-term debt.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of securities.

Purpose: To grant Fishers Island authority to enter into a loan agreement with Citizens Bank of Connecticut.

Substance of final rule: The Commission approved a request by Fisher Island Water Works Corporation to enter into a loan agreement with Citizens Bank of Connecticut for the amount of \$530,000 of debt with a term of 15 years, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-W-1073SA1)

NOTICE OF ADOPTION**Economic Development by the Massena Electric Department****I.D. No.** PSC-41-04-00001-A**Filing date:** Dec. 15, 2004**Effective date:** Dec. 15, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-E-1143 approving the revisions to Massena Electric Department's (Massena) schedule for electric service—P.S.C. No. 2.

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

Subject: Tariff filing by Massena.

Purpose: To attract new customers and encourage existing customers to expand their businesses in upstate New York.

Substance of final rule: The Commission approved Massena Electric Department's proposed economic development program (Rider No. 1 – Economic Development) for industrial and commercial customers.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-E-1143SA1)

NOTICE OF ADOPTION**Interruptible and Temperature-Controlled Transportation Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island****I.D. No.** PSC-42-04-00018-A**Filing date:** Dec. 15, 2004**Effective date:** Dec. 15, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-G-0944, approving revisions to KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's (KeySpan) schedule for gas service—P.S.C. No. 1.

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

Subject: Tariff filing by KeySpan.

Purpose: To ensure operational compliance by customers electing service under KeySpan's dual-fuel interruptible tariff provisions Service Classification Nos. 7 and 13.

Substance of final rule: The Commission approved a tariff filing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to revise its dual-fuel interruptible tariff provisions S.C. No. 7 – Interruptible Transportation Service and S.C. No. 13 – Temperature-Controlled Transportation Service, to change the calculation of the charge that is assessed to interruptible customers for unauthorized use of gas, and to implement a procedure whenever a customer fails twice during a winter period to switch to their alternative fuel.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-G-0944SA2)

NOTICE OF ADOPTION

Distribution Delivery and Competitive Transition Charge Adjustments by Niagara Mohawk Power Corporation

I.D. No. PSC-42-04-00021-A

Filing date: Dec. 15, 2004

Effective date: Dec. 15, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 01-M-0075 approving revisions to Niagara Mohawk Power Corporation's (Niagara Mohawk) tariff schedules, P.S.C. Nos. 207 and 214—Electricity.

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

Subject: Compliance filing by Niagara Mohawk.

Purpose: To implement year four of Niagara Mohawk's distribution delivery rates and competitive transition charges.

Substance of final rule: The Commission approved tariff amendments by Niagara Mohawk Power Corporation (Niagara Mohawk) in compliance with its Commission-Approved Rate Plan implementing year four of Niagara Mohawk's Distribution Delivery Rates and Competitive Transition Charges.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(01-M-0075SA23)

NOTICE OF ADOPTION

Disposition of State Tax Refund by Central Hudson Gas & Electric Corporation

I.D. No. PSC-42-04-00022-A

Filing date: Dec. 20, 2004

Effective date: Dec. 20, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-M-0612 directing Central Hudson Gas & Electric Corporation (Central Hudson) to allocate the entire tax refund to ratepayer interests.

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

Subject: Allocation of a tax refund.

Purpose: To use the tax refund to reduce customer's electric bills during the 2005 summer peak season.

Substance of final rule: The Commission directed Central Hudson Gas & Electric Corporation (Central Hudson) to deposit the tax refund it received from the State Department of Taxation and Finance on March 11, 2004, and all interest earned on the refund, into the Benefit Fund, with the exception of \$18,510 to be used to compensate Central Hudson for the cost incurred to obtain the refund, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-M-0612SA2)

NOTICE OF ADOPTION

Fixed Price Rates by New York State Electric & Gas Corporation

I.D. No. PSC-43-04-00006-A

Filing date: Dec. 15, 2004

Effective date: Dec. 15, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 01-E-0359 approving revisions to New York State Electric and Gas Corporation's (NYSEG) tariff schedule, P.S.C. Nos. 120 and 121—Electricity.

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

Subject: Electric price protection plan.

Purpose: To establish the bundled rate option rates available to NYSEG's customers for year four through year five of the electric rate plan.

Substance of final rule: The Commission approved a tariff filing by New York State Electric and Gas Corporation (NYSEG) in compliance with Commission Order in Cases 01-E-0359 and 01-M-0404 issued November 22, 2002 establishing the Bundled Rate Option rates available to NYSEG customers beginning January 1, 2005 and continuing through December 31, 2006.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(01-E-0359SA16)

NOTICE OF ADOPTION

Interruptible Service by New York State Electric & Gas Corporation

I.D. No. PSC-43-04-00013-A

Filing date: Dec. 15, 2004

Effective date: Dec. 15, 2004

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

Action taken: The commission, on Dec. 15, 2004, adopted an order in Case 04-E-1230 approving revisions to New York State Electric and Gas Corporation's (NYSEG) tariff schedule, P.S.C. No. 120—Electricity.

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

Subject: Tariff filing by NYSEG to eliminate its interruptible service rate.

Purpose: To provide more cost-based compensation to customers through New York Independent Systems Operator's interruptible rate program.

Substance of final rule: The Commission approved New York State Electric and Gas Corporation's (NYSEG) request to eliminate its Service Classification No. 7 - Interruptible Service Rate applicable to large general service customers with Time-of-Use Metering.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-E-1230SA1)

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

Day Ahead Demand Response Program by Central Hudson Gas & Electric Corporation

I.D. No. PSC-01-05-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 15—Electricity to become effective March 17, 2005.

