RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Standards and Testing Procedures for Gasoline and Kerosene

I.D. No. AAM-45-04-00008-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 sections 224.2, 224.3 and 224.9 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 179 and 192-a

Subject: Standards and testing procedures for gasoline and kerosene.

Purpose: To update requirements relating to standards that gasoline and kerosene must meet and testing procedures that must be used to determine whether gasoline complies with such revised standards.

Text of proposed rule: Section 224.2 of 1 NYCRR is amended to read as follows:

224.2 Specifications and test procedures. Except as otherwise provided in this Part, the specifications and test procedures referred to in this Part shall be those set forth in the Annual Book of ASTM Standards, Section 5, [1992] *2004* edition as published by the American Society for Testing and Materials *(ASTM)*. This document is available from the [American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103] *ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.* It is available for public inspection and copying in the Counsel's Office, Department of Agriculture and Markets, [Capital Plaza, 1 Winners Circle] *10B Airline Drive,* Albany, NY 12235 *and in the office of the Department of State, 41 State Street, Albany, NY 12231.*

Section 224.3 of 1 NYCRR is amended to read as follows:

224.3 Standards for gasoline and diesel motor fuel. The following products when sold, offered for sale or when used in this state shall meet the following requirements:

(a) Automotive gasoline. All automotive gasoline shall meet the requirements in the Annual Book of ASTM Standards, specification number D [4814 (as in effect on January 1, 1992)] *4814-04a,* except as noted below.

(1) Vapor Pressure. [The vapor pressure of automotive gasoline sold or supplied to a retailer or wholesale purchaser-consumer, when sampled and tested by methods prescribed in ASTM D 4814 (as in effect on January 1, 1992), shall not exceed:

(i) 9.0 pounds per square inch during the period May 1 to September 15. Exceptions from this standard granted by the Commissioner of Environmental Conservation under 6 NYCRR part 225-3 shall be recognized.

(ii) 13.5 pounds per square inch during the periods April 1 to April 30 and September 16 to October 31.

(iii) 15.0 pounds per square inch during the period November 1 to March 31] *Vapor pressure standards set forth in 6 NYCRR Part 225-3, or exceptions granted thereto by the Commissioner of Environmental Conservation, shall supersede those in this Section.*

(2) Gasoline-alcohol blends.

(i) The total alcohol content of any gasoline alcohol blend shall not exceed 10 percent by volume.

(ii) [The 50 percent distillation temperature shall not be less than 158° Fahrenheit (70°C) for blends containing 10 percent ethanol by volume.

(iii)] When methanol is blended with gasoline in quantities greater than three-tenths (0.3) percent by volume, the finished blend shall contain at least an equal amount of butanol or higher molecular weight alcohol, or other approved co-solvent. The maximum methanol content of any gasoline shall not exceed five percent by volume.

(3) Motor octane number. All unleaded gasoline with minimum (R+M)/2 octane ratings of 87 or higher shall have minimum motor octane number of 82. Unleaded gasolines with minimum (R+M)/2 octane ratings less than 87 shall have a minimum motor octane number of 81.5.

(4) Testing for octane rating. [All octane ratings] *To determine the automotive fuel rating (octane rating) for gasoline* in this [section] *Part,* [shall be based on ASTM D 439 (as in effect on June 19, 1978) as determined by the ASTM standard test methods D 2699 and D 2700 (as in effect on June 19, 1978)] *add the research octane number from test method ASTM D 2699-92 and the motor octane number from test method ASTM D 2700-92 and divide by two as explained in ATSM Standards, specification number D 4814-04a.* Variations in test results for octane ratings within the ASTM reproducibility limits shall be recognized in the enforcement of this section. No violation shall be issued for failure to meet a certified or posted octane rating unless the laboratory test results are:

(i) more than seven-tenths (0.7) octane less than the certified or posted octane for octane ratings less than 89; or

(ii) more than six-tenths (0.6) octane less than the certified or posted octane rating for octane ratings of 89 or greater.

(5) Leaded gasoline. All automotive gasoline designated as "leaded" shall contain a minimum of 0.05 gram per gallon and a maximum of 0.1 gram per gallon of lead, or a minimum of 0.005 gram per gallon of phosphorus.

(b) Diesel fuel. All diesel fuel shall meet the requirements in the Annual Book of ASTM Standards, specification number D 975 (as in effect on January 1, 1992).

(c) Kerosene. All kerosene shall meet the requirements in the Annual Book of ASTM Standards, specification number D [3699 (as in effect on January 1, 1992)] *3699-03.*

Paragraph (2) of subdivision (a) of section 224.9 of 1 NYCRR is amended to read as follows:

(2) To find the octane rating, [add the research octane number and the motor octane number and divide by two, as explained in ASTM D 439 (as in effect on June 19, 1978), entitled "Standard Specifications for Automotive Gasoline." To determine the research octane number, use ASTM standard test method D 2699 (as in effect on June 19, 1978), and to determine the motor octane number, use ASTM standard test method D 2700 (as in effect on June 19, 1978)] *use the method prescribed in paragraph (4) of subdivision (a) of section 224.3 of this Part.* The first subdivision (c) of section 224.9 of 1 NYCRR (entitled "Duties of distributors") is amended to be re-lettered subdivision (b) thereof.

Subparagraph (i) of paragraph (2) of the first subdivision (c) of section 224.9 of 1 NYCRR (entitled "Duties of distributors") is amended to read as follows:

(i) If you do not blend the gasoline with other gasoline, you must certify consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must certify consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to certify the octane rating of the gasoline consistent with your determination of the octane rating according to the method [in ASTM D 439 (as in effect on June 19, 1978)] *prescribed in paragraph (4) of subdivision (a) of section 224.3 of this Part.*

Subparagraph (5) of the first subdivision (c) of section 224.9 of 1 NYCRR (entitled "Duties of distributors") is amended to read as follows:

(5) You must keep for one year any delivery tickets or letters of certification on which you based your octane rating certifications. You must also keep for one year records of any octane rating determinations you made according to [ASTM D 439 (as in effect on June 19, 1978)] *the method prescribed in paragraph (4) of subdivision (a) of section 224.3 of this Part.* They must be open for inspection by weights and measures officials during normal business hours.

Paragraph (3) of the second subdivision (c) of section 224.9 of 1 NYCRR (entitled "Duties of retailers") is amended to read as follows:

(3) If you do not blend the gasoline with other gasoline, you must post consistent with the (R+M)/2 octane rating certified to you. If you blend the gasoline with other gasoline, you must post consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to post the octane rating consistent with your determination of the octane rating according to the method [in ASTM D 439 (as in effect on June 19, 1978)] *prescribed in paragraph (4) of subdivision (a) of section 224.3 of this Part.* In all cases above, the octane rating must be shown as a whole or half number equal to or less than the octane rating certified to you or determined by you.

Paragraph (6) of the second subdivision (c) of section 224.9 of 1 NYCRR (entitled "Duties of retailers") is amended to read as follows:

(6) You must keep for one year any delivery tickets or letters of certification on which you based your posting of octane ratings. You must also keep for one year records of any octane rating determinations you made according to [ASTM D 439 (as in effect on June 19, 1978)] *the method prescribed in paragraph (4) of subdivision (a) of section 224.3 of this Part.* These records may be kept at the retail station, or at another, reasonably close location. They must be open for inspection by weights and measures officials during normal business hours.

Text of proposed rule and any required statements and analyses may be obtained from: Ross Andersen, Department of Agriculture and Markets, Bureau of Weights and Measures, 10B Airline Dr., Albany, NY 12235, (518) 457-3146

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR sections 224.2, 224.3 and 224.9. Such sections currently incorporate by reference, inter alia, standards for automotive gasoline and kerosene, and procedures for determining the octane content in automotive gasoline, based upon standards and procedures set forth in the 1992 edition of "Annual Book of ASTM Standards, Section 5," published by the American Society for Testing and Materials (ASTM), an organization that develops standards and procedures governing the composition and analysis of materials. The proposed rule would amend 1 NYCRR sections 224.2, 224.3 and 224.9 by deleting reference to the standards and procedures currently provided set forth therein and would substitute therefor, by incorporating by reference, standards and procedures set forth in the 2004 edition of the "Annual Book of ASTM Standards, Section 5" ("the standards and procedures to be incorporated by reference" or "such standards and procedures").

The proposed rule meets the definition of "consensus rule" set forth in SAPA section 102(11)(c) in that it is not controversial. The standards and procedures to be incorporated by reference have been developed and have already been reviewed and approved by all entities participating in, or affected by the operation of, the petroleum industry (including refiners, distributors, pipeline and ship operators, additive producers, engine manufacturers, private testing services and retailers), through their participation in ASTM. Furthermore, such standards and procedures have already been subject to review and have already been adopted, by nearly every state that regulates automotive gasoline and kerosene. Finally, the standards and procedures to be incorporated by reference are presently used by all entities participating in, or affected by the operation of the petroleum industry, which entities endeavor to comply with such standards and procedures in order to conduct business, both nationally and internationally.

Based upon the foregoing, the proposed rule is not controversial since such standards and procedures have been developed, reviewed, approved and adopted by all entities that would be affected thereby.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 224.2 Book 5 of the 2004 Annual Book of ASTM Standards (henceforth, "ASTM Book 5 (2004)") which contains specifications and test methods for evaluating petroleum products and fuels. The 1992 edition of ASTM Book 5 is presently incorporated by reference. ASTM Book 5 (2004) differs from the 1992 edition in that it contains product specifications that are more appropriate for present day vehicles and engines and provides for test methods that incorporate the most recent advances in testing technology. ASTM Book 5 (2004) has been adopted by or is in use in every state other than New York that enforces petroleum product quality standards. These standards are used by national and international producers of petroleum products and by pipeline operators. They already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The ASTM standards for gasoline have been amended since 1992 to change certain standards for fuel formulation (distillation range) that will specify fuels that work best in fuel injected engines. The vast majority of vehicles in use today are fuel injected rather than carbureted. Retaining those standards would result in New York motorists losing the benefit of those changes and isolating New York in the fuel distribution system in this country.

The proposed rule will also incorporate changes to sections 224.3 and 224.9 to conform the regulations for automotive fuel ratings (octane) to rules changes adopted by the Federal Trade Commission (FTC) since 1993. These rules expressly preempt the states from having different standards.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Department of Correctional Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Departmental Records and Release of Information

I.D. No. COR-45-04-00006-P

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

Proposed action: Amendment of sections 5.1, 5.5, 5.23, 5.30, 5.35, 5.36, and 6.2; repeal of sections 5.21 and 5.24; and addition of new section 5.24 and Part 8 to Title 7 NYCRR.

Statutory authority: Correction Law, sections 29(2) and 112; Public Health Law, parts 17 and 18; and the Health Information Portability and Accountability Act as implemented by 42 CFR parts 160 and 164

Subject: Departmental records and release of information.

Purpose: To conform to the requirements of the Health Information Portability and Accountability Act, and clarify procedures for custody and release of certain records and information.

Text of proposed rule: Section 5.1 is amended as follows:

The rules and regulations set forth in this Part are promulgated pursuant to Correction Law, section 29(2), Public Officers Law, section 87, *Public Health Law, section 17 and 18 and 45 CFR Part 160, Subparts A and B and 45 CFR Part 164, Subpart E (Dec. 28, 2000, amended Aug. 14, 2002 and February 20, 2003), the Standards for Privacy of Individually Identifiable Health Information, also known as the HIPAA privacy regulations.* [They] *These laws and regulations* govern the privacy of records, statistics and other information collected, obtained and maintained by the department and information obtained in an official capacity by officers, employees or members thereof.

Subdivision (d) of section 5.5 is amended as follows:

(d) Drug abuse and alcohol abuse records means those records relating to drug and alcohol abuse rehabilitation as defined in [21 USC 1175, 42 USC 4582] *42 USC 290-dd-2 (1998)* and 42 CFR 2.11 *(1995). The statute and regulation are incorporated by reference and are authored by the United States Department of Health and Human Services and published by the United States Government Printing Office, Washington, D.C. 20402. A copy is available for public inspection and copying at the Department of Correctional Services, Harriman State Campus, 1220 Washington Avenue, Albany, New York 12226-2050.*

Subdivision (h) of section 5.5 is hereby repealed and a new subdivision (h) added as follows:

(h) Medical record means information that is created or received by a health care provider (including the Department), health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual. The definition of inmate medical record does not include a health and/or psychiatric record, as defined in Mental Hygiene Law section 33.13, created by or received from the New York State Office of Mental Health unless that record is physically incorporated into the DOCS medical record.

Section 5.21 is hereby repealed.

Section 5.23 is amended as follows:

Notwithstanding anything herein to the contrary, any record, including *medical records, mental health records,* probation records, youthful offender and juvenile delinquent records, drug and alcohol abuse and rehabilitation records, the confidentiality of which is provided by law, shall only be released in accordance with the law governing such records.

Section 5.24 is hereby repealed and a new section 5.24 added as follows:

§ 5.24 Inmate medical records.

(a) Inmate medical records shall be released in accordance with Public Health Law Sections 17 and 18 and 45 CFR Part 160, Subparts A and B and 45 CFR Part 164, Subpart E, the Standards for Privacy of Individually Identifiable Health Information, also known as the HIPAA privacy regulations, and state law.

(1) The department shall follow HIPAA privacy standards in regards to the use and disclosure of inmate medical records, except in circumstances where there is a more stringent state law. In such cases, the department will apply the more stringent law.

(2) The department incorporates by reference 45 CFR Part 160, Subparts A and B and 45 CFR Part 164, Subpart E (December 28, 2000, amended August 14, 2002 and February 20, 2003), the Standards for Privacy of Individually Identifiable Health Information, also known as the HIPAA privacy regulations. Such regulations are authored by the United States Department of Health and Human Services and published by the United States Government Printing Office, Washington, D.C. 20402. A copy is available for public inspection and copying at the Department of Correctional Services, Harriman State Campus, 1220 Washington Avenue, Albany, New York 12226-2050.

(b) For the purpose of providing legal services on behalf of the State, its agencies, officials, employees and persons described in Correction Law 24-a, such records may be released to the Office of the Attorney General, and to outside counsel certified pursuant to Public Officers Law 17.

(c) Where HIV-related information is contained in such records, confidential HIV-related information shall be released only pursuant to the provisions of Part 7 of this Title.

(d) Nothing in this section shall be construed as creating a private right of action for an individual who is the subject of these records or his/her personal representative.

Subdivision (c) of section 5.30 is amended as follows:

(c) *Employee* [m] *M*edical records shall not be provided to anyone except (1) pursuant to an authorization signed by the subject or someone authorized to act on his behalf, (2) in the case of a bona fide medical emergency to a provider of health services, [and] (3) for scientific and historical research, provided the privacy of the subject is protected, *or (4) as otherwise required or permitted by law.*

Subdivision (h) of section 5.30 is amended as follows:

(h) Information as to the salary and title of a named employee of the department shall be supplied only pursuant to written request, except that such information may be supplied upon oral request to other State departments and agencies, [and] to local, Federal and State law enforcement agencies *and to the media by the office of public information.*

Subdivision (a) of section 5.35 is amended as follows:

(a) [(1)] Within five business days after receipt of a written request for a department record,[other than a medical record,] the records access officer shall determine whether the record requested is in the department's custody and shall respond as provided for in subdivisions (b), (c) and (d) of this section.

NOTE: Requests for inmate medical records received by a Records Access Officer should be referred to the Nurse Administrator of the facility in which the inmate is incarcerated or from which the inmate was released. A copy of the referral letter shall be sent to the requester. Facilities may charge the reasonable fee of $.50 per page for medical records, as allowed by HIPAA and Public Health Law section 18. Access to medical records shall not be denied by reason of inability to pay.

[(2) Within 10 business days after receipt of a written request for medical records, the records access officer shall determine whether the record requested is in the department's custody and shall respond as provided for in Public Health Law, section 18.]

Section 5.36 is amended as follows:

The fee for photocopies of a department record *obtained under this Part* shall be 25 cents per page, not exceeding 9 inches by 14 inches in size, *unless otherwise provided by statute, as in the case of medical records.* The fees for other types of copies or other size copies or transcripts shall be such reasonable amounts as the deputy commissioner for administrative services shall establish, in conformity with the regulations of the Committee on Public Access to Records. Notwithstanding the provisions of this section, the custodian of the record may, in his discretion, waive all or any portion of the fees authorized by this section for any department record.

Subdivision (a) of section 6.2 is amended as follows:

(a) The deputy commissioner for administration is hereby designated privacy compliance officer and is responsible for ensuring that the department complies with the provisions of the Personal Privacy Protection Law and the regulations herein and for coordinating the department's response to requests for records or amendment of records *under that law.*

A new Part 8 is added to read as follows:

PART 8

(Statutory authority: Correction Law §§ 112 and 29[2])

RELEASE OF INFORMATION TO INMATE FAMILIES AND THE NEWS MEDIA

§ 8.1 Policy

Members of an inmate's immediate family and the news media generally have no special legal right of access to information regarding an inmate. Nevertheless, the Department seeks to be responsive to legitimate inquiries from inmate families and the news media without compromising the safety, security and good order of correctional facilities and applicable law.

§ 8.2 Immediate Family Members

The immediate family of an inmate shall be entitled to the following information without authorization from the inmate: correctional facility in which confined, general state of health, date of death, general circumstances relating to the occurrence of death, and departmental actions regarding release and confinement. Additional information on an inmate injury or death that is subject of a pending investigation shall only be released upon approval of department counsel.

§ 8.3 News Media

Upon request by the news media, the following information from an inmate record shall be made available: name, age, date of birth, birthplace, city of previous residence, physical description, commitment information, present facility in which housed, departmental actions regarding confinement and release, and when related to a newsworthy event, institutional work assignments, general state of health, and an occurrence of death. Other information shall only be released to the news media in the discretion of the commissioner or his designee, giving consideration (1) to safety and security, (2) to the protection of the privacy of the inmate and his right to a fair trial or retrial, and (3) to the public's right to know, unless otherwise provided by statute or regulation. News media shall make requests for information to the director of public information, or to the superintendent of the appropriate correctional facility who shall consult with the director of public information prior to responding to the request.

Note: Pursuant to section 677 of the County Law, findings and conclusions regarding the cause of an inmate's death may be requested from the office of the coroner/medical examiner of the county in which the death occurred.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

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

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

Regulatory Impact Statement

Statutory Authority:

Section 29(2) of the Correction Law requires the commissioner to make rules regarding the privacy of records and information obtained and maintained by the department. Section 112 of the Correction Law requires the commissioner of correction to make rules and regulations for the government of officers and employees of the department and to prescribe a system of records for correctional facilities, inmates and employees.

Public Health Law, sections 17, 18 and 2782, and other state law govern the release of medical records by health care providers.

The Federal Health Insurance Portability and Accountability Act Privacy Regulations, 45 CFR Part 160, Subparts A and B and 45 CFR 164, Subpart E, also govern the use and disclosure of medical records by a covered entity and require it to adopt procedures to bring it into compliance.

Legislative Objective:

By vesting the commissioner with this rulemaking authority, the legislature intended that appropriate records be kept, and that procedures be implemented to provide the public and the news media with access to certain items of information from such records.

By adopting standards on medical confidentiality and the use and disclosure of protected health information, the State legislature, Congress and the U.S. Department of Health and Human Services require that covered entities comply with certain mandates in the use and disclosure of protected health information.

Needs and Benefits:

The Department receives many requests each day for information concerning inmates and employees. Existing Parts 5 and 6 provide for compliance with applicable sections of the Public Officers Law and the Public Health Law, and provide, under the authority of Correction Law, for dissemination and management of records not covered by other statutes. The new Federal privacy regulations promulgated under the Health Insurance Portability and accountability Act (HIPAA) provide impetus for most of these proposed amendments. HIPAA sets a national minimum standard of confidentiality of medical records. DOCS is covered by HIPAA. Additionally, in a recent Court of Claims decision, (Davidson vs. Department of Correctional Services, Claim No. 106233, as affirmed by the Appellate Division, Third Department on January 8, 2004, 771 N.Y.S.2d 197), the Court held that DOCS violated its own regulations (7 NYCRR 5.24[b]) by releasing medical records to the Office of Attorney General. The Court compared 5.24(b), which set forth when it was permissible to release medical records of inmates, with 7 NYCRR 7.5(b)(7). The latter regulation sets forth permissible disclosures of HIV-related information and specifically allows for the release of HIV- related information to the Attorney General's office without the inmate's authorization. Section 5.24(b) does not specifically mention the Office of Attorney General for the disclosure of medical records without the inmate's authorization.

The lawyers in the Office of Attorney General routinely represent DOCS officers, employees and other licensed health professionals in cases brought by inmates. Those attorneys need access to inmate files, including medical files, when preparing defenses for cases alleging malpractice, 8th amendment violations, disability discrimination cases and any number of other complaints. The rules of HIPAA allow a covered entity (DOCS) to disclose protected health information without the authorization of the patient for treatment, payment and health care operations (45 CFR 164.506). Legal services is included in the definition of "health care operations" (45 CFR 164.501). The proposed changes to 5.24 would specifically allow disclosure of inmate medical records to the Office of the Attorney General.

The amendments at section 5.1 and 5.5(d) merely add or correct relevant citations. The amendments at sections 5.5(h) and 5.23 clarify the definition of medical record per HIPAA (45CFR160.103). HIPAA changes what information must be made available to a patient upon his or her request for medical records. Public Health Law § 18.1(e) defines "patient information" or "information" as

> "any information concerning or relating to the examination, health assessment including, but not limited to, a health assessment for insurance and employment purposes or treatment of an identifiable subject maintained or possessed by a health care facility or health care practitioner who has provided or is providing services for assessment of a health condition including, but not limited to, a health assessment for insurance and employment purposes or has treated or is treating such subject, except (i) information and clinical records subject to the provisions of section 23.05 or 33.13 of the mental hygiene law... . (iii) information maintained by a practitioner, concerning or relating to the prior examination or treatment of a subject received from another practitioner, provided however, that such information may be requested by the subject directly from such other practitioner in accordance with the provisions of this section..."

Under Public Health Law § 18.1(e)(iii), practitioners do not have to provide a patient access to information received by another practitioner. However, under HIPAA, the definition of health information is any information that is "created or received" by a health care provider which "which relates to the past, present, or future physical or mental health or condition of an individual..." Access to health information under HIPAA is broader than under PHL § 18 and includes health information obtained from another practitioner.

Where the requirements of State and Federal law conflict, HIPAA requires covered entities to follow the "more stringent" law. "More stringent" in HIPAA is defined as "with respect to the rights of an individual who is subject of the individually identifiable information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment" (45CFR160.202).

The HIPAA rule provides for greater access by the patient to his or her health record and must be followed. The modified definition of medical record in new section 5.5(h) mirrors the HIPAA definition. The last sentence of 5.5(h) definition of medical record clarifies that if health and/or psychiatric records created by or received from the New York State Office of Mental Health are physically incorporated in the Department of Correctional Services records; those records are considered part of the medical record and must be released under these rules. Mental Hygiene Law 33.13 and 33.16 control the confidentiality and release of health and psychiatric records created by the New York State Office of Mental Health. Generally, the Office of Mental Health maintains their own records for services provided to DOCS inmates and release and access to those records are governed by OMH and the above laws. However, in the limited circumstances when mental hygiene records are physically incorporated in DOCS

records, access and release of that information is governed by DOCS regulations.

The amendments at sections 5.24 and 5.35 are intended to ensure that inmate medical records are not identified as records obtainable under the freedom of information law. The amendment at section 5.30(c) clarifies that employee medical records are not a subject of HIPAA rules (45CFR164.501). Likewise, the amendments at 5.36 and 6.2 clarify that fees for records and the designation of the privacy compliance officer serve only actions under the Public Officers Law. HIPAA provides for the designation of a separate privacy compliance officer (45CFR164.530). Public Health Law § 18 provides for the fee schedule.

Section 5.21 has been repealed and new Part 8 added to cover the dissemination of information to inmate families and the news media of a type and under the circumstances which may not require physical access to a record under the freedom of information law. Much of the information from the inmate record, as listed in existing subdivision (a) of section 5.21, is currently made available through the department's website: www.docs.state.ny.us. Aside from restructuring, new Part 8 substantially repeats the content of 5.21. However, the phrase "nature of injury or illness" is being removed from the description of information items automatically disclosed because of potential privacy concerns. Similarly, the phrase "cause of death" is also being removed because of privacy concerns and because, as indicated in the note added at the end of 8.2, the county coroners issue death certificates and are the proper sources for inquiries concerning causes of death. In addition, the title "director for public relations" has been changed to "director of public information," and the specification added at the end of 8.2 to ensure that superintendents consult with the director before responding to requests from the media. This should ensure that requests are handled in a fair and uniform manner Statewide.

The amendment at 5.30(h) allows the media to orally request salary and title information regarding a named employee. This change is being instituted for the convenience of the department.

Costs:

a. To State government: None.

b. To local governments: None. The proposed amendment does not apply to local governments.

c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.

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

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

b. Additions to existing reporting or application forms: None.

c. New or additional recordkeeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

There are no new mandates imposed upon local governments by this proposal. The proposed amendment does not apply to local governments.

Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

Alternatives:

DOCS is covered by HIPAA because it is a health care provider which conducts certain transactions electronically. As a covered entity, it must comply with the standards set by that regulation.

Federal Standards:

Minimum standards of the Federal government for this subject area at set forth 45 CFR Part 160, Subpart A and B and 45 CFR 164, Subpart E.

Compliance Schedule:

The Department of Correctional Services is expected to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely conforms to the requirements of the Health Information Portability and Accountability Act, and clarifies procedures for custody and release of certain records and information.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely conforms to the requirements of the Health Information Portability and Accountability Act, and clarifies procedures for custody and release of certain records and information.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely conforms to the requirements of the Health Information Portability and Accountability Act, and clarifies procedures for custody and release of certain records and information.

Insurance Department

EMERGENCY RULE MAKING

Physicians and Surgeons Professional Insurance Merit Rating Plans

I.D. No. INS-45-04-00001-E
Filing No. 1197
Filing date: Oct. 25, 2004
Effective date: Oct. 25, 2004

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

Action taken: Amendment of Part 152 (Regulation 124) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 2342(d) and (e); and L. 2002, ch. 1, part A, section 42 as amd. by L. 2002, ch. 82, part J, section 16

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

Specific reasons underlying the finding of necessity: Section 42 of Part A of Chapter 1 of the Laws of 2002, requires that any physician, surgeon or dentist who wants to participate in the excess medical malpractice insurance program established by the Legislature in 1986 must participate in a proactive risk management course. Section 42 authorized the Superintendent to promulgate regulations that provide for the establishment and administration of such plans. Section 42, as originally enacted on January 25, 2002, established an effective date of July 1, 2003 for participation in these courses. However, on May 29, 2002, Section 16 of Part J of Chapter 82 of the Laws of 2002 was enacted and the effective date was amended to July 1, 2002.

It is essential that this amendment be promulgated on an emergency basis so that insurers are made aware of the requirements for proactive risk management courses and have the courses in place as soon as possible. Insureds must be able to avail themselves of these courses as soon as possible so that they may participate in the excess medical malpractice insurance program. This is especially important for those insureds who are presently insured in the excess medical malpractice insurance program. It is vital that their insurance be maintained on a continuous basis not only for their financial protection but also to preserve the rights of claimants who suffer injury as a result of medical malpractice.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Physicians and surgeons professional insurance merit rating plans.

Purpose: To establish guidelines and requirements for medical malpractice merit rating plans and risk management plans.