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

Subject: Day Ahead Demand Response Program.

Purpose: To establish pole attachment rates.

Substance of proposed rule: On December 17, 2004, Central Hudson Gas & Electric Corporation (Central Hudson) filed proposed tariff revisions to modify its Day Ahead Demand Response Program (DADRP) in conjunction with the DADRP tariff provisions of the New York Independent System Operator to extend the time period to October 31, 2005, in which demand reduction incentive payments will be available. The Commission may approve, modify, or reject, in whole or in part, Central Hudson's filing.

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-E-1626SA1)

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

Financing of the Construction of a Gas-Fired Combined Cycle Generation Facility by Astoria Energy LLC

I.D. No. PSC-01-05-00011-P

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

Proposed action: The commission is considering a petition from Astoria Energy LLC requesting approval of a refinancing, with Liberty Bonds, of existing debt supporting the construction of its gas-fired, combined cycle generation facility located in Queens, NY.

Statutory authority: Public Service Law, section 69

Subject: Financing of the construction of a gas-fired combined cycle generation facility.

Purpose: To approve the financing.

Substance of proposed rule: The Commission is considering a petition from Astoria Energy LLC requesting approval of a refinancing, with Liberty Bonds, of existing debt supporting the construction of its gas-fired, combined cycle generation facility located in Queens, NY. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-E-1636SA1)

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

Transmission and Distribution of Gas

I.D. No. PSC-01-05-00012-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 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 safety standards for gas transmission pipelines contained in 16 NYCRR Part 255, Transmission and Distribution of Gas, into conformance with recent amendments to the counterpart Federal regulations.

Substance of proposed rule (Full text is not posted on a State website):

The proposed amendments require operators of gas transmission lines to perform ongoing assessments of pipeline integrity and to repair and remediate the pipeline as necessary. They also require implementation of preventive and mitigative actions for pipelines located in high consequence areas (HCAs). HCAs include highly populated areas and locations that would be hard to evacuate (hospitals, schools, prisons, etc.) The requirements for an integrity management program include conducting baseline and reassessment testing of each covered transmission pipeline segment at specified intervals, conducting testing in an environmentally appropriate manner, conducting an integrated data analysis on a continuing basis, and taking actions to address integrity concerns.

The proposed amendments contained in 16 NYCRR Sections 255.901 through 255.951 include the requirements from 49 CFR Part 192 relating to pipeline integrity management. These proposed amendments define HCAs and prescribe methods for determining portions of transmission lines that are located in or effect HCAs, and proposed amendments require operators to develop an integrity management for those pipeline segments. The proposed amendments specify the elements that must be included in an integrity management program, require operators of transmission pipelines to develop a baseline assessment plan that identifies potential threats to these covered pipeline segments, provide methods and schedules for evaluation and reevaluation of these segments, and prescribe what actions must be taken to address integrity issues discovered as a result of integrity assessments. The proposed amendments prescribe what preventive and mitigative measures must be taken by operators to protect pipeline segments located in HCAs, provide for a continual process of evaluation and assessment of these segments, and require an operator to continually evaluate the effectiveness of its integrity management program.

The proposed amendments include a new Appendix that provides guidance to operators in identifying HCAs, lists the assessment methods and assessment and reassessment intervals for gas transmission lines located in HCAs, and describes preventive and mitigative measures for addressing threats to transmission pipelines that operate in HCAs.

The proposed changes to the Referenced Material section of the Commission's regulations update referenced materials to their current editions and add materials referenced in the proposed amendments to 16 NYCRR Part 255.

Text of proposed rule and any required statements and analyses may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

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

Consensus Rule Making Determination

This amendment is being proposed as a Consensus Rule because no objection to the rule as written is expected. Department of Public Service Staff

has had discussions with the affected operators who stated that they would have no objections to the proposed amendments to Part 255. The affected parties are aware that the amendments to Part 255 will conform to the current Federal Regulations contained in Title 49, Code of Federal Regulations (CFR), Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Standards.

Job Impact Statement

This agency finds that the proposed amendments are to bring Part 255 into conformance with recent amendments to the counterpart Federal Regulations contained in 49 CFR Part 192, and the amendments should not have any impact on job and employment opportunities because operators are currently required to comply with the requirements in the Federal Regulations.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Cable Television Rules

I.D. No. PSC-01-05-00013-P

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

Proposed action: The commission proposes deleting Title 9 NYCRR Part 589 through section 590.59, Part 591, Subpart 592-2, Part 593, 596, 597 and parts of Part 599, revising sections 590.60 through 599.90 and renumbering them as Title 16 NYCRR sections 890.60 through 899.90.

Statutory authority: Public Service Law, sections 215(2), 216(1), 221(3) and 222(3)

Subject: Cable television rules.

Purpose: To revise cable television rules.

Substance of proposed rule (Full text is posted at the following State website: www.dps.state.ny.us): The proposed rule deletes 9 NYCRR Parts 589 through 590.59, 591, 592-2, 593, 596, 597 and portions of Part 599. It revises and renumbers 9 NYCRR Sections 590.60 through 599.90 as 16 NYCRR Section 890.60 through 899.90. References to the Commission on Cable Television are changed to the Public Service Commission.

Section 890.61(m) defines service outage as an outage occurring during normal operating conditions as defined in Section 890.61(j). Section 890.65(e) excuses a cable company for interruption of programming to provide emergency information under the Emergency Alert System. Advance notice of scheduled service outages is no longer required to be given to the Commission, the municipality or subscribers.