Substance of emergency rule: Section 152.1 is amended by adding paragraph (e) which details the statutory authority for proactive risk management programs.

Section 152.2 is amended by adding definitions for the terms physician, excess medical malpractice program and insurer.

Section 152.6 contains the standards for risk management programs in which insureds participate in order to receive premium credits. This section is amended to provide that these courses may be offered in an internet-based format.

Section 152.7 is amended by specifying how risk management programs, provided in an internet-based format, may be implemented.

Section 152.8 is renumbered to be Section 152.11 and a new Section 152.8 is added to provide the standards for proactive risk management programs which are provided for insureds who wish to qualify for the excess medical malpractice insurance programs established by the Legislature.

A new Section 152.9 is added to provide coordination of the excess medical malpractice risk management courses with risk management courses that are offered for the purpose of providing premium credits.

A new Section 152.10 is added to provide guidelines for insurers in implementing risk management programs administered for insureds who wish to qualify for participation in the excess medical malpractice insurance program established by the Legislature.

Section 152.11 is amended to provide requirements for insurers conducting audits of insureds or for insureds to conduct self-review surveys. A new provision is added requiring insurers to report, by territory and medical specialty, the number of insureds participating in risk management programs who qualify for the excess medical malpractice insurance program.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire January 22, 2005.

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

Regulatory Impact Statement

1. Statutory authority: Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law, and to effectuate any power granted under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2343(d) provides that the Superintendent shall, by regulation, establish a merit rating plan for physicians professional liability insurance. Section 2343(e) provides that the Superintendent may approve malpractice insurance premium reductions for insured physicians who successfully complete an approved risk management course, subject to standards prescribed by the Superintendent by regulation. Section 42 of Part A of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002, requires that all physicians, surgeons and dentists participating in the excess medical malpractice insurance program established by the Legislature in 1986 participate in a proactive risk management program. Section 42 authorizes the Superintendent to promulgate regulations which provide for the establishment and administration of these risk management courses.

2. Legislative objectives: The objective of Section 2343(d) was the establishment, by the Superintendent, by regulation, of a merit rating plan for physicians professional liability insurance that was reasonable and not unfairly discriminatory, inequitable, violative of public policy or contrary to the best interests of the people of New York. The regulation was to include reasonable standards to be applied to merit rating plans submitted by insurers for approval by the Superintendent. Those standards are to be used to arrive at premium rates, surcharges and discounts based on an evaluation of the insured, geographical areas, specialties of practice, past and prospective loss and expense experience for medical malpractice insurance and any other factors deemed relevant in a system of merit rating.

The objective of Section 2343(e) was to permit insurers to provide premium credits for successful completion of risk management programs approved by the Superintendent.

The objective of Section 42 of Part A of the Laws of 2002 was to require that all physicians, surgeons and dentists participating in the excess medical malpractice insurance program established by the Legislature participate in a proactive risk management program.

An effective risk management program would provide insureds with an overview of the causes of malpractice claims, emphasize communication skills and improved patient rapport skills, and focus on improving procedures. This should reduce the frequency and severity of medical malpractice claims. The intent of this amendment is to effectuate that objective.

3. Needs and benefits: The first amendment to Part 152 established standards under which risk management programs may be approved by the Superintendent. Successful completion of approved risk management programs permitted credits to be applied to physicians professional liability programs.

At the time that amendment was promulgated, all risk management courses were conducted in a classroom setting in a lecture format. Since that time, advances in technology have made Internet-based home study courses available in an array of disciplines. Insurers have requested that they be permitted to take advantage of this technology and offer Internet-based risk management courses to their medical malpractice insureds. Offering Internet-based risk management courses will allow insureds increased flexibility in participating in these courses. This may result in more insureds completing the courses, which should ultimately translate into better patient care and reductions in the incidence and cost of medical malpractice claims.

The recently enacted Section 42 of Part A of Chapter 1 of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002 requires that, as of July 1, 2002, physicians, surgeons and dentists participate in a proactive risk management program in order to be eligible to participate in the excess medical malpractice insurance program established by the Legislature.

4. Costs: This rule imposes no compliance costs upon state or local governments.

There are no additional costs imposed upon regulated parties by the provisions of this amendment since, for the purposes of obtaining a premium credit, insurers are not required to offer risk management courses to their insureds, and those that offer risk management courses will not be required to include an Internet-based version. However, if they do offer these courses, these provisions offer regulated parties another option in offering risk management courses to their insureds. It is likely that it is more cost effective to offer Internet-based risk management courses to insureds in addition to, or in place of risk management courses in the lecture format. Courses conducted in a lecture format entail costs of hiring instructors, printing course materials and renting physical settings that can accommodate, and are convenient to, as many insureds that are eligible to attend.

In addition, insured physicians taking the Internet-based courses would not incur any transportation expenses that are associated with attending lecture format risk management courses. Furthermore, physicians would not have to schedule time away from their practice since these courses could be taken on line at virtually any time.

While insurers will incur additional costs when offering proactive risk management programs for the purpose of insurer eligibility in the excess medical malpractice insurance program, the statute provides that these costs will be reimbursed from funds available pursuant to Section 51 of Part A of Chapter 1 of the Laws of 2002. Reimbursement will be made according to procedures to be established by the Superintendent.

Although insurers have offered risk management programs, for the purpose of obtaining premium credits, for almost ten years, there are additional requirements specified in Section 42 of Chapter 1 of the Laws of 2002 for proactive risk management courses.

The follow-up course component of the proactive risk management course must be offered annually rather than every other year.

In order to satisfy the statutory requirement that these courses be proactive, insurers will also be required to conduct risk management audits annually, either by the insurer or by a self-review survey completed by the insured. There will be costs associated with developing the audit procedure, training people to conduct the audits, visiting insureds' practice settings to do the audit and implementing any necessary follow-up procedures after the results of the audit are analyzed.

These new requirements must be incorporated into the course and the course must be submitted to the superintendent for approval.

In addition, Section 42 requires that, in order for a dentist to participate in the excess medical malpractice program, he or she must participate in a proactive risk management program. Dental malpractice insurance carriers will incur costs necessary to set up proactive risk management courses, since up to this point the requirements of this Part with respect to risk management courses set up for purposes of premium credits did not apply to them.

Although the statute does not permit insurers to assess any fees against insureds for participating in these courses, insureds may have to schedule time away from their practice to participate in these risk management courses. However, it should be noted that participation in a proactive risk management course permits an insured to be issued one million dollars of excess medical malpractice insurance at no charge to himself/herself. It should also be noted that the aim of participation in risk management courses is to improve patient care which ultimately translates into better patient care which will reduce the frequency and severity of medical malpractice losses.

In addition, it is anticipated that completion of the excess medical malpractice risk management program will allow an insured physician to receive credit for Category 1 continuing medical education.

5. Local government mandates: This rule does not impose any mandates on local government.

6. Paperwork: There are paperwork requirements imposed by the provisions of the amendment on insurers with respect to offering an internet based risk management course. An insurer that decides to offer an Internet-based risk management course will have to follow existing procedures for obtaining the Superintendent's approval of that course and submit required data on the number of insureds receiving the risk management credit.

Although they are not regulated parties, an insured physician might be subject to minimal paperwork requirements. If an insured physician takes an Internet-based risk management course, he or she must affirm that they were the person who actually took the course and that they are aware that any premium credit granted by the insurer is based on this affirmation. Any additional costs associated with the completion of this affirmation will be offset by the fact that the insured does not have to travel to and from a location where any risk management course is offered in the lecture format. It should also be noted that it is a voluntary decision by the insured to participate in any risk management course.

With respect to the proactive risk management course, insurers will have to provide the follow-up course on an annual basis rather than every other year which will entail making more frequent arrangements concerning location, notification and presentation of the course if it is offered in a lecture format. They will also have to develop new procedures for the purposes of conducting audits and/or self-audits by insureds.

Insurers will also be required to submit to the Department, on an annual basis, the number of insureds participating in proactive risk management courses. However, this paperwork burden should be minimal since insurers are already required to submit similar statistics regarding other risk management courses.

7. Duplication: This amendment will not duplicate any existing federal or state law.

8. Alternatives: The alternative of not permitting Internet-based risk management courses to be offered by insurers is not a viable alternative. The Department is of the opinion that technological advances in this area should be made available to insurers and insureds. By permitting the availability of these types of courses, it is expected that more insured physicians will be able to take these courses and the benefits of risk management will improve the quality of care provided to their patients.

Consideration was given to permitting insurers to provide non-Internet-based home study courses to their insureds. However, the Department is of the opinion that such home study courses do not afford insurers the ability to properly monitor the effectiveness of the course and to verify that the insured physician is actually taking the course as do other formats. Currently, when offering a risk management course in the lecture format, attendance must be taken of participants both before and after the lecture and admittance to the course is closed at a certain time after the start of the course. With Internet-based risk management courses, the insured physician will be required to affirm that they have read the content of the course, taken any quizzes and completed the required project. In addition, insureds will be given an individual password to use and the length of time spent on the Internet taking the course can be tracked by the insurer.

Since the proactive risk management course is required by statute, the Department could not consider the alternative of not implementing it. Although an internet based format is not directly addressed in the mandatory statute, the rule provides for this option in order to provide flexibility to both insurers and physicians, surgeons and dentists who must take such courses to qualify for the excess medical malpractice insurance coverage and to maintain consistency between the risk management credit course which is voluntary, and the course that must be taken by all insureds wishing to qualify for the excess medical malpractice insurance program.

9. Federal standards: There are no minimum standards of the federal government for the same or similar areas.

10. Compliance schedule: The provisions of this amendment will apply immediately. As required by statute, insurers must have a proactive risk management course available for their insureds in order for insureds to participate in the excess medical malpractice insurance program. It is expected that insurers will be able to comply with the new provisions in a relatively short period of time since most medical malpractice insurers already have had other risk management programs approved by the superintendent. In order to facilitate compliance with this statute, extensive discussions have been held by the Department with the major medical malpractice insurers in this state and the Medical Society of the State of New York so that the content of the course relative to excess management will be consistent from course to course and also qualify for continuing medical education credit.

Since the offering of risk management courses for the purpose of premium credits is optional for insurers, there is no compliance schedule with respect to the offering of these courses in an internet-based format. An insurer may offer an internet-based risk management course to its insureds as soon as the Department determines that the course is in compliance with the provisions of this Part.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State and self-insurers, none of which fall within the definition of "small business".

The Insurance Department has reviewed filed Reports on Examination an Annual Statements of authorized property/casualty insures and determined that none of them would fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees. Self-insurers typically have to be large enough to have the financial ability to self insure losses and the Department has never been provided information to indicate that any of the self-insurers are small businesses.

This rule will also have no adverse economic impact on local governments and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

Although they are not regulated parties, this part affects physicians, surgeons and dentists, some of whom may be considered small businesses as they are required to attend proactive risk management courses if they wish to be eligible to participate in the excess medical malpractice insurance program. This may entail scheduling time away from their medical practice in order to participate in these courses. However, it should be noted that participation in this course permits an insured to be issued one million dollars of excess medical malpractice insurance at no charge to himself/herself. It should also be noted that the aim of participation in risk management courses is to improve patient care which ultimately translates into better patient care which will reduce the frequency and severity of medical malpractice losses.

In addition, by providing insurers with the option of offering risk management programs in an internet-based format, physicians should be able to save time and money by taking these courses in their home or office at a time convenient to them as opposed to attending these courses when conducted in a lecture format.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and self-insurers covered by this regulation do business in every county in this state, including rural areas as defined under Section 102 (1) of the State Administrative Procedure Act. Other affected parties, such as physicians, surgeons and dentists, conduct their practices throughout the state.

2. Reporting, recordkeeping and other compliance requirements: There are paperwork requirements imposed by the provisions of this amendment on insurers with respect to offering an internet-based risk management course. An insurer that decides to offer an internet-based risk management course will have to follow existing procedures for obtaining the Superintendent's approval of that course and submit required data on the number of insureds receiving the risk management credit.

Although they are not regulated parties, an insured physician might be subject to minimal paperwork requirements. If an insured physician takes an internet-based risk management course, he or she must affirm that they were the person who actually took the course and that they are aware that any premium credit granted by the insurer is based on this affirmation. Any additional costs associated with the completion of this affirmation will be offset by the fact that the insured does not have to travel to and from a setting where any risk management course is offered in the lecture format. It should also be noted that it is a voluntary decision by the insured to participate in any risk management course.

With respect to the proactive risk management course, insurers will have to provide the follow-up course on an annual basis rather than every other year which will entail making more frequent arrangements concerning location, notification and presentation of the course if it is offered in a lecture format. They will also have to develop new procedures for the purpose of conducting audits and/or self-audits by insureds.

Insurers will also be required to submit to the Department, on an annual basis, the number of insureds participating in proactive risk management courses. However, this paperwork should have a minimal impact since

insurers are already required to submit similar statistics regarding other risk management courses.

3. Costs: This rule imposes no compliance costs upon state or local governments.

It is not expected that insurers would incur undue expenses in offering internet-based risk management courses to their insureds for the purpose of obtaining premium credits. In fact, it is likely that it is more cost effective to offer internet-based risk management courses to insureds in addition to, or in place of, risk management courses in the lecture format.

Insureds would not be unduly affected by participating in internet-based risk management courses and would probably incur time and financial savings since they would be able to take these courses in their home or office at a time convenient to them.

Insurers will incur additional costs when offering proactive risk management programs to insureds for the purpose of eligibility in the excess medical malpractice insurance program. However, the stature provides that their costs will be reimbursed from statutory funds according to procedures to be established by the Superintendent. Insurers must offer these courses on an annual basis and will be conducting risk management audits or have insureds conduct self-audits. These new requirements are statutorily mandated, but should not impose any undue hardships for insurers.