In section 890.80(e)(2)(ii), a notice regarding billing practices is given to subscribers once a year, rather than twice a year. Section 890.80(j) provides that subscribers be notified seven days before home wiring is removed, rather than 30 days.

Section 890.90(b) provides that cable companies shall meet specified telephone answer standards no less than 90% of the time, measured on a quarterly basis. Reports of performance and service are sent to the Commission on an annual rather than quarterly basis. Companies must keep the data on a quarterly basis and it is subject to Commission review. Companies that routinely meet or exceed the standards may petition the Commission for a waiver of the reporting requirements. The contents of reports of service and trouble calls are set out in section 890.91(f).

Part 891 governs franchise renewal procedures. It includes a Commission mediation procedure. Amendments to franchise agreements are covered in Part 892. Franchising procedures are set out in Part 894. There is a new requirement for municipalities to send a Notice of Alternative Franchising Procedures to some cable companies in certain circumstances.

Part 895 governs franchise standards, including transfer of ownership. Section 895.1(g) allows the cable television company and a municipality to agree on a franchise term of up to a maximum of 15-years, rather than the current 10-year maximum term. Section 895.1(t) provides that valid reporting requirements in the franchise may be satisfied with system wide statistics, except for reporting requirements relating to franchise fees or customer complaints. Part 896 governs technical performance and safety standards. Section 895.3, the level playing field provision, provides that a municipality may not award or renew a cable franchise which contains economic or regulatory burden which taken as a whole are greater or lesser than those burdens place on another franchise operating in the same franchise area. Part 897 deals with applications for Commission approval of certificates of confirmation. Part 899 covers financial reporting requirements and requires use of Generally Accepted Accounting Principles (GAAP).

Text of proposed rule and any required statements and analyses may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

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

Regulatory Impact Statement

(a) Statutory Authority and Legislative Objectives

Public Service Law (PSL) section 216(1) allows the Commission to promulgate such rules and regulations, as it may find necessary to carry out the purposes of Article 11. The legislative objective of the section is to give to the Commission necessary powers to regulate cable television companies.

PSL section 215(2) enumerates the various duties of the Commission with regard to procedures and practices for municipal franchises, standards for what is included in franchise agreements and for construction and operation of cable television systems. The legislative intent is to allow the Commission to prescribe standards for municipalities to follow in granting cable television franchises and the content of franchise agreements.

PSL section 221(3) provides the conditions under which the Commission shall issue a certificate of confirmation of a franchise. The legislative intent is to allow the Commission to set standards for certificates.

PSL section 222(3) provides the conditions under which the Commission shall approve a cable television franchise renewal application. The legislative intent is to authorize the Commission to set standards for franchise renewals.

PSL section 224-a deals with consumer protection. It requires cable television companies to notify the Commission and subscribers of network or significant programming changes. It provides for free downgrades by a subscriber if notice is not given. The section also requires cable television companies to provide a description of rates, programming, service and equipment information to its subscribers. It provides the terms by which a subscriber may downgrade or terminate service following notice of a network or significant program change. It also requires cable companies to keep copies of attachments, lists and notices to the public regarding programming. The section provides that if a company promotes a certain program, then moves it to a different tier, the subscriber has the right to free modification of and, in some cases, refunds for the service. Finally, the Commission may order a penalty for non-compliance with the section. The legislative intent of the section is to provide consumer protections to cable television customers by requiring companies to provide certain notices to the Commission and customers and to allow penalties for non-compliance.

PSL section 228(1) forbids landlords from preventing cable television companies from serving customers in their buildings. The legislative intent is to ensure that cable television service is available to all customers, even those who reside in apartment buildings owned by landlords.

(b) Needs and Benefits

The purpose of the rules is to move the cable television regulations from Title 9 Executive, to Title 16 Public Service, to reflect the 1995 transfer of authority for cable regulation from the Cable Television Commission to the Public Service Commission. The twenty‑year old rules are also updated. Transfer of the rules from the Executive Title to the Public Service Title is necessary to avoid confusion by practitioners about the location of Public Service Commission regulations on cable television.

Numerous parties commented on proposed rules issued in March, 2003. There are no anticipated enforcement proceedings at this time as a result of changes in the rules.

The rules will apply to 30 cable television companies in the State and 1,543 local governments. The rules will allow longer franchise terms if the parties agree and less frequent reporting by the companies. The rules generally reduce regulatory requirements for companies in a more competitive environment, while maintaining important consumer protections.

Companies and municipalities may enter into franchise agreements for up to a maximum of 15 years, rather than the current 10 years. This benefits both by saving time and money in putting together renewal petitions, holding hearings, and publishing notices. In addition, the option of a longer franchise term gives flexibility to companies and municipalities to agree to shorter or longer terms depending on their circumstance. Companies are also allowed flexibility in placing required information on bills.

Some reporting requirements to customers and to the Commission have been reduced in frequency. For example, reports of performance and service are reported annually to the Commission rather than quarterly, although records are kept on a quarterly basis. A notice to customers about

billing practices is sent annually rather than twice a year. The rules allow more flexibility in that if a company meets or exceeds performance and service standards, it may seek a waiver of reporting requirements. Less frequent reporting benefits companies by saving costs in preparing reports and mailings.

Reducing requirements is beneficial in a cable television market that has become more competitive since the rules were originally adopted.

(c) Costs

(i) Costs for implementation of, and continuing compliance with the rules to regulated persons.