However, it should be noted that participation in this course permits an insured to be issued one million dollars of excess medical malpractice insurance at no charge to himself/herself. It should also be noted that the aim of participation in risk management courses is to improve patient care which ultimately translates into better patient care which will reduce the frequency and severity of medical malpractice losses.

It should also be noted that portions of the excess medical malpractice risk management programs will be reviewed by the Medical Society of the State of New York for qualification as Category 1 of continuing medical education credit. Therefore, an insured who successfully completes this course will qualify both for continuing medical education and for participation in the excess medical malpractice insurance program.

4. Minimizing adverse impact: The regulation applies to regulated parties that do business throughout New York State and does not impose any adverse impact on rural areas. Permitting insurers to offer risk management courses in an internet-based format should benefit insureds in rural areas through savings of time and money. Instead of traveling to central locations throughout the state to attend these courses in a lecture format, they can take the courses on computers in their home or office at a time convenient to them.

5. Rural area participation: The Department met extensively with the major medical malpractice insurers in New York State to solicit their opinions on the subject of proactive risk management programs. The Department also solicited input from the Medical Society of the State of New York in order that these courses would qualify for continuing medical education credit. Their comments were taken into account in developing the provisions of this Part.

Job Impact Statement

This rule should not have any adverse impact on jobs and employment opportunities in this State since it merely sets forth guidelines that medical malpractice insurers must follow when developing statutorily prescribed proactive risk management programs that must be submitted to the Superintendent for approval. It also permits insurers to offer risk management courses in an internet-based format.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Claim Submission Guidelines for Medical Service and Hospital Claims

I.D. No. INS-45-04-00002-EP
Filing No. 1198
Filing date: Oct. 25, 2004
Effective date: Oct. 25, 2004

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

Action taken: Addition of Part 217 (Regulation 178) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 2403, 3224 and 3224-a

Finding of necessity for emergency rule: public health.

Specific reasons underlying the finding of necessity: Prior to the enactment of Chapters 637 and 666 of the Laws of 1997 (the "Prompt Pay Law"), establishing prompt payment requirements for health care claims, existing law did not require insurers under contracts issued by insurers pursuant to Articles 32, 42 or 43, HMOs and PHSPs to pay claims or bills for healthcare services within any specific timeframe. Neither did existing law require interest on unpaid claims or bills for health care services. The lack of specific statutory time frames for payment encouraged delayed payment of claims.

Chapter 637 and 666 of the Laws of 1997, which took effect on January 22, 1998, amended the Insurance Law relating to settlement of claims for health care services. The law was intended to set timeframes within which insurers under contracts issued pursuant to Articles 32, 42, or 43, HMOs and PHSPs must pay undisputed claims for health care services submitted by subscribers and health care providers.

Since the effective date of the prompt payment statute, the Insurance Department has received over 88,000 complaints against insurers, HMO and PHSPs concerning late payment of claims. The Department also levied periodic monetary penalties against insurers, HMOs and PHSPs for untimely payment and untimely denial of health care claims.

While insurers, HMOs and PHSPs have altered their procedures to comply with the timeframes of the Prompt Pay Law, there remained disagreement among the various associations that represent health care providers, insurers, HMOs and PHSPs regarding when a claim should be considered clean and therefore ready for payment.

The Insurance Department convened the Healthcare Roundtable to encourage dialogue among the various associations representing health care providers, insurers, HMOs and PHSPs in order to reach agreement as to when a claim should be considered to be clean or undisputed. Regulation 178 is the result of several meetings, discussions and agreement, and represents a consensus of the Healthcare Roundtable. The Department believes that the clean claim provision in this regulation will prevent providers from submitting unnecessary complaints to the Insurance Department regarding claims that are deficient.

The Insurance Department and the Healthcare Roundtable continue to meet to discuss additional changes that might be necessary to further the prompt pay requirements. This regulation must be promulgated as an emergency measure so that, as discussions continue, the clean claim parameters can be put in place and assessed to determine what other claim payment guidelines are needed. Insurers, HMOs and PHSPs are ready to accept the guidelines, as they will improve insurers', HMOs', and PHSPs' relationships with the provider community, which is essential for the viability of health insurance in New York State.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Claim submission guidelines for medical service and hospital claims submitted in paper form.

Purpose: To create claim payment guidelines on what is needed in order to determine when a health care insurance claim is considered complete and ready for payment.

Text of emergency/proposed rule: A new Part 217 of Chapter IX of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 178), entitled " Prompt Payment Of Health Insurance Claims", is adopted to read as follows:

Section 217.1 Definitions and applicability.

(a) For the purposes of this Part:

(1) "Payer" shall mean an insurer authorized to write accident and health insurance or that is licensed pursuant to Article 43 of the New York Insurance Law, or an entity certified pursuant to Article 44 of the Public Health Law.

(2) "Submitted on paper" shall include claims submitted on paper or by facsimile.

(b) This Part shall apply to all health care claims submitted under contracts or agreements issued or entered into pursuant to Articles 32, 42 or 43 of the Insurance Law or Article 44 of the Public Health Law.

Section 217.2 Health Insurance claim submission guidelines.

(a) A claim for payment of medical or hospital services submitted on paper shall be deemed complete if it contains the minimum data elements set forth in this Part. If the minimum data elements set forth are not present or accurate, the payer may, but need not, adjudicate the claim if the payer can determine, based on the information submitted, whether such claim should be paid or denied. Even if the claim is deemed complete, a payer may, pursuant to the provision of Section 3224-a(b) of the New York

Insurance Law, request specific additional information, distinct from information on the claim form, necessary to make a determination as to its obligation to pay such claim.

(b)(1) In the case of a medical claim submitted on the national standard form known as a CMS 1500 (previously known as HCFA 1500 (New York State)), attached as an appendix (Appendix 26), the claim shall contain at least the items in the following fields of the claim form, except as provided in paragraph (2) of this subdivision:

1a. Insured's I.D. Number
2. Patient's Name
3. Patient's Date of Birth and Gender
4. Insured's Name (Last Name, First Name)
5. Patient's Address
9. Other Insured's Name (if appropriate)
9a. Other Insured's Policy or Group Number (if appropriate)
9b. Other Insured's Date of Birth and Gender (if appropriate)
9c. Employer's Name or School Name (if appropriate)
9d. Insurance Plan Name or Program Name (if appropriate)
10a. Is Patient's Condition Related to Employment?
10b. Is Patient's Condition Related to Auto Accident?
10c. Is Patient's Condition Related to Other Accident?
11. Insured's Policy, Group or FECA Number (if provided on ID Card)
11d. Is There Another Health Benefit Plan?
12. Patient's or Authorized Person's Signature (Can be completed by writing "signature on file" where appropriate)
13. Insured's or Authorized Person's Signature (if appropriate)
17. Name of Referring Physician or Other Source (if appropriate)
17a. I.D. Number of Referring Physician (if appropriate)
18. Hospitalization Dates Related to Current Services (if appropriate)
21. Diagnosis or Nature of Illness or Injury
24A. Dates of Service
24B. Place of Service
24D. Procedures, Services, or Supplies
24E.Diagnosis Code (refer to item 21)
24F. $ Charges
24G. Days or Units (for Durable Medical Equipment) (if appropriate)
25. Federal Tax I.D. Number
28. Total Charge
29. Amount Paid (if appropriate)
30. Balance Due
31. Signature of Physician or Supplier Including Degrees or Credentials (if not already on file, except as required by applicable Federal and State laws)
33. Personal Identifying Number of the particular practitioner rendering the care plus, if practicing in a group, the Identifying Number of the group as well

(2) For items listed in paragraph (1) of this subdivision with the notation "(if appropriate)", the generic nature of the standard claim form produces some instances when the information is not relevant in a particular instance. In those cases, the payer shall not insist upon completion of that item if the information is not relevant to the situation of that particular practitioner or patient or the information will not be used by the payer. If an item is not applicable at all, it should be left blank rather than inserting a notation that it is not applicable.

(c)(1) In the case of a hospital claim submitted on the national standard form HCFA 1450 (also known as UB-92), attached as an appendix (Appendix 27), the claim shall contain at least the items in the following fields of the claim form, except as provided in paragraph (2) of this subdivision:

1. Provider Name and Address
3. Patient Control Number
4. Type of Bill
5. Federal Tax Number
6. Statement Covers Period
7. Covered Days (if appropriate) (interim bill, etc)
8. Non-Covered Days (if appropriate)
9. Coinsurance Days (if appropriate)
10. Lifetime Reserve Days (if appropriate)
11. Newborn Birthweight (if appropriate)
12. Patient Name
13. Patient Address
14. Patient Birthdate
15. Patient Sex
17. Admission Date
18. Admission Hour
19. Type of Admission
22. Discharge Status Code
42. Revenue Codes
43. Revenue Description
44. HCPCS/CPT4 Codes
45. Service Date
46. Service Units
47. Total Charges (by revenue code)
48. Non-Covered Charges
50. Payer Name
51. Provider ID
54. Other Insurance Payment (if appropriate)
55. Estimated Amount Due (if appropriate)
58. Insured's Name
59. Patient Relationship
60. Patient's Cert. SSN - HIC - ID No.
62. Insurance Group Number (if on card) (where appropriate)
67. Principal Diagnosis Code
68. Code
69. Code
70. Code
71. Code
72. Code
73. Code
74. Code
75. Code
76. Admitting Diagnosis Code
77. E-Code
78. DRG #
79. P.C.
80. Principal Procedure Code and Date
81. Other Procedures Code and Date
82. Attending Physician's ID Number

(2) For items listed in paragraph (1) of this subdivision with the notation "(if appropriate)", the generic nature of the standard claim form produces some instances when the information is not relevant in a particular instance. In those cases, the payer shall not insist upon completion of that item if the information is not relevant to the situation of that particular practitioner or patient or the information will not be used by the payer. If an item is not applicable at all, it should be left blank rather than inserting a notation that it is not applicable.

(d) Nothing in this Part shall prohibit a payer from electing to accept some or all claims with less information than that specified in the lists set forth in subdivisions (b) and (c) of this section.

A new Appendix 26 of Title 11 is adopted to read as follows:

See Appendix in the back of this issue.

A new Appendix 27 of Title 11 is adopted to read as follows:

See Appendix in the back of this issue.

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 January 22, 2005.

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

Data, views or arguments may be submitted to: Merline Smith, Consumer Services Bureau, Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 474-7894, e-mail: msmith@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory Authority: The Superintendent's authority for the adoption of Part 217 of Title 11 (Regulation 178) is derived from Sections 201, 301, 1109, 2403, 3224, 3224-a of the Insurance Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the Superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law. Section 2403 prohibits any person from engaging in any trade practice constituting a "defined violation", which pursuant to the provisions of Section 2402(b) includes a violation of Section 3224-a. Section 3224-a sets forth the timeframes for timely payment of undisputed claims for health care services under contracts issued by insurers pursuant to Articles 32, 42 and 43 of the Insurance Law and by health maintenance organizations (HMOs) or

Prepaid Health Service Plans (PHSPs) pursuant to Article 44 of the Public Health Law. Section 3224 gives the Superintendent the authority to establish a standard claim form for physicians or other health care providers to be used for accident and health insurance claims and by Article 43 corporations.

2. Legislative Objectives: Prior to the enactment of Chapters 637 and 666 of the Laws of 1997, establishing prompt payment requirements for health care claims, existing law did not require insurers under contracts issued by insurers pursuant to Articles 32, 42 or 43, HMOs or PHSPs to pay claims or bills for health care services within any specific timeframe. Neither did existing law require interest on unpaid claims or bills for health care services. The statement in support of the prompt payment legislation stated that HMOs and insurers did not pay claims and bills in a timely fashion, to the detriment of providers and patients alike. The lack of specific statutory provisions encouraged payers to delay payments to take advantage of interest, which can be earned on the moneys being withheld from payment. The intent of the prompt payment law was to provide protection to both patients and health care providers relative to the timely payment of health service claims by insurers under contracts issued pursuant to Articles 32, 42 or 43, HMOs and PHSPs.

Prior to the legislation, there were generally no repercussions for the late payment of claims. Healthcare providers complained that there were no incentives for paying claims promptly or penalties for late payments. Consequently, hospitals were accumulating large receivables because of these late payments.

Chapters 637 and 666 of the Laws of 1997, which took effect on January 22, 1998, amended the Insurance Law relating to the settlement of claims for health care and payment for health care services. The law was intended to set timeframes within which insurers under contracts issued pursuant to Articles 32, 42 or 43, HMOs and PHSPs must pay undisputed claims for health care services submitted by subscribers and health care providers. New Section 3224-a prescribed penalties in the form of interest payable on claims paid later than 45 days. The law also amended Section 2402, to include a violation of Section 3224-a as a defined violation, and amended Section 2406 to specifically provide for the Superintendent to levy daily monetary penalties against such insurers, HMOs and PHSPs for their failure to pay undisputed health claims within 45 days of receipt, untimely denials of claims, or requesting additional information needed to process the claim beyond 30 days of receipt of the claim. The Insurance Department established mechanisms for accepting complaints from health care providers and created procedures for levying monetary penalties against insurers, HMOs and PHSPs for violation of the prompt payment statute.

Since January 1998, the Department has received over 88,000 complaints from health care providers against insurers, HMOs and PHSPs regarding the timely payment of health care claims. The Department has collected monetary penalties of approximately 5 million dollars from insurers, HMOs and PHSPs for violations of Section 3224-a.

The powers granted to the Superintendent of Insurance to investigate and enforce compliance with the prompt payment requirements established by the law as well as the new interest and penalty sanctions, help ensure that payments are made in a timely manner. The purpose of this regulation is to facilitate the legislative intent of the Prompt Pay Law by establishing minimum requirements when claims are submitted on paper as to what constitutes a clean or undisputed claim, thereby resulting in more timely payment of claims by insurers, HMOs and PHSPs.

3. Needs and Benefits: While insurers, HMOS, and PHSPs have altered their procedures to comply with the timeframes of the Prompt Pay Law, there remained disagreement among the various associations that represent health care providers, insurers, HMOs, and PHSPs regarding when a claim should be considered to be clean and therefore ready for payment.

The Superintendent of Insurance convened the Healthcare Roundtable to encourage dialogue among the various associations representing health care providers, insurers, HMOs, and PHSPs in order to reach agreement as to when a claim should be considered to be clean or undisputed. The group agreed that the guidelines established by the State of Connecticut in the form of a regulation, which sets forth elements of a clean claim, would be a good starting point in determining what information must be included on a claim form in order for the claim to be considered complete.

Regulation 178 is the result of several meetings, discussions and agreements, and represents a consensus of the Healthcare Roundtable. Members of the Roundtable include the Medical Society of the State of New York, The Healthcare Association of New York, The Greater New York Hospital Association, The Conference of Blue Cross Blue Shield Plans, the Health Plan Association, the American College of Obstetricians and Gynecologists, and various provider representatives.

This regulation is similar to Connecticut's regulation in that the parameters are clear and consistent with the health care claims process for provider claims submitted on paper. The regulation provides clear standards with which insurers, HMOs, and PHSPs need to comply in processing health care claims submitted on paper. In this way, providers will know what information will be needed when submitting such claims to ensure prompt payment of the claims.

4. Cost: Any cost associated with implementing the claims payment guidelines was established by statute and has already been incurred by insurers, HMOs, and PHSPs who readied their claims processing functions in early 1998, when Section 3224-a became effective, in order to process claims within the requisite timeframes. The regulation does not require insurers, HMOs, or PHSPs to provide additional or new claim forms but simply establishes which elements on existing claim forms need to be completed. In fact, insurers, HMOS and PHSPs have already established procedures to handle the increased number of complaints filed by health care providers. Insurers, HMOs and PHSPs believe that the clean claim provisions in this proposed regulation will prevent providers from submitting unnecessary complaints to the Insurance Department regarding claims that are deficient. The prevention of such a practice could also serve to reduce costs to regulated parties and the Department.

5. Local Government Mandates: The proposed regulation does not impose any new mandates on any county, city, town, village, school district or fire district.

6. Paperwork: The proposed regulation does not impose any reporting requirements on insurers, HMOs, PHSPs, or health care providers. No additional paperwork will be required from insurers, HMOs, PHSPs or health care providers, other than what is already required by statute.

7. Duplication: The proposed regulation does not overlap or duplicate any other state regulations, or federal mandates.

8. Alternatives: Interest groups representing providers and payers met on numerous occasions to develop the parameters for determining what constitutes a substantially complete claim. Various alternatives were considered but all affected parties agreed that the regulation represents the best solution to resolve the question about what constitutes a clean claim.

9. Federal Standards: There are no federal laws that require timely payment of undisputed health care claims. There is a new claims payment regulation issued by the United States Department of Labor, which relates to the processing of claims under employer group contracts, but the federal regulation does not address timely payment of health care claims.

10. Compliance Schedule: Since interested parties representing providers, HMOs, PHSPs and insurers developed the regulation, these parties are aware of the regulatory provisions and will be able to bring practices into compliance with the requirements. Insurers, HMOs, and PHSPs are ready to accept the guidelines, as they will improve insurers', HMOs', and PHSPs' relationships with the provider community, which is essential for the viability of health insurance in New York State. The regulation has already been promulgated on an emergency basis and has been in effect for many months.

Regulatory Flexibility Analysis

1. Effect of the rule: The regulation will affect insurers paying claims under contracts written pursuant to Articles 32, 42, and 43 of the Insurance Law and health maintenance organizations (HMOs) and Prepaid Health Service Plans (PHSPs) pursuant to Article 44 of the Public Health Law. The Insurance Department has reviewed the filed Reports on Examination and Annual Statements of insurers authorized to do business in New York and has concluded that insurers and HMOs do not fall within the definition of small business found in Section 102(8) of the State Administrative Procedures Act, because there are none which are both independently owned and have under 100 employees.

There are under 20 PHSPs in New York, some of which are small businesses. PHSPs are entities certified pursuant to Article 44 of the Public Health Law that provide Medicaid services in a managed care environment. However, they will not be negatively impacted by this regulation. The regulation establishes minimum requirements for the submission of claims on forms that the plans currently use. The establishment of these minimum requirements will assist the plans by reducing the administrative burden of requesting additional information on incomplete claims.

The regulation will also affect health care providers, many of which are small businesses, submitting claims on paper for payment for health care services submitted on the CMS 1500 claim form and the CMS 1450 form. It sets forth guidelines for determining when a claim that is submitted on paper is considered complete and ready for processing. This regulation is

the result of meetings with representatives of health care providers, insurers, HMOs and PHSPs, and represents a consensus between the Department and the various interested parties as to what information is necessary for a claim to be considered substantially complete. The regulation does not apply to or affect local governments.

2. Compliance requirements: Prompt payment reporting, record keeping and other compliance requirements are imposed by statute. Insurers, HMOs, and PSHPs are already paying claims for healthcare services to providers. There are no compliance requirements for local governments. There are no compliance requirements for small businesses including health care providers other than clarifying what constitutes a substantially complete claim so as to facilitate payment of claims to them.

3. Professional services: Insurers, HMOs, and PHSPs are not required and should not need to obtain professional services to comply with this regulation. Health care providers do not need to obtain additional professional services as a result of this regulation.

4. Compliance costs: The relevant statutes, as amended by Chapters 637 and 666 of the Laws of 1997, require that insurers, HMOs, and PSHPs pay undisputed claims within 45 days of receipt, or deny the claim, or request additional information within 30 days of receipt. Insurers, HMO, and PSHPs are already responding to the mandates of the prompt payment statute. This regulation had been requested by interested parties in order to establish the framework for what is considered a substantially complete claim that is ready for processing. The regulation does not impose any additional cost to insurers, HMOs, and PSHPs. As a result of this regulation, insurers, HMOs, and PSHPs should not need to request additional information as frequently, thereby reducing their costs of processing claims.

5. Economic and technological feasibility: Compliance with the regulation should be economically and technologically feasible for small businesses since no new procedures or requirements are added and the regulation merely establishes the minimum items needed to have a clean claim when using the standard form and adherence on the part of the health care provider will speed the processing of health care claims and curtail the various requests from insurers and HMOs for additional information.

6. Minimize adverse impact: The regulation is intended to help health care providers, many of which are small businesses. If claims are substantially complete when submitted, insurers, HMOs and PHSPs will not need to request additional information. Consequently, payment to providers will be faster, resulting in lower receivables on the books of health care providers. Differing compliance timetables or an exemption from coverage by the regulation are not feasible given existing statutory requirements for prompt payment of claims.

7. Small businesses and local government participation: Notification of the Department's intent to propose the regulation was included in the Department's regulatory agenda, accessible to small businesses and local governments. Interested parties representing HMOs, insurers, and PHSPs and providers developed the regulation with Department representatives during numerous meetings convened by the Department, and therefore interested parties had an opportunity to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Health maintenance organizations (HMOs), Prepaid Health Service Plans (PHSPs) and insurers to which this regulation is applicable do business in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Health care providers in New York State are comprised of mostly physicians, but include other health care providers in individual practices or small groups throughout the state.

2. Reporting, recordkeeping and other compliance requirements and professional services: This regulation requires no additional record keeping or reporting by insurers, HMOs, or PHSPs other than that which they are required to perform by statute. Although health care providers are being asked to include certain elements on the claim form when a claim is submitted on paper to make it substantially complete, these elements have always been required by insurers and HMOs for claims that are submitted on paper by health care providers. The regulation will not add any new reporting requirements for health care providers, and professional services will not be needed to comply with the proposed regulation.

3. Costs: Any cost associated with implementing the claims payment guidelines was established by statute and has already been incurred by insurers, HMOs and PHSPs who readied their claims processing functions in early 1998, when Section 3224-a became effective, in order to process claims within the requisite timeframes. The regulation does not require insurers, HMOs, or PHSPs to provide additional or new claim forms but simply establishes which elements on existing claim forms need to be completed. In fact, insurers, HMOS and PHSPs have already established procedures to handle the increased number of complaints filed by health care providers. Insurers, HMOs and PHSPs believe that the clean claim provisions in this proposed regulation will prevent providers from submitting unnecessary complaints to the Insurance Department regarding claims that are deficient. The prevention of such a practice could also serve to reduce costs to regulated parties and the Department.

4. Minimize adverse impact: Because the same requirements apply to both rural and non-rural entities, the regulation will impact all affected entities in the same manner. In fact, the regulation has the potential to decrease insurers', HMOs' and PSHPs' expenses, possibly reducing rate increase requests. It will also accelerate payment to providers for the delivery of health care services. This acceleration of payment to health care providers will help keep local doctors in family practice in their respective communities, and will foster consumers' continued access to providers.

5. Rural area participation: Notification of the Department's intent to propose the regulation was included in the Department's regulatory agenda. In addition, interested parties representing insurers, HMOs, PHSPs, and providers, potentially located in rural areas, discussed the regulation during numerous meetings convened by the Department and therefore had an opportunity to participate in the rule making process.

Job Impact Statement

This regulation will not adversely affect jobs or employment opportunities in New York State. The regulation is intended to improve the relationship between payers and providers, ultimately getting payment to providers more quickly, and helping to keep providers in their communities. As a result of the regulation, insurers will spend less time requesting information from health care providers. The regulation will also lessen confusion as to whether insurers have exercised bad faith in requesting additional information.

There is no anticipated adverse impact on job opportunities in this state.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Obsolete Service Fee and Rate Schedules

I.D. No. MRD-34-04-00009-A
Filing No. 1195
Filing date: Oct. 21, 2004
Effective date: Nov. 10, 2004

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

Action taken: Repeal of section 62.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09, 16.00 and 43.01

Subject: Deletion of obsolete service fee and rate schedules.

Purpose: To delete obsolete rules.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-34-04-00009-P, Issue of August 25, 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

The agency received no public comment.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charges Applicable to the Sale of Certain Power and Energy

I.D. No. PAS-45-04-00007-P

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

Proposed action: Revision to service tariff for certain Direct Firm Power Service business customers.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Charges applicable to the sale of certain power and energy.

Purpose: To maintain the system's fiscal integrity; this change in the service tariff is not the result of a Power Authority rate increase.

Text of proposed rule:

POWER AUTHORITY OF THE STATE OF NEW YORK *30 SOUTH PEARL STREET* [1633 BROADWAY], *10TH FLOOR, ALBANY* [NEW YORK], NEW YORK *12207* [10019]
SERVICE TARIFF NO. 1
DIRECT FIRM POWER SERVICE

APPLICABLE:

To sale of firm power for direct use by Customers whose Applications for Service have been accepted by Authority.

Alternating current; 60 hertz; 3 phase.

RATE

CAPACITY CHARGE:	$8.16 per month per kilowatt of billing demand.
ENERGY CHARGE:	23.00 mills per kilowatt-hour.

BILLING DEMAND:

For customers using power from other sources in conjunction with that supplied hereunder and for other customers whose application for service as accepted by the Authority so specify:

The contract demand in effect during the billing period.

For all other customers supplied under this tariff:

The maximum 30-minute integrated demand established during the billing period but not less than 75% of the contract demand.

POWER FACTOR:

Not less than 95%, lagging or leading, except as otherwise specified in the customer's accepted application for service.

CONTINUANCE AND TERMINATION OF SERVICE:

Initiation of service will be upon application of customer, accepted by Authority, under the procedure specified in the Rules and Regulations for Power Service promulgated by Authority. Service under terms and conditions of this Service Tariff may be renewed for successive terms of one year through June 30, 2000 upon written application of Customer made at least ninety (90) days before the end of the then current contract year and upon written approval of the Authority.

Special Provisions:

A. Resale. No Customer shall resell any of the power supplied by Authority under this Service Tariff.

B. Credit for alternate sale of power. Any Customer whose billing demand is specified as equal to its Contract Demand and which expects temporarily to be unable to use a substantial proportion of its Contract Demand may request Authority to endeavor to dispose of the power it does not require to a substitute purchaser. Authority will endeavor to do so on terms acceptable to Customer, Authority and the substitute purchaser. The net proceeds to Authority from sale of such capacity exclusive of the energy associated therewith shall be credited against Customer's billing demand obligation.

C. Adjustments to demand and energy charges. Authority sells power without profit and rates charged are formulated pursuant to the Power Authority Act. Whenever Authority determines on the basis of operating experience, governmental requirements or other relevant considerations that the rate should be revised it will notify Customer in writing of the revised demand and energy charges not less than 90 days in advance of the effective date thereof.

D. Transmission costs and losses.

(1) The demand and energy charges specified in this service tariff apply to amount of power and energy supplied at 345 kV at the FitzPatrick switchyard. Appropriate adjustment will be made to the amounts supplied to Customer's point of receipt as specified in its application for service to compensate for losses in transmission to that point.

(2) In addition to demand and energy charges Customer shall pay such transmission costs for delivery from Authority's power plant switchyard are specified in Customer's accepted Application for Service.

E. Apportionment between contracts. Where firm power is delivered under this tariff in conjunction with other power, the amounts supplied by Authority hereunder shall be apportioned as provided in Customer's approved Application under this Service Tariff.

F. New York Independent System Operator-Related Charges.

Notwithstanding any provision herein to the contrary, the Authority at any time may require the Customer to compensate the Authority for the following Charges for services provided by or which are a result of the New York Independent System Operator, Inc. ("NYISO") or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with the Authority's responsibilities as Load Serving Entity for the Customer:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

2. Marginal losses;

3. The New York Power Authority Transmission Adjustment Charge ("NTAC");

4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT; and

5. Any and all other charges, assessments or other amounts associated with providing electricity to the Customers that are incurred by the Authority and associated with the Authority's responsibilities as Load Serving Entity for the Customers under the provisions of NYISO's OATT or other tariffs.