Under Section 894.9(c)(2), if a municipality uses the alternative franchising procedure, it must send a copy of the public notice of the alternative procedure to each cable company holding an existing franchise to serve any portion of the geographic areas sought to be franchised through the alternative procedure. The costs will be under \$10.00 per mailing. The maximum number of notices mailed would be two.

Some costs will decrease. Cable companies will submit annual reports to the Commission rather than quarterly reports. According to CTTANY, this will save companies in the state a total of about \$1.5 million per year collectively.

Section 895.1(g) allows municipalities and cable companies to agree to a franchise term of up to 15 years, rather than the current 10 years. This provision may reduce costs to local governments and cable companies in that they may need to go through the renewal procedure less frequently. According to CTTANY, the renewal procedure costs between \$10,000 and \$100,000. If a company files for renewal of its franchise every 15 years instead of 10 years, it would save one third of the renewal procedure costs over time. For example, over a 30-year period, it would renew twice rather than three times.

Renewal costs to a local government are about half of the company costs: approximately \$5,000 to \$50,000. Local governments will save one third of those costs over time if they choose a 15-year term.

(ii) Costs to the agency, state or local governments.

The costs to the agency and state will not change from the present level.

The cost to local governments is set out in (i).

(iii) Information, including the source of information upon which cost analysis is based.

The proposed rules reduce some requirements. Commission staff have determined that costs will decrease for cable companies and municipalities and remain the same for other entities based on the reduced requirements. The municipalities may have an additional mailing of up to two one-page notices. Staff estimates the cost of the mailing as under \$10 based on first class mail of a one page notice. Costs set out in (i) are based on information provided by CTTANY. Staff estimates savings to municipalities that choose the 15-year franchise renewal term, based on experience with the renewal procedures and knowledge of resources expended by municipalities on the procedure.

(d) Paperwork

The public notice of alternative franchise procedure as set out in (c) (i), may be required of some companies. Other reporting requirements have been reduced by the rules.

Quarterly filings to the Commission have been reduced to annual filings. A semi-annual billing practice notice to customers has been reduced to an annual notice.

(e) Local government mandates

The rule requires a new notice to cable companies if a municipality uses the alternative franchising procedure.

(f) Duplication

Cable television franchise renewals are largely governed by federal law: 47 USC Section 546. The proposed rule implements the federal law and establishes a timetable for the franchise renewal process. It also sets up a non-binding mediation procedure for municipalities and cable companies.

(g) Alternative approaches

Leaving the cable rules in Title 9 was considered and rejected as confusing for parties looking for cable information in the Public Service Commission's rules in Title 16. Leaving the reporting requirements as they are was considered and rejected because quarterly reporting was determined to be unnecessary for regulatory purposes. Leaving the maximum franchise term at 10 years was considered and rejected because companies and some municipalities favored the flexibility of a longer maximum term.

Retaining the requirement of sending a notice of billing practices to subscribers twice each year, was considered and rejected because notice at the time of connection and one annual notice thereafter was deemed adequate for informational purposes.

Offering a mediation procedure is preferable to having no procedure available, as in the current rules.

(h) Federal standards

The rule does not exceed federal standards.

(i) Compliance schedule

Regulated parties should be able to review the rules and comply within 60 days of adoption.

Regulatory Flexibility Analysis

(a) Description of types and estimate of number of small businesses and local governments to which rule will apply.

The rules apply to approximately 30 cable television companies in the State. Of that number, 26 are small businesses. The rules apply to approximately 1,543 local governments throughout the State;

(b)(i) Reporting, recordkeeping and other compliance requirements of the rule.

Under section 894.9(c)(2), if a municipality uses the alternative franchising procedure, it must send a copy of the public notice of the alternative procedure to each cable company holding an existing franchise to serve any portion of the geographic area sought to be franchised through the alternative procedure.

(b)(ii) Kinds of professional services a small business or local government is likely to need to comply with the requirements.

If a small business uses the mediation procedure, it may want to consult with professionals with mediation experience.

(c) Estimate of initial capital costs and annual cost of compliance with variations for small businesses and local governments of different types and sizes.

Costs for mailing the notice under section 894.9 are under \$10 per mailing.

(d) An assessment of economic and technological feasibility of compliance with the rules by small businesses and local governments.

The rules are economically and technologically feasible for compliance by small businesses and local governments because there are no new onerous requirements.

(e) How the rule is designed to minimize adverse impacts on small businesses and local governments.

Reporting requirements were reduced to benefit all regulated parties, including small businesses and local governments.

(f) Participation of small businesses and local governments in the rulemaking.

A draft of the proposed rules was sent to 21 interested parties, including the Cable Telecommunications Association of New York, Inc., (CTANY), the New York State Conference of Mayors, the New York State Association of Counties, and the Consumer Protection Board. These parties were also invited to a meeting to discuss the proposed rules on November 5, 2003 and a public meeting held on December 11, 2003, in New York City.

CTANY, which represents small cable companies, specifically supported a 15-year maximum franchise term and annual rather than quarterly reports to the Commission, and annual rather than semi-annual notices to customers about billing practices. These ideas were incorporated into the proposed rules. CTANY requested that all reporting requirements in the franchise be satisfied with system wide statistics, rather than statistics for each locality. System wide statistics were incorporated for all reporting requirements except for franchise fees and customer complaints, for which more location specific information was deemed necessary.

Comments from all parties were received and considered.

Rural Area Flexibility Analysis

(a) Types and number of rural areas to which rule applies.

The rule applies to all rural areas in the State that have cable television franchises. Cable television service is available in approximately 95% of the State.

(b)(i) Reporting, recordkeeping and other compliance requirements of the rule.

Under Section 894.9(c)(2), if a municipality uses the alternative franchising procedure, it must send a copy of a public notice of alternate franchising procedure to each cable company holding an existing franchise to serve any portion of the geographic area sought to be franchised through the alternative procedure.

(b)(ii) The kinds of professional services that are likely to be needed in a rural area to comply with requirements.

If an entity in a rural area is involved in the mediation procedure, it may wish to consult professionals with mediation experience.

(c) Estimate of initial capital cost and annual costs of complying with the rule, with Costs for mailing a notice under Section 894.9 is under \$10 per mailing.

(d) How the rule is designed to minimize any adverse impact on rural areas.

The rule decreases some reporting requirements which eases the burden on all regulated parties, including those located in rural areas.

(e) Participation in the rulemaking of public and private interests in rural areas.

The Cable Telecommunications Association of New York, Inc., which represents cable television companies throughout the State, including in rural areas, reviewed drafts of the rules and offered suggested revisions. The Consumer Protection Board, the New York State Conference of Mayors and the New York State Association of Counties, which represent rural areas among other interests, were sent a draft of the rules and given an opportunity to comment. An additional 17 parties also received draft copies of the rules, were invited to participate in two meetings and to submit comments.

Job Impact Statement

The agency has determined that the rule will not have an adverse impact on jobs or employment opportunities in the State.

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

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc.

I.D. No. PSC-01-05-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

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

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision of Wappingers Falls, Inc. and the Town of Stony Point to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Stony Point (Rockland County).

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

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-V-1236SA1)

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

Franchising Process by the Town of Orangetown

I.D. No. PSC-01-05-00015-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 by the Town of Orangetown (Rockland County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

Subject: Franchising process by the Town of Orangetown.

Purpose: To waive certain preliminary franchising procedures.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Orangetown (Rockland County) for a waiver of 9 NYCRR Part 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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. Brillig, 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-V-1591SA1)

Department of State

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

Required Annual Reporting of the Presence of Wild Animals

I.D. No. DOS-01-05-00002-P

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

Proposed action: This is a consensus rule making to add Part 820 to Title 19 NYCRR.

Statutory authority: General Municipal Law, section 209-cc

Subject: Required annual reporting of the presence of wild animals.

Purpose: To set forth the report form and the procedures for reporting the presence of wild animals.

Text of proposed rule:

*Chapter XVI Wild Animals
Part 820*

*Required Annual Reporting of the Presence of Wild Animals
(Statutory Authority: General Municipal Law § 209-cc)*

§ 820.1. Purpose and effect. Pursuant to General Municipal Law (GML) § 209-cc, the State Fire Administrator, in consultation with the Department of Environmental Conservation, is required to develop and maintain a list of the common names of wild animals to be reported annually to local authorities, on a date which the Fire Administrator shall determine. The Fire Administrator has developed a list of such common names and has distributed the list to all municipal clerks. The list is also posted on the Department of State's website. As common names of animals have neither legal nor scientific significance, the list is, of necessity, not exclusive. Accordingly, where there is any question as to whether a particular animal must be reported, § GML 209-cc(2)(c) shall govern. The purpose of this Part is to further comply with GML § 209-cc by providing the annual reporting date and the Report Form, as well as other procedural details. § 820.2 Time for filing. All persons required to report the owning, possessing or harboring of a wild animal shall file such report with the city, town or village clerk within whose jurisdiction the animal is owned, possessed or harbored, on or before April 1 of each year.

§ 820.3 Report form. The report of the presence of a wild animal shall be made on the following form:

Report No. _____

Report of the Presence of Wild Animals

The information recorded here is essential to emergency services personnel so that they may protect themselves and your neighbors, provide for the safety of your animals, ensure the maximum protection and preservation of your property, and provide you with emergency services without unnecessary delay.

Every person in New York State, who owns, possesses, or harbors a wild animal, as set forth in General Municipal Law § 209-cc, must file this Report annually, on or before April 1 of each year, with the clerk of the

city, village or town (if outside a village) where the animal is kept. A list of the common names of animals to be reported is enclosed with this form. Failure to file as required will subject you to penalties under law.

A separate Report is required to be filed annually for each address where a wild animal is harbored.

Exemptions: Pet dealers, as defined in section 752-a of the General Business Law, and zoological facilities licensed pursuant to 7 USC 2132, are not required to file this report.

Instructions for completing this form:

1. Please print or type all information, using blue or black ink.
2. Fill in the information requested on this page.
3. On the continuation sheets, fill in the information requested for each type of animal that you possess.
4. Return the completed forms to the City, Town, or Village Clerk of each municipality where the animal or animals are owned, possessed or harbored.
5. File a new report each year, by April 1, for as long as you keep the animal or animals.
6. You are referred to General Municipal Law § 209-cc for additional information. Copies of this statute and the list of common names of animals to be reported may also be accessed at the Department of State's website, www.dos.state.ny.us.

Name: _____
 Business Name (if a business): _____
 Street Address: _____
 City, State and Zip: _____
 Telephone Number: _____
 Address Where Animal is Located (if different than above): _____

Name of Emergency Contact: _____
 Daytime phone number: _____
 After-hours phone number: _____
 Signature and title (if a business) of person completing form: _____

THIS FORM MUST BE FILED WITH YOUR CITY, TOWN (IF THE ANIMAL IS LOCATED OUTSIDE A VILLAGE) OR VILLAGE CLERK. DO NOT FILE THIS FORM WITH THE NYS DEPARTMENT OF STATE.