Text of proposed rule and any required statements and analyses may be obtained from: Angela Graves, New York State Power Authority, 123 Main St., 15th Fl., White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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

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

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-44-00-00021-P	November 1, 2000
PSC-23-04-00006-P	June 9, 2004
PSC-33-04-00023-P	August 18, 2004
PSC-33-04-00024-P	August 18, 2004
PSC-33-04-00025-P	August 18, 2004

NOTICE OF ADOPTION

Base Cost of Fuel by the Village of Richmondville

I.D. No. PSC-15-04-00026-A
Filing date: Oct. 22, 2004
Effective date: Oct. 22, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 04-E-0421 approving revisions to the Village of Richmondville's (Richmondville) tariff schedule, P.S.C. No. 1—Electricity provided Richmondville files further revisions.

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

Subject: Tariff filing by the Village of Richmondville.

Purpose: To allow Richmondville to recover from a significant increase in the price of purchased power.

Substance of final rule: The Commission approved a request by the Village of Richmondville (Richmondville) to increase its base cost of purchased power by 0.75 center per kWh provided Richmondville files further modifications, on not less than one day's notice to become effective November 1, 2004, 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-0421SA1)

NOTICE OF ADOPTION

Mini Rate Increase by Salamanca Board of Public Utilities

I.D. No. PSC-26-04-00005-A
Filing date: Oct. 21, 2004
Effective date: Oct. 21, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 04-E-0735 allowing Salamanca Board of Public Utilities (Salamanca) to revise its tariff schedule, P.S.C. No. 1—Electricity provided Salamanca files further modifications.

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

Subject: Minor rate filing by Salamanca.

Purpose: To approve an increase in Salamanca's annual electric revenues.

Substance of final rule: The Commission authorized an increase in Salamanca Board of Public Utilities' (Salamanca) annual revenues by $92,895 or 2.7% and directed Salamanca to defer $25,000 of rate case expenses and recover these costs over a three year period beginning November 1, 2004.

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-0735SA1)

NOTICE OF ADOPTION

Submetering of Electricity by New 19 West LLC

I.D. No. PSC-31-04-00021-A
Filing date: Oct. 25, 2004
Effective date: Oct. 25, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 04-E-0772 allowing New 19 West LLC to submeter electricity at 18-20 West St., New York, NY.

Statutory authority: Public Service Law, sections 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To submeter electricity at a newly renovated residential apartment complex.

Substance of final rule: The Commission approved a request by New 19 West LLC to submeter electricity at 18-20 West Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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-0772SA1)

NOTICE OF ADOPTION

Service Fees to be Charged by Utilities to Energy Service Companies

I.D. No. PSC-32-04-00015-A
Filing date: Oct. 25, 2004
Effective date: Oct. 25, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 03-M-0117 directing utilities to refile their tariffs and use commission approved reconnection fees as a proxy for the suspension fees that will be charged Energy Service Companies on a temporary basis.

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

Subject: Cancellation and refiling of suspension fees.

Purpose: To modify fees charged to energy service companies when distribution utilities suspend service to customers who fail to pay amounts due.

Substance of final rule: The Commission directed utilities that tariffed suspension fees to modify those fees using their tariffed reconnection fees as the proxy for the suspension fees and to refund Energy Service Companies any amounts collected in excess of suspension fees allowable, 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-M-0117SA5)

NOTICE OF ADOPTION

Purchase of the Retail Supplier's Accounts Receivable by Central Hudson Gas & Electric Corporation

I.D. No. PSC-33-04-00014-A
Filing date: Oct. 20, 2004
Effective date: Oct. 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 Oct. 20, 2004, adopted an order in Case 00-E-1273 approving revisions to Central Hudson Gas & Electric Corporation's (Central Hudson) schedule for electric service—P.S.C. No. 15.

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

Subject: Compliance filing pursuant to the June 14, 2004 commission order modifying rate plan.

Purpose: To increase customer migration in the electric commodity market.

Substance of final rule: The Commission approved revisions to Central Hudson Gas & Electric Corporation's (Central Hudson) electric tariff schedule to change its current practice of purchasing the retail supplier's accounts receivable whereby, if Central Hudson is providing consolidated billing service to a retail supplier. Central Hudson will purchase the retail supplier's accounts receivable at a discount, without recourse.

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.

(00-E-1273SA7)

NOTICE OF ADOPTION

Rider M—Voluntary Real-Time Pricing by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-33-04-00018-A
Filing date: Oct. 20, 2004
Effective date: Oct. 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 Oct. 20, 2004, in Case 04-E-0922 approved revisions to Consolidated Edison Company of New York Inc.'s (Con Edison) tariff schedule, P.S.C. No. 9—Electricity.

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

Subject: Tariff filing by Con Edison.

Purpose: To increase the number of customers eligible to participate in Con Edison's Voluntary Real-Time Pricing Program.

Substance of final rule: The Commission approved Consolidated Edison Company of New York, Inc.'s request to revise Rider M—Voluntary Real-Time Pricing to increase the population of customers eligible to participate in the program.

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-0922SA1)

NOTICE OF ADOPTION

Retail Access Program by Central Hudson Gas & Electric Corporation

I.D. No. PSC-33-04-00019-A
Filing date: Oct. 20, 2004
Effective date: Oct. 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 Oct. 20, 2004, adopted an order in Case 00-G-1274 approving the revisions to Central Hudson Gas & Electric Corporation's (Central Hudson) schedule for gas service—P.S.C. No. 12.

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

Subject: Compliance filing pursuant to the June 14, 2004 commission order modifying rate plan.

Purpose: To increase customer migration in the natural gas commodity market.

Substance of final rule: The Commission approved revisions to Central Hudson Gas & Electric Corporation's (Central Hudson) gas tariff schedule to implement the retail access policies outlined in the Commission's Order of June 14, 2004.

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.

(00-G-1274SA3)

NOTICE OF ADOPTION

Interruptible and Off-Peak Customers by Consolidated Edison Company of New York

I.D. No. PSC-33-04-00020-A
Filing date: Oct. 22, 2004
Effective date: Oct. 22, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 04-G-0948 approving revisions to Consolidated Edison Company of New York, Inc.'s (Con Edison) schedule for gas service—P.S.C. No. 9 provided Con Edison Files further modifications.

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

Subject: Revisions to Con Edison's interruptible and off-peak firm service tariff provisions.

Purpose: To establish a reasonable criteria for customers compliance during periods of imposed interruptions and maintain distribution system reliability.

Substance of final rule: The Commission authorized amendments to Consolidated Edison Company of New York, Inc.'s (Con Edison) interruptible and off-peak firm service tariff provisions provided Con Edison file revised tariff leaves. The amendments will become effective on a temporary basis, on one day's notice on November 1, 2004, 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-G-0948SA1)

NOTICE OF ADOPTION

Application Form for Steam Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-33-04-00022-A
Filing date: Oct. 20, 2004
Effective date: Oct. 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 Oct. 20, 2004, adopted an order in Case 04-S-0905 approving amendments to Consolidated Edison Company of New York, Inc.'s (Con Edison) schedule for steam service—P.S.C. No. 3.

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

Subject: Tariff filing by Con Edison to update its current application form.

Purpose: To improve Con Edison's application process for steam service.

Substance of final rule: The Commission approved Consolidated Edison Company of New York, Inc.'s request to revise its existing application form for steam service.

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-S-0905SA1)

NOTICE OF ADOPTION

Gas Supply Charge Revenues by Rochester Gas and Electric Corporation

I.D. No. PSC-34-04-00021-A
Filing date: Oct. 20, 2004
Effective date: Oct. 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 Oct. 20, 2004, adopted an order in Case 03-G-0766 approving amendments to Rochester Gas and Electric Corporation's (RG&E) gas tariff schedule, P.S.C. No. 16.

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

Subject: Compliance filing regarding the commission's May 20, 2004 order.

Purpose: To modify RG&E's gas supply credits provision.

Substance of final rule: The Commission approved tariff revisions by Rochester Gas and Electric Corporation (RG&E) that provides for the pass back of gas supply credits received by RG&E that exceed $7.5 million in any month.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-G-0766SA3)

NOTICE OF ADOPTION

Schedule for Gas Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-34-04-00023-A
Filing date: Oct. 21, 2004
Effective date: Oct. 21, 2004

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

Action taken: The commission, on Oct. 20, 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 provided KeySpan files further modifications.

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

Subject: Tariff filing to amend KeySpan's dual-fuel interruptible tariff provisions.

Purpose: To ensure system reliability for service to firm customers.

Substance of final rule: The Commission approved revisions to KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's (KeySpan) dual-fuel interruptible tariff provisions and directed KeySpan to modify existing tariff language to ensure that sales and transportation customers are treated equally.

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-0944SA1)

NOTICE OF ADOPTION

Schedule for Gas Service by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York

I.D. No. PSC-34-04-00024-A
Filing date: Oct. 21, 2004
Effective date: Oct. 21, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 04-G-0945 allowing The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (Brooklyn Union) to revise its schedule for gas service—P.S.C. No. 12 provided Brooklyn Union files further modifications.

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

Subject: Tariff filing to revise Brooklyn Union's dual-fuel interruptible tariff provisions.

Purpose: To ensure system reliability for service to firm customers.

Substance of final rule: The Commission approved revisions to The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's (Brooklyn Union) dual-fuel interruptible tariff provisions and directed Brooklyn Union to modify existing tariff language to ensure that sales and transportation customers are treated equally.

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-0945SA1)

NOTICE OF ADOPTION

Schedule for Gas Service by Rochester Gas and Electric Corporation

I.D. No. PSC-35-04-00016-A
Filing date: Oct. 20, 2004
Effective date: Oct. 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 Oct. 20, 2004, adopted an order in Case 03-G-0766 approving amendments to Rochester Gas and Electric Corporation's (RG&E) gas tariff schedule, P.S.C. No. 16.

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

Subject: Compliance filing regarding the commission's May 20, 2004 order.

Purpose: To modify RG&E gas balancing, cashout provisions, marketer capacity requirements and implement a storage transfer penalty charge.

Substance of final rule: The Commission approved modifications to Rochester Gas and Electric Corporation's (GR&E) gas balancing and cashout provisions to implement automatic imbalance adjustments, reflect applicable mid-point pricing indices and adjust cashout tiers and multipliers.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-G-0766SA4)

NOTICE OF ADOPTION

Transfer of Water Plant Assets by Camfield-Purcell Water Works, Inc., Brickyard Road Water System, *et al.*

I.D. No. PSC-35-04-00023-A
Filing date: Oct. 22, 2004
Effective date: Oct. 22, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 04-W-0959 approving the transfer of Camfield-Purcell Water, Inc. (Camfield-Purcell) and Brickyard Road (Brickyard) water line to the Town of Stillwater.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water plan assets.

Purpose: To allow the Town of Stillwater to acquire water system assets from Camfield-Purcell and Brickyard.

Substance of final rule: The Commission approved a request by Camfield-Purcell Water Works, Inc. (Camfield-Purcell) to transfer Camfield-Purcell and Brickyard Road water line to the Town of Stillwater, 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-0959SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreement between Sprint Communications Company L.P. and Verizon New York Inc.

I.D. No. PSC-45-04-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Sprint Communications Company L.P. and Verizon New York Inc. to revise the interconnection agreement effective on June 23, 2000.

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

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

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Sprint Communications Company L.P. and Verizon New York Inc. in June 2000. The companies subsequently have jointly filed amendments to clarify the provisions regarding reciprocal compensation rates. The Commission is considering these changes.

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

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

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

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

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

(99-C-1389SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreement between PAETEC Communications, Inc. and Citizens Telecommunications of New York, Inc. d/b/a Frontier Citizens Communications of New York

I.D. No. PSC-45-04-00010-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 modification filed by PAETEC Communications, Inc. and Citizens Telecommunications of New York, Inc. d/b/a Frontier Citizens Communications of New York to revise the interconnection agreement effective on Oct. 5, 2001.

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

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

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between PAETEC Communications, Inc. and Citizens Telecommunications of New York, Inc. d/b/a Frontier Citizens Communications of New York in October 2001. The companies subsequently have jointly filed amendments to clarify the provisions regarding interconnection trunking arrangements and specified points of interconnection. The Commission is considering these changes.

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

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

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

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

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

(01-C-1956SA4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Order Setting Permanent Hot Cut Rates by Bridgecom International Inc., *et al.*

I.D. No. PSC-45-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to modify or to clarify, in whole or in part, its order setting permanent hot cut rates, issued Aug. 25, 2004, as proposed in: 1) a petition for reconsideration filed Oct. 15, 2004 jointly by Bridgecom International Inc., AT&T Communications of New York, Inc., MCI, Inc., Broadview Networks, Inc., and Conversent Communications of New York, LLC; 2) a petition for clarification and reconsideration filed Oct. 15, 2004 by Covad Communications Company; and 3) a petition for clarification and rehearing filed Oct. 15, 2004 by Verizon New York Inc.

Statutory authority: Public Service Law, section 22

Subject: Modification or clarification of the commission's Aug. 25, 2004 order setting permanent hot cut rates.

Purpose: To consider modification to the order in response to three petitions for rehearing and/or clarification.

Substance of proposed rule: The Public Service Commission is considering whether to modify or to clarify, in whole or in part, its Order Setting Permanent Hot Cut Rates, issued August 25,2004, as proposed in: 1) a "Petition for Reconsideration" filed October 15, 2004 jointly by Bridgecom International Inc., AT&T Communications of New York, Inc., MCI, Inc., Broadview Networks, Inc., and Conversent Communications of New York, LLC; 2) a "Petition for Clarification and Reconsideration" filed October 15, 2004 by Covad Communications Company; and 3) a "Petition for Clarification and Rehearing" filed October 15, 2004 by Verizon New York Inc.

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

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

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

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

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

(02-C-1425SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Broadview NP Acquisition Corp.

I.D. No. PSC-45-04-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Broadview NP Acquisition Corp. for approval of an interconnection agreement executed on Oct. 1, 2004.