Instructions to the Municipal Clerk:

- Forward copies of this Report to:
1. Each NY State Police troop, County Sheriff, and municipal police agency having jurisdiction over the location of the wild animal;
 2. The fire chief of each fire department, fire corporation, or fire company serving the location of the wild animal;
 3. Each ambulance or emergency medical service department, ambulance corporation, or ambulance or emergency medical service company serving the location of the wild animal.

Report No. _____

Report of the Presence of Wild Animals
 List of Animals at this Address

Common name of animal	Number of such animals at this location	Scientific name (genus and species), if known

Text of proposed rule and any required statements and analyses may be obtained from: Harry J. Willis, Department of State, 41 State St., Suite 830, Albany, NY 12231, (518) 474-6740, e-mail: hwillis@dos.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

Pursuant to General Municipal Law § 209-cc (L. 2002, c. 680) the State Fire Administrator, in consultation with the Department of Environmental Conservation, is required to develop and maintain a list of wild animals which must be reported annually to the municipal clerk by anyone harboring such wild animal. The Fire Administrator has developed this list and

has distributed it to all municipal clerks. The list is also posted on the Department of State's website. The purpose of this Rule Making is to further comply with GML § 209-cc by providing the annual reporting date, the Report Form, and appropriate Instructions. As these are ministerial details being carried out in strict compliance with the statutory directive, the Fire Administrator has determined that no person is likely to object to the Rule as written [SAPA § 202(1)(b)(i)].

Job Impact Statement

Pursuant to General Municipal Law § 209-cc (L. 2002, c. 680) the State Fire Administrator, in consultation with the Department of Environmental Conservation, is required to develop and maintain a list of wild animals which must be reported annually to the municipal clerk by anyone harboring such wild animal. The Fire Administrator has developed this list and has distributed it to all municipal clerks. The list is also posted on the Department of State's website. The purpose of this Rule Making is to further comply with GML § 209-cc by providing the annual reporting date, the Report Form, and appropriate Instructions. As these are ministerial details being carried out in strict compliance with the statutory directive, the Fire Administrator has determined that the Rule will have no adverse impact on jobs or employment opportunities; if anything, it may create the need for additional manpower to transmit and file the information and to issue the required notices.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Operational Plans for Room and Board Facilities

I.D. No. TDA-06-04-00006-A

Filing No. 1404

Filing date: Dec. 16, 2004

Effective date: Jan. 5, 2005

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

Action taken: Amendment of sections 352.8(b) and 900.1(a) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 131(1); and L. 1953, ch. 562

Subject: Operational plans for room and board facilities.

Purpose: To require an operational plan to be submitted under certain circumstances for facilities that provide room and/or board.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-06-04-00006-P, Issue of February 11, 2004.

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

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

Assessment of Public Comment

During the public comment period for the regulations concerning the oversight of room and board facilities, the Office of Temporary and Disability Assistance (Office) received comments from two social services districts. One State agency commented that the proposed regulations would have no impact on their programs. No changes have been made to the proposed regulations as a result of the comments. The comments and responses follow.

Comment: One commenter stated that the new rules would needlessly restrict the supply of privately owned apartments used as scatter site housing for the homeless and create confusion among scatter-site operators as to whether they would be subject to regulation.

Response: There is no basis for this concern. The regulations will improve the quality and availability of temporary housing by making Part 900 standards and reimbursement available to scattered site housing and small facilities when they are operated by one organization and total occupancy exceeds 19 families. Analysis of homeless data shows that length-of-stay is shorter in facilities that are operated in accordance with Part 900. Current regulations that provide allowances for persons living in

room and board situations do not include any standards for the accommodations and services that are provided, and provide no control over the cost of the temporary housing.

The proposed regulations provide that the social services districts must notify the Office annually in April whenever a single entity or organization continuously houses 20 or more families in one or more residential structures throughout the previous three calendar months. Therefore, an operator will know whether its program would be reviewed to determine if it is subject to the proposed regulations. The factors that the Office will use to determine whether a residential structure or structures should be operated in accordance with Part 900 standards were set forth in the Regulatory Impact Statement. The criteria will be included in a policy directive to social services districts.

Comment: One commenter stated that the scatter-site housing subject to the proposed regulations may fail to meet Part 900 requirements causing the social services district to lose the housing resource.

Response: It is unlikely that housing resources will be lost due to the proposed regulations, since Part 900 regulations allow for the granting of waivers of the standards. This Office will work with social services districts, as it has done with respect to existing Part 900 facilities, to tailor the regulatory requirements to local situations.

Comment: One commenter stated that the proposed regulations do not contain a standard definition of when or how a waiver request may be made for either the submission of an operational plan or for waivers of specific Part 900 requirements.

Response: The proposed regulations provide that a social services district may submit a request to the Office stating the reasons why the requirement to submit an operational plan should be waived. A waiver request may be approved for good cause. The process to be followed to submit a waiver of specific Part 900 requirements is contained in 18 NYCRR 900.4. A policy directive that will be issued to social services districts will provide a standard method and format for requesting either a waiver of the submission of an operational plan or a waiver of a specific Part 900 requirement.

Comment: One commenter requested that the Office consider the impact of the proposed regulations on the State's and social services district's ability to meet legal obligations under *McCain v. Bloomberg*.