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

Subject: Interconnection of networks for local exchange service and exchange access.

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

Substance of proposed rule: Verizon New York Inc. and Broadview NP Acquisition Corp. have reached a negotiated agreement whereby Verizon New York Inc. and Broadview NP Acquisition Corp. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

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

(04-C-1285SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Retail Renewable Portfolio Standard Implementation Plan

I.D. No. PSC-45-04-00013-P

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

Proposed action: The commission is considering matters related to the implementation of the renewable portfolio standard (RPS) adopted in its order regarding retail renewable portfolio standard that was issued on Sept. 24, 2004.

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

Subject: Retail renewable portfolio standard.

Purpose: To consider an implementation plan.

Substance of proposed rule: The Commission is considering an implementation plan that addresses matters pertinent to the Retail Renewable Portfolio Standard (RPS) the Commission adopted in its Order Regarding Retail Renewable Portfolio Standard, issued on September 24, 2004. These matters include, but are not limited to, consideration of: criteria and procedures to determine facility eligibility; procurement models that may be used by the central procurer for main tier and customer-sited tier resources; a process to determine the future eligibility of technologies not currently eligible for participation in the RPS; criteria for determining eligibility of existing hydroelectric facilities of five megawatts or less, existing direct combustion biomass facilities, and existing wind facilities; design of an on-going monitoring and evaluation program; potential modifications to the Environmental Disclosure Program to accommodate the RPS; a mechanism to ensure the allocation and disclosure of renewable power related to the RPS surcharge to the retail customers paying the RPS surcharge; the process and issues appropriate for the 2009 review of the RPS; and, administrative costs. The Commission may accept, reject, or modify the proposals relating to these matters.

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

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

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

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

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

(03-E-0188SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Retail Renewable Portfolio Standard Implementation Plan

I.D. No. PSC-45-04-00014-P

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

Proposed action: The commission is considering matters related to the implementation of the renewable portfolio standard (RPS) adopted in its order regarding retail renewable portfolio standard that was issued on Sept. 24, 2004.

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

Subject: Implementation plan regarding the retail renewable portfolio standard.

Purpose: To consider measures appropriate for the 2005 implementation of the retail renewable portfolio standard in light of the one-year extension of the renewable electricity production credit.

Substance of proposed rule: The Commission is considering matters related to the implementation of the Retail Renewable Portfolio Standard (RPS) adopted in its Order Regarding Retail Renewable Portfolio Standard that was issued on September 24, 2004. In particular, the Commission is considering the criteria and procedures to determine facility eligibility and the procurement models for main tier and customer-sited resources that are most suitable for the initial implementation of the RPS in light of the one-year extension of the federal Renewable Electricity Production Credit to facilities that are placed in service before January 1, 2006. Comments are requested as soon as possible because the Commission may consider immediate adoption of the proposals on an emergency basis pursuant to section 202(6) of the State Administrative Procedure Act. The Commission may accept, reject or modify the proposed criteria and procurement models.

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

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

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

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

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

(03-E-0188SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Quality Performance Program by Rochester Gas and Electric Corporation

I.D. No. PSC-45-04-00015-P

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

Proposed action: The Public Service Commission is considering a proposal of Rochester Gas and Electric Corporation (RG&E) and a proposal of Department of Public Service staff for approval to implement a complaint rate target in RG&E's Service Quality Performance Program, as contemplated in appendix O of the electric rate joint proposal.

Statutory authority: Public Service Law, section 66

Subject: Service Quality Performance Program.

Purpose: To establish a complaint rate target.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a proposal of Rochester Gas and Electric Corporation (RG&E) and a proposal of Department of Public Service Staff to implement a complaint rate target in RG&E's Service Quality Performance Program, as contemplated in Appendix 0 of the Electric Rate Joint Proposal that was approved by the Commission in an Order issued on May 20, 2004 in Case 03-E-0765.

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

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

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

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

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

(03-E-0765SA6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. PSC-45-04-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 2—Electricity to become effective Jan. 24, 2005.

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

Subject: Distributed generation.

Purpose: To revise standby service in order to provide additional opportunities for customers to install environmentally-friendly distributed generation equipment.

Substance of proposed rule: On October 21, 2004, Consolidated Edison Company of New York, Inc. (Con Edison) filed proposed tariff revisions to revise standby service in order to provide additional opportunities for customers to install environmentally-friendly distributed generation equipment. The proposal will permit the interconnection of low-tension customers with environmentally-friendly private generating facilities having a total nameplate rating between 3 MW and 5 MW to take service under Service Classification 14-RA by connecting the facility to Con Edison's high-tension distribution system, provided certain conditions are met. The Commission may approve, reject or modify, in whole or in part, Con Edison's proposed tariff revisions.

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

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

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

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

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

(04-E-1315SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Quality Performance Program by Rochester Gas and Electric Corporation

I.D. No. PSC-45-04-00017-P

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

Proposed action: The Public Service Commission is considering a proposal of Rochester Gas and Electric Corporation (RG&E) and a proposal of Department of Public Service staff for approval to implement a complaint rate target in RG&E's Service Quality Performance Program, as contemplated in appendix H of the gas rate joint proposal.

Statutory authority: Public Service Law, section 66

Subject: Service Quality Performance Program.

Purpose: To establish a complaint rate target.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a proposal of Rochester Gas and Electric Corporation (RG&E) and a proposal of Department of Public Service Staff to implement a complaint rate target in RG&E's Service Quality Performance Program, as contemplated in Appendix H of the Gas Rate Joint Proposal that was approved by the Commission in an Order issued on May 20, 2004 in Case 03-G-0766.

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

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

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

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

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

(03-G-0766SA7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing and Clarification by Consolidated Edison Company of New York, Inc., *et al.*

I.D. No. PSC-45-04-00018-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 petitions for rehearing and clarification of the commission's Aug. 25, 2004, statement of policy on further steps toward competition in retail energy markets filed by Consolidated Edison Company of New York, Inc. jointly with Orange and Rockland Utilities, Inc. and National Fuel Gas Distribution Corporation.

Statutory authority: Public Service Law, sections 4(1), 20(1), 22, 66-e(2), and 66-f(1)

Subject: Commission's Aug. 25, 2004 statement of policy in Case 00-M-0504 (POLR).

Purpose: To clarify various aspects of the utilities' obligations regarding the development of retail competition.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. jointly with Orange and Rockland Utilities, Inc. and National Fuel Gas Distribution Corporation filed Petitions for Rehearing or Clarification of the Commission's August 25, 2004, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets. The subject of the petitions are the Commission's policies regarding gas and electric commodity purchasing and hedging. The Commission may grant the petitions, in whole or in part, or it may deny them.

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

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

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

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

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

(00-M-0504SA7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-45-04-00019-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 for rehearing by Consolidated Edison Company of New York, Inc. of the Aug. 25, 2004, statement of policy on unbundling and order directing tariff filings.

Statutory authority: Public Service Law, sections 4(1), 20(1), 22, 65, 66 and art. 4

Subject: Commission policy regarding the unbundling of utility costs in competitive markets and recovery of utility lost revenue in Case 00-M-0504 (unbundling).

Purpose: To establish a consistent statewide policy.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. (Con Edison) has filed, under Public Service Law § 22, a Petition for Rehearing of the Commission's August 25, 2004, Statement of Policy on Unbundling and Order Directing Tariff Filings. The subjects of the Con Edison petition are the Commission's policies regarding lost revenue recovery mechanisms and the proper treatment of certain retailing costs should Con Edison adopt a purchase-of-receivables model for energy services companies. The Commission may grant the petition, in whole or in part, or may deny the petition.

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

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

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

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

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

(00-M-0504SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Energy Competitive Rate Design Policy

I.D. No. PSC-45-04-00020-P

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

Proposed action: The commission is considering a policy statement on rate design issues associated with the unbundling of utility rates to foster the development of retail energy competition.

Statutory authority: Public Service Law, sections 4(1), 20(1), 65, 66 and art. 4

Subject: Commission policy on energy competitive rate design in Case 00-M-0504 (unbundling).

Purpose: To establish a uniform approach to the design of gas and electric rates to facilitate the operations of energy services companies and the development of competitive energy markets.

Substance of proposed rule: On August 25, 2004, the Commission issued a Statement of Policy on Unbundling and Order Directing Tariff Filings, in which interested parties were invited to address a series of questions regarding the design of unbundled gas and electric rates for competitive markets. The subject of the proposal is the appropriate allocation of revenue responsibility for utility costs among different service classifications and for competitive products. More particularly, the issues raised by the Commission in its Policy Statement are: the appropriate rate design for large- and small-use customers; the proper design of rate recovery for variable and non-variable costs; and whether there is a need to further differentiate non-residential service classes in the establishment of unbundled rates. The Commission may adopt uniform rate design policies, in whole or in part, or may decline to do so.

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

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

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

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

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

(00-M-0504SA9)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access Procedures by William A. Huston

I.D. No. PSC-45-04-00021-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a petition filed by William A. Huston regarding Time Warner Entertainment Advance/Newhouse Partnership d/b/a Time Warner Cable - Binghamton Division's (Time Warner Cable - Binghamton) practices with regard to public access.

Statutory authority: Public Service Law, section 216(1) and (5)

Subject: Public access procedures.

Purpose: To consider a petition regarding the public access procedures of Time Warner Cable - Binghamton.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a petition filed by William A. Huston regarding Time Wamer Entertainment Advance/Newhouse Partnership d/b/a Time Wamer Cable - Binghamton Division's (Time Wamer Cable - Binghamton) practices with regard to public access.

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

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

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

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

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

(04-V-1129SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Water Plant Assets by the Town of Schodack

I.D. No. PSC-45-04-00022-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by the Town of Schodack for approval of the acquisition of the water plant system of Golf View Water Supply Co.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water plant assets.

Purpose: To approve the transfer of the water plant assets of Golf View Water Supply Co. to the Town of Schodack, Rensselaer County.

Substance of proposed rule: On October 18, 2004, the Town of Schodack (Town) filed a petition for approval of its acquisition of the water plant system of Golf View Water Supply Co. (Golf View). The filing contains an offer of cession and deed provided by Golf View to the Town at the time of the system's initial approval. The water system herein includes all real and personal property, fixtures and appurtenances and all escrow accounts and deposits that exist relative to the water system. Golf View currently provides water service to approximately 22 customers in the Town of Schodack, Rensselaer County. The Commission may approve or reject, in whole or in part, or modify the petition.

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

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

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

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

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

(04-W-1307SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Video Lottery Gaming Occupational Licensing

I.D. No. RWB-40-04-00004-E
Filing No. 1201
Filing date: Oct. 25, 2004
Effective date: Oct. 25, 2004

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

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

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

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

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

Subject: Video lottery gaming occupational licensing.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. RWB-40-04-00004-P, Issue of October 6, 2004. The emergency rule will expire January 22, 2005.

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

Regulatory Impact Statement

1. Statutory Authority: Section 1617-a of Article 34 of the Tax Law provides that the Division of the Lottery is authorized to license, pursuant to rules and regulations to be promulgated by the Division of the Lottery, the operation of video lottery gaming at Aqueduct, Monticello, Yonkers, Finger Lakes and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York State Exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack. The statute requires that the Division's rules and regulations shall provide, as a condition of licensure, *inter alia*, that racetrack employees involved in the operation of video lottery gaming are licensed by the Racing and Wagering Board. Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Section 101, the New York State Racing and Wagering Board has general jurisdiction over pari-mutuel horse racing and requires the licensing of all individuals who work at a racetrack.

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

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

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

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

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

(b) Costs to other state agencies: None.

(c) Costs to Local Government: None.

(d) Costs to Regulated Entities: None.

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

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

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

8. Alternatives: No other alternatives are available.

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

6. Minimizing Adverse Impacts: None.

7. Small Business and Local Government Participation: None.

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

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

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

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

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-35-04-00002-A
Filing No. 1199
Filing date: Oct. 25, 2004
Effective date: Oct. 25, 2004

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

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

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

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

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Oct. 1, 2004, and ending Dec. 31, 2004, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-35-04-00002-P, Issue of September 1, 2004.

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-45-04-00003-P

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

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

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

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

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

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

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xxxvi) October - December 2004					
12.3	20.3	34.9	11.9	19.9	32.75
(xxxvii) January - March 2005					
13.1	*21.1*	*36.3*	*14.5*	*22.5*	*35.95*

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Abatement of Penalties

I.D. No. TAF-45-04-00004-P

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

Proposed action: This is a consensus rule making to amend Parts 2392, 2396 and 2397 of Title 20 NYCRR. This rule is proposed pursuant to SAPA section 207(3), Review of Existing Rules.

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

Subject: Abatement of penalties (and other additions to tax) upon a showing of reasonable cause and an absence of willful neglect.

Purpose: To update the regulations by adding a citation for the penalty imposed on partnerships and S-corporations who fail to pay estimated taxes for their partners/shareholders into the list of penalties that can be abated by a showing of reasonable cause; and clarify that the general provisions for reasonable cause will apply to penalties imposed upon participants in the electronic funds transfer programs for sales tax and withholding tax.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (a) of section 2392.1 of such regulations is amended to read as follows:

(a) (1) Where any person fails to timely file a return, fails to timely pay any taxes due or fails to meet or fulfill any other act or requirement of the Tax Law, thereby subjecting such person to the additions to tax, penalties, or interest penalty imposed pursuant to sections 182-a(10)(b), 289-b(1)(a), 289-b(2), 433(1)(a), 481(1)(a)(i), 512(1)(a), 527(b), *658(c)(4)(C)(i)*, 685(a), 685(f), 685(h), 685(o), 685(u), 685(v), 685(w), 1085(a), 1085(n), 1085(o), 1145(a)(1)(i), 1145(c), 1145(e), or 1416(b), of the Tax Law, or the interest amount imposed pursuant to section 1145(a)(1)(ii) of such law, the applicable additions to tax, penalties, interest penalty and/or the interest amount, as listed above, must be imposed unless it is shown that such failure was due to reasonable cause and not due to willful neglect. In the event that these amounts have been imposed and it is later determined any such failure was due to reasonable cause and not due to willful neglect, all or part of these amounts will be cancelled. The absence of willful neglect alone is not sufficient grounds for not imposing or for cancelling these amounts.