Response: The Office has determined that the proposed regulations will not negatively impact the supply of temporary housing and therefore will not negatively impact the social services district's ability to provide temporary housing assistance to eligible families. Since length-of-stay in Part 900 approved shelters is significantly shorter than the length-of-stay in scattered-site housing, the approval of scattered site and other temporary housing under Part 900 will lead to shorter lengths of stay in temporary housing. This should make temporary housing more available for homeless families.

Comment: One commenter would prefer that the proposed regulation be revised to apply in situations where 20 or more families are housed on site so as not to subject providers who operate a number of smaller shelters to increased record keeping and service requirements.

Response: The requirements of Part 900 can be tailored to the circumstances of individual providers. Smaller shelters need not be disadvantaged with respect to meeting State requirements. The proposed regulations also allow the Office to determine that smaller shelters and individual scatter site programs should not be subject to any Part 900 requirements. The Office will impose only those requirements that are appropriate for small facilities.

Comment: One commenter stated a concern that the additional level of State review will discourage providers from developing additional small facilities or cause some to withdraw their units from the program entirely.

Response: It is not known at this time which small facilities or scattered site providers will be subject to Part 900 requirements. As stated in the Regulatory Impact Statement, the Office will look at the number of families sheltered and the durations of stay, the rate charged for the temporary housing, the services needed and provided to families, and the availability of Part 900-like services in the community. Where the totality of circumstances demonstrates that application of Part 900 requirements will assist in reducing the length of stay, the Office will work with the social services districts and the providers to address any issues that are identified by the providers. Because most homeless providers share the Office's goal to reduce the incidence of homelessness, attempts to ensure quality service to the homeless will not discourage desirable providers.

Comment: One commenter is concerned that the proposed regulations will result in increased costs.

Response: Cost is one of the key concerns of the Office. Absent the proposed revisions, social services districts may establish rates that must be reimbursed by the State without State review. Applying Part 900 standards will allow the Office to obtain facility budgets and review per diem rates. Experience to date has shown that the rental costs of scattered site apartments significantly exceed the rental or mortgage costs associated with existing Part 900 facilities. Application of the proposed regulations may, in some cases, reduce per diem costs. In addition, the goal of the proposed regulations is to reduce the length of stay in temporary housing, thus benefiting recipients and reducing costs to the social services district and the State and federal governments.

Triborough Bridge and Tunnel Authority

NOTICE OF ADOPTION

Cross Charge Schedule

I.D. No. TBA-41-04-00008-A
Filing No. 1430
Filing date: Dec. 21, 2004
Effective date: March 13, 2005

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

Action taken: Amendment of section 1021.1 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: Crossing charge schedule for use of bridges and tunnels operated by Triborough Bridge and Tunnel Authority.

Purpose: To raise additional revenue.

Text or summary was published in the notice of proposed rule making, I.D. No. TBA-41-04-00008-P, Issue of October 3, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Frank Pascual, Director of Public Affairs, Triborough Bridge and Tunnel Authority, Two Broadway, 22nd Fl., New York, NY 10004, (646) 252-7416, e-mail: fpascual@mtabt.org

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.

Urban Development Corporation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Economic Development and Job Creation

I.D. No. UDC-01-05-00001-EP
Filing No. 1403
Filing date: Dec. 15, 2004
Effective date: Dec. 15, 2004

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

Action taken: Amendment of Part 4243 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 1994, ch. 169; and L. 2001, ch. 471

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires clarification of the rule and elimination of inconsistencies in the rule.

Subject: Economic development and job creation throughout New York State.

Purpose: To provide the framework for administration of The Empire State Economic Development Fund, evaluate criteria, terms and conditions, and the application and evaluation process; and make changes to include the Rural Revitalization Program as required by the authorizing legislation.

Substance of emergency/proposed rule (Full text is not posted on a State website): The Empire State Economic Development Fund (the "Program") was created pursuant to Chapter 309 of the Laws of 1996 as amended by Chapter 432 of the Laws of 1997 and Chapter 471 of the Laws of 2001 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-m and 16-l of the New York State Urban Development Corporation Act (the "UDC Act") which govern the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

b) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

c) Competitiveness Improvement Program for Competitiveness Improvement projects.

d) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

e) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

f) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

g) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

h) Rural Revitalization Program to support community economic development programs and activities including value added small business growth, agricultural, agribusiness and forest products and those projects that promote the family farm, increase or retain employment opportunities and otherwise contribute to the revitalization of local rural areas which are economically distressed.

The proposed amended Rule adds provisions implementing the Rural Revitalization Program recently authorized by the legislature and corrects inconsistencies in accordance with the Enabling Legislation. Section 4243.1 clarifies the Sections under which the Program is authorized and expands the types of assistance to include the Rural Revitalization Pro-

gram. Section 4243.2 consolidates definitions and extends types of assistance under the amended Rule. Section 4243.36 extends Program assistance to include the Rural Revitalization Program. Section 4243.37 sets forth the eligible uses for such Rural Revitalization Program assistance. Section 4243.38 provides the evaluation criteria for receipt of such Rural Revitalization Program assistance.