Section 2. Paragraph (2) of subdivision (i) of such section is amended to read as follows:

(2) [However, the provisions of this section shall not apply to the requirements of] *See sections 2396.11 and 2397.7 of this Title for provisions regarding reasonable cause that are applicable to* the Electronic Filing and Funds Transfer Program for Certain Taxpayers Remitting Withholding Taxes[, nor to the requirements of] *and* the Electronic Funds Transfer Program For Certain Taxpayers Remitting Taxes Under and Pursuant to the Authority of articles 12-A, 13-A, 28 and 29 of the Tax Law, provided for by sections 9 and 10, respectively, of the Tax Law. [See sections 2396.11 and 2397.7 of this Title for provisions regarding reasonable cause that are applicable to the programs provided for by such sections 9 and 10, respectively.]

Section 3. Subparagraph (iv) of paragraph (2) of subdivision (c) of section 2396.11 of such regulations is amended to read as follows:

(iv) the circumstances set forth in section [102.7] *2392.1* of this Title, to the extent applicable.

Section 4. Subparagraph (iv) of paragraph (3) of subdivision (b) of section 2397.7 of such regulations is amended to read as follows:

(iv) the circumstances set forth in section [416.3 or section 536.5] *2392.1* of this Title, as applicable.

Text of proposed rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4,

Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

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

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

Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Regulatory Agenda section of the January 7, 2004, State Register a list of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and a notice of the Department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2004.

No public comments were received by the Department in response to the listing, in January 2004, of the amendments made to Part 2392 of Title 20 NYCRR. The amendments to Part 2392 were adopted by the Commissioner on July 26, 1999, and published in the State Register on August 11, 1999 (I.D. #TAF-22-99-00002-A). The amendments concerned the various penalties imposed by the Tax Law which allow for abatement upon a showing of reasonable cause and an absence of willful neglect. Although no comments were received, the Department has determined as a result of its 2004 review that the 1999 amendments should be updated to reflect a recent amendment to the Tax Law and should not be continued without modification; thus, requiring this rule. See the Consensus Rule Making Determination for further explanation.

Consensus Rule Making Determination

The Department of Taxation and Finance has considered the proposed amendments to Parts 2392, 2396 and 2397 of Title 20 NYCRR and has determined that no person is likely to object to the rule as written.

The primary purpose of these amendments is to update Part 2392 of Title 20 NYCRR by adding a citation for the penalty imposed on partnerships and S-corporations who fail to pay estimated taxes for their partners/shareholders into the list of penalties that can be abated by a showing of reasonable cause. The penalty was added to the Tax Law after the adoption of Part 2392. The amendments also clarify that the general provisions for reasonable cause will apply to certain penalties imposed upon participants in the Electronic Funds Transfer programs for sales tax and withholding tax. The amendments will have no effect on existing Department policy.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities.

The primary purpose of these amendments is to update Part 2392 of Title 20 NYCRR by adding a citation for the penalty imposed on partnerships and S-corporations who fail to pay estimated taxes for their partners/shareholders into the list of penalties that can be abated by a showing of reasonable cause. The penalty was added to the Tax Law after the adoption of Part 2392. The amendments also clarify that the general provisions for reasonable cause will apply to certain penalties imposed upon participants in the Electronic Funds Transfer programs for sales tax and withholding tax. The amendments will have no effect on existing Department policy.

Workers' Compensation Board

EMERGENCY RULE MAKING

Waiver Agreements

I.D. No. WCB-45-04-00005-E
Filing No. 1200
Filing date: Oct. 25, 2004
Effective date: Oct. 25, 2004

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

Action taken: Amendment of section 300.36 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 141 and 32

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

Specific reasons underlying the finding of necessity: Workers Compensation Law, section 32, as amended chapter 635 of the Laws of 1996, permits the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimants's dependents, subject to approval by the board. At first, few waiver agreements were submitted to the board, and a meeting was held before a board commissioner in all cases to question the parties about the agreement. However, in the late 1990's, the number of waiver agreement submitted to the board increased so dramatically that it was not feasible to hold a meeting in every case in which an agreement was filed. Moreover, most agreements submitted to the board were routine. Beginning in 2000, board commissioners began reviewing routine agreements administratively, without holding a meeting to discuss the agreement with the parties. The majority of settlement agreements are reviewed and approved by the board without the need for a meeting with the parties. On April 22, 2004, the Appellate Division, Third Department rendered a Memorandum and Order in Matter of *Hart* v. *Pageprint /Dekalb*, 6 A.D. 3d 947, 775 N.Y.S.2d 195 (3rd Dept., Slip Op. No. 94339, 2004), finding that the administrative review of waiver agreements was invalid insofar as it conflicted with the terms of 12 NYCRR 300.36. The purpose of this amendment is to amend 12 NYCRR 300.36, consistent with Workers' Compensation Law, section 32, to permit the board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting with the parties, which benefits everyone. Requiring meetings for all wiaver agreements would greately increase the time it takes for such an agreement to be approved as the board has limited calendar time. Additionally, the board has numerous agreements which have been processed administratively and are ready for approval, but cannot be approved due to the above referenced decision. If the board is to continue to efficiently and timely review and issue decisions regarding waiver agreements, it must process the routine agreements administratively.

Subject: Waiver agreements.

Purpose: To provide for the administrative review of waiver agreements.

Text of emergency rule: Subdivision (b) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(b) Any agreement submitted to the board for approval shall be on a form prescribed by the chair or, alternatively, contain the information prescribed by the chair. [For the purposes of section 32 of the Workers' Compensation Law and this section, an agreement shall be deemed submitted when it is received by the board at the time a hearing is conducted to question the parties about the agreement. No agreement shall be approved for a period of 10 calendar days after submission to the board.]

Subdivision (c) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(c) The [submission] *receipt* of an agreement [to] *by* the board for approval shall act as a stay on all related proceedings before the board.

Subdivision (e) is renumbered (f), a new subdivision (e) is added and renumbered (f) is amended to read as follows:

(e) The agreement shall be reviewed by the chair, a designee of the chair, a member of the board, or a Workers' Compensation Law Judge, who will make a determination whether to approve or disapprove the agreement. The chair, designee of the chair, member of the board, or Workers' Compensation Law Judge reviewing the agreement may approve or disapprove the agreement administratively, based on a review of the record before the board, or may choose to schedule a meeting to question the parties about the agreement. If the agreement is reviewed administratively, the Board shall advise the parties in writing of the date the agreement shall be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section. If a meeting is scheduled to question the parties about the agreement, the agreement will be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section at such meeting. No agreement shall be approved for a period of 10 calendar days after submission to the board.

([e]*f*) The board will advise the parties of the approval or disapproval of all agreements by duly filing and serving a notice of [decision] *approval or disapproval*.

Subdivisions (f), (g), (h) and (i) of Section 300.36 of 12 NYCRR are renumbered (g), (h), (i) and (j).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire January 22, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 473-8626, e-mail: officeofgeneralcounsel@wcb.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.36. Workers' Compensation Law Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Workers' Compensation Law Section 117(1) further authorizes the Board to adopt reasonable rules consistent with the provisions of the Workers' Compensation Law and the Labor Law.

Section 141 of the Workers' Compensation Law provides that the Chair shall be the administrative head of the Board and authorizes the Chair, in the name of the Board, to enforce all the provisions of the WCL and to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports. Section 142 of the Workers' Compensation Law confers upon the Board the power to hear and determine all claims for compensation or benefits and to approve agreements.

Section 32 of the Workers' Compensation Law provides that whenever a claim for workers' compensation has been filed, the claimant or the deceased claimant's dependents and the employer or its insurance carrier may enter into a written agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. Such agreement shall not be binding unless approved by the Board. Once approved by the Board, the agreement shall be final and conclusive upon the parties. An agreement may be modified at any time by written agreement of all the interested parties provided it is approved by the Board.

2. Legislative objectives:

Section 73 of Chapter 635 of the Laws of 1996 amended Section 32 of the Workers' Compensation Law to permit the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. This rule would amend the regulations adopted in 1997 implementing Section 73 of Chapter 635 of the Laws of 1996 to provide for the administrative review of waiver agreements.

3. Needs and benefits:

Prior to the enactment of Section 73 of Chapter 635 of the Laws of 1996, a workers' compensation claimant was not permitted to permanently waive his or her right to benefits under the Workers' Compensation Law (hereinafter "WCL"). The 1996 amendment to WCL § 32 permits the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, subject to approval by the Board. At first, few waiver agreements were submitted to the Board, and a meeting was held before a Board Commissioner in all cases to question the parties about the agreement. However, in the late 1990's, the number of waiver agreement submitted to the Board increased so dramatically that it was not feasible to hold a meeting in every case in which an agreement was filed. Moreover, most agreements submitted to the Board were routine. Beginning in 2000, Board Commissioners began reviewing routine agreements administratively, without holding a meeting to discuss the agreement with the parties. The majority of settlement agreements are reviewed and approved by the Board without the need for a meeting with the parties. On April 22, 2004, the Appellate Division, Third Department rendered a Memorandum and Order in Matter of *Hart* v. *Pageprint/Dekalb*, 6 A.D.3d 947, 775 N.Y.S.2d 195 (3rd Dept. 2004), finding that the administrative review of waiver agreements was invalid insofar as it conflicted with the terms of 12 NYCRR 300.36. On April 29, 2004, the Board filed an emergency regulation with the Department of State, effective immediately, to amend 300.36 to permit the Board to review waiver agreements submitted pursuant to Workers' Compensation Law § 32 administratively.

The purpose of this amendment is to permanently amend 12 NYCRR 300.36, consistent with WCL § 32, to permit the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting with the parties.

Permitting the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting benefits all participants to the workers' compensation system. The Board receives approximately 1,000 new waiver agreements each month. Requiring meetings for all waiver agreements would greatly increase the length of time it would take to review each agreement, as the Board has limited calendar time and only a small number of Board Commissioners. Additionally, claimants would be required to take time during the work day to appear at a Board district office for the meeting. The waiver agreements that are reviewed administratively are routine and the claimants represented. The Board is working to ensure that the parties who have entered into a routine waiver agreement have that agreement reviewed and a decision issued without delay. By redirecting the simple or routine cases from the meeting calendar and processing them administratively, the complex cases that remain on the meeting calendar will progress more quickly.

In addition, this proposed amendment makes two minor changes to 12 NYCRR 300.36 which reflect the current practice of the Board, and have minimal impact on regulated parties. These changes (1) require the Board to stay all proceedings in a case upon the receipt by the Board of a waiver agreement and (2) reflect that the written approval or disapproval by the Board of a waiver agreement is a "notice of approval" or "notice of disapproval," rather than a "notice of decision."

In essence this rule conforms the regulations to practices and procedures that have been in effect since 2000.

4. Costs:

The proposed amendment will not result in any new or additional costs to private regulated parties, State, local governments or the Workers' Compensation Board. This proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not require personal appearances before the Board by the parties. By eliminating the need for personal appearances before the Board for all waiver agreements, parties will experience savings in travel costs, appearance costs and claimants will not have to take time away from work to attend.

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants in the workers' compensation system, this proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not require personal appearances before the Board by the parties.

6. Paperwork:

The proposed amendment does not add any reporting requirements.

7. Duplication:

This amendment will not duplicate any existing Federal or State requirements.

8. Alternatives:

One alternative discussed was to hold a meeting in every case to question the parties about the agreement submitted. However, in most instances, waiver agreements submitted to the Board are routine, questioning of the parties concerning the agreement is not necessary, and a meeting would result in a delay in the processing of such agreements. Pursuant to the proposed amendment, the Board could schedule a meeting to discuss the agreement with the parties when circumstances so warrant.

Representatives of the Board have been meeting with different constituent groups across the State at which this topic is discussed. At a meeting with representatives of both carriers and claimants, it was suggested, to improve the administrative process and alleviate concerns expressed, that the Board modify its internal processing when reviewing waiver agreements administratively. The Board is currently reviewing this suggestion to determine impact and feasibility of implementation.

9. Federal standards:

There are no federal standards applicable to this proposed amendment.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

Small businesses that are self-insured will also be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

Small businesses which are self-insured employers and self-insured local governments may voluntarily enter into waiver agreements settling upon and determining claims for compensation. This amendment will speed the processing and approval of such agreements.

2. Compliance requirements:

The amendment will not require any additional reporting or recordkeeping by small businesses or local governments.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers' Compensation Law § 32.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed amendment. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed amendment to comply.

6. Minimizing adverse impact:

This proposed amendment is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business participation and local government participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure small business and local government entities. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement submitted, the majority of comments received support the amendment allowing the Board to review and approve routine agreements administratively.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule applies to all claimants, insurance carriers and self-insured employers in all rural areas of the state which are subject to the provisions of the Workers' Compensation Law.

2. Reporting, recordkeeping and other compliance requirements:

The amendment will not impose any additional reporting, recordkeeping or compliance requirements on regulated parties in rural areas.

3. Costs:

This proposal will not impose any compliance costs on rural areas. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers Compensation Law § 32.

4. Minimizing adverse impact:

This proposed amendment is designed to minimize adverse impact for regulated parties in rural areas. This proposed amendment provides only a benefit to regulated parties in rural areas.

5. Rural area participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure employers in rural areas. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement, the majority of comments received supported the amendment allowing the Board to review and approve routine agreements administratively.

Job Impact Statement

The proposed amendment will not have an adverse impact on jobs. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to WCL § 32 and will therefore ultimately benefit the participants to the workers' compensation system.