2. Evaluation Criteria - The Corporation, in cooperation with regional economic development offices, shall review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

3. Application procedure - Approval of applications shall be made only upon a determination by the Corporation:

a) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability of family farms.

b) that the project would be unlikely to take place in the State without the requested assistance; and

c) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

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 March 14, 2005.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792, e-mail: apidedjian@empire.state.ny.us

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

Chapter 84, Laws of 2002 (Unconsolidated Laws, Section 6266-m), which was originally enacted by Chapter 309, Laws of 1996 and amended by Part M1 Section 5 of the Article VII Bill of the Budget of 2003, authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement The Empire State Economic Development Fund (the "Program") to promote the economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities in throughout the State. The program, in furtherance of the foregoing, offers private businesses, government entities and not-for-profit entities various forms of assistance, including loans, loan guarantees and grants. Chapter 471, Laws of 2001, (Unconsolidated Laws, Section 6266-l) authorized the Corporation to extend this type of assistance to eligible beneficiaries in rural areas of the State. Section 5(4) of the New York State Urban Development Corporation Act (Unconsolidated Laws, Section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with Section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Need and Benefits:

Currently, the Program's legislation assists job creation throughout the State by providing the following types of assistance:

1) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

2) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

3) Competitiveness Improvement Program for Competitiveness Improvement projects.

4) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

5) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

6) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

7) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

However, the current rule does not include the Rural Revitalization Program established in the new Section 16-l of the New York State Urban Development Corporation Act that creates the following type of assistance:

A) Rural Revitalization Assistance grants or contracts for services, on a competitive basis in response to requests for proposals, to eligible entities and organizations to support community economic development programs and activities which increase or retain employment opportunities in rural New York State and otherwise contribute to the revitalization of local rural areas which are economically distressed through innovative activities designed to generate economic alternatives and opportunities in rural areas;

B) Agricultural Job Training Assistance to be delivered under contract with the Commissioner of Agriculture and Markets, in consultation with the Commissioner of Labor, to administer a program of job training for workers engaged in or to be engaged in the production, harvesting and processing of farm of aquatic products;

C) Farmers Market Grant Program awarded on a competitive basis in response to requests for proposals, to municipal corporations, local development corporations, business improvement districts, not-for-profit corporations, regional marketing authorities and agricultural cooperatives organized pursuant to the Cooperative Corporations Law, for the construction, reconstruction, improvement, expansion or rehabilitation of farmers' markets. The Corporation may contract with the Commissioner of Agriculture and Markets to prepare and issue requests for proposals, accept grant applications, recommend those applications that best meet the established criteria under each such request for proposals and to administer grants awarded under the Farmers' Market Grant Program;

D) Rural Single-tenant Entrepreneurship and Incubators Facilities grants, loans and loan guarantees to vocational education agencies for development of single tenant entrepreneurship and incubator facilities in rural areas; and

E) Agricultural Industry Competitiveness Assistance loans, loan guarantees and interest subsidy grants to subsidize loans from federally chartered instrumentalities and state and private lending institutions, including agricultural cooperative corporations, provided that such assistance to state lending institutions shall not exceed one-third of the total project cost or four hundred thousand dollars, whichever is less, to agricultural enterprises seeking to implement eligible agricultural projects as set forth in the terms and conditions for this type of assistance.

The proposed changes incorporate the Rural Revitalization Program into the rule for Empire State Economic Development Fund as contemplated by the authorizing legislation. All those conceived by the legislature as being eligible may apply, including, but not limited to, small business entities and organizations, agricultural entities and organizations, agribusiness and forest products entities and organizations and family farms.

The changes should improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including job creation in rural areas by supporting community economic development programs and activities including value added small business growth, agricultural, agribusiness and forest products and those projects that promote the family farm, increase or retain employment opportunities and otherwise contribute to the revitalization of local rural areas which are economically distressed.

The proposed amended Rule adds provisions implementing the Rural Revitalization Program recently authorized by the legislature and corrects inconsistencies in accordance with the Enabling Legislation. Section 4243.1 clarifies the Sections under which the Program is authorized and

expands the types of assistance to include the Rural Revitalization Program. Section 4243.2 consolidates definitions and extends types of assistance under the amended Rule. Section 4243.36 extends Program assistance to include the Rural Revitalization Program. Section 4243.37 sets forth the eligible uses for such Rural Revitalization Program assistance. Section 4243.38 provides the evaluation criteria for receipt of such Rural Revitalization Program assistance.

1. Evaluation Criteria – The Corporation, in cooperation with regional economic development offices, shall review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability of family farms.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

It is impossible to determine the costs with any degree of accuracy, because it is a voluntary grant and loan program with mandated costs. Nevertheless, the changes should not increase costs for the Program.

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

The alternative of placing the five rural assistance programs under separate rules and regulations was considered. However, it was determined that placing all five in the funding source's rules and regulations and was more efficient.

9. Federal Standards:

There are no applicable federal government standards which apply.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of Rule:

The amended Rule includes the Rural Revitalization Program into the framework for the administration of The Empire State Economic Development Fund, including eligibility criteria, available assistance, evaluation criteria, terms and conditions, and the application and evaluation process. The amended Rule contains changes to include legislature required Rural Revitalization Program assistance and requirements necessary to fully conform the Rule with the legislation. This should not affect the Program's accessibility to small business.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the amended rule.

5. Economic and Technological Feasibility:

The Rule makes The Empire State Economic Development Fund assistance feasible for small businesses, including rural businesses and family farms, by expressly stating that small businesses are eligible for certain types of program assistance while permitting small businesses access to all

other types of program assistance for which they may be legible, notwithstanding the size of such businesses. The Rule also makes the program assistance feasible for local governments by expressly stating that government entities and municipalities are eligible for program assistance. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts with the program. There are no aspects of the Rule that make The Empire State Economic Development Fund assistance or the Rule technologically infeasible for small business or local government.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Government Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Empire State Economic Development Fund emphasizes the effective provision of economic development throughout New York State. Small business may participate by requesting assistance when the requisite eligibility criteria are met. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS 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. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund in rural areas, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.