

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 HEARING(S) SCHEDULED

Pine Shoot Beetle Quarantine

I.D. No. AAM-42-04-00008-P

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

Proposed action: Amendment of section 131.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Pine Christmas trees, nursery stock, logs and lumber, with bark attached.

Purpose: To modify the pine shoot beetle quarantine to prevent the spread of the beetle in the counties of Albany, Broome, Cayuga, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne and Yates, incorporate by reference, Federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 2004, which set forth requirements for the movement of host materials; and to delete spruce, larch and fir from the list of

regulated host materials subject to regulation under the pine shoot beetle quarantine.

Public hearing(s) will be held at: 11:00 a.m., Dec. 8, 2004 at Department of Agriculture and Markets, 10B Airline Dr., Colonie, NY.

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

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

Text of proposed rule: Section 131.1 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

Pine Christmas trees, pine nursery stock and pine [, spruce, larch and fir] logs and lumber, with bark attached, shall not be shipped, transported or otherwise moved from any point within *Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Oswego, Ontario, Orleans, Otsego, Rensselaer, Saratoga, Schoenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne*, [and] Wyoming and Yates Counties to any point outside of said counties, except in accordance with 7 CFR sections 301.50 through 301.50-10 [(pages 27 - 34) (revised as of January 1, 1995)] (pages 33 - 41) (revised as of January 1, 2004) which is incorporated by reference herein. Copies of the Code of Federal Regulations may be obtained from the U.S. Government Printing Office, Washington, DC 20402 and the material incorporated by reference herein is available for public inspection and copying at the offices of the Department of Agriculture and Markets, Division of Plant Industry, [Capital Plaza, One Winners Circle] 10B Airline Drive, Albany, NY 12235.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

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

Public comment will be received until: five days after the last scheduled public hearing.

Regulatory Impact Statement

1. Statutory authority: Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules

and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives: The proposed modification of the quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the pine shoot beetle.

3. Needs and benefits: The pine shoot beetle, *Tomicus piniperda*, an insect non-indigenous to the United States, is a destructive wood-boring insect native to Europe. The beetle attacks pine trees by nesting under the bark and feeding on new shoots. The resulting damage by the beetle causes shoot and branch mortality which affects the growth and appearance of the tree and may eventually lead to the death of the tree. Although it is a slow-moving pest, the pine shoot beetle is easily spread through the movement of Christmas trees, nursery stock and pine logs and lumber.

The pine shoot beetle was first detected in a Christmas tree farm near Cleveland, Ohio in July of 1992 and subsequently spread to other parts of Ohio as well as to sections of Michigan, Indiana, Illinois, Pennsylvania and New York. On November 19, 1992, the United States Department of Agriculture (USDA) adopted regulations (7 CFR sections 301.50 through 301.50-10), establishing a pine shoot beetle quarantine as well as requirements and restrictions governing the movement of regulated materials from counties where this pest has been detected. On November 25, 1992, the Department, as an emergency measure, adopted section 131.1 of 1 NYCRR, which required that pine Christmas trees, pine nursery stock and pine, spruce, larch and fir logs and lumber, with bark attached, shall not be shipped, transported or otherwise moved from any point within Allegany, Cattaraugus, Erie, Genesee, Livingston, Monroe, Niagara, Oswego, Ontario and Wyoming Counties to any point outside said counties, except in accordance with federal regulations at 7 CFR sections 301.50 through 301.50-10. This emergency measure was ultimately adopted as a permanent rule on March 17, 1993.

However, subsequent observations of the pine shoot beetle in the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne and Yates, have resulted in the need to add these counties to the list of quarantined areas in section 131.1. The proposed amendments contain the needed additions. Although the beetle has not as yet been detected in Columbia County, the proposed extension of the quarantine into that county will establish a buffer between infested and uninfested counties, thereby helping to control the further spread of this pest. Columbia County is not the only county adjacent to counties in which the beetle has been detected, since the Counties of Ulster and Orange are also adjacent to the quarantined area. However, since Columbia County contains saw mills which process pine logs shipped from counties where the beetle has been detected, there is a greater likelihood that infested materials will be transported to Columbia County. The need to establish such a buffer has resulted in the need to add Columbia County to the list of proposed quarantined areas in section 131.1. The proposal contains the needed addition. The proposed amendments also incorporate by reference, the most recent revision of the federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2004, which set forth requirements and restrictions governing the movement of regulated materials from counties where the pine shoot beetle has been detected. Finally, the proposed amendments delete spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the USDA has tested and determined that these materials are not a host to the pine shoot beetle.

The effective control of the pine shoot beetle within the areas of the State where the insect has been found is important to protect New York's Christmas tree, nursery and forest products industries. It is estimated that there are 3,970 nursery dealers, 2,205 nursery growers, 673 forest products companies, 119 arborists and 116 Christmas tree farms in the State which engage in these industries. They employ an estimated 42,000 people and generate 1.51 billion dollars in revenue per year. The failure of states to control insect pests within their borders can lead to federal quarantines as well as quarantines by other states which would affect all areas of those states, rather than just the infested portions. Such widespread quarantines would adversely affect the Christmas tree, nursery and forest products industries throughout New York State.

4. Costs:

- (a) Costs to the State government: None.
- (b) Costs to local government: None.

(c) Costs to private regulated parties: Under the proposed amendments, regulated parties exporting host material from the quarantined area, other than pursuant to compliance agreement, would require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year with a total annual cost of less than \$1,000.

Most shipments will be made pursuant to compliance agreements for which there is no charge.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None

(ii) It is anticipated that the Department will be able to administer the proposed expansion of the quarantine with existing staff.

5. Local government mandate: None.

6. Paperwork: Under the proposal, regulated articles inspected and certified to be free of the pine shoot beetle moving from quarantined areas will have to be accompanied by a state or federal phytosanitary certificate of a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication: None.

8. Alternatives: None. The failure of the State to modify the quarantine to reflect the areas in which the pine shoot beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. In addition, the failure to regulate the movement of host material from the buffer area may be viewed by these partners as facilitating the spread of this pest. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of pine shoot beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the proposed modification of quarantine in this rulemaking.

9. Federal standards: The proposed amendments do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule: Immediate.

Regulatory Flexibility Analysis

1. Effect on small business: The proposed amendments to the pine shoot beetle quarantine in section 131.1 of 1 NYCRR would extend that quarantine to the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne and Yates. The proposed amendments would also incorporate by reference, the most recent revisions to federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2004, which set forth requirements and restrictions for the movement of host materials. Finally, the proposed amendments delete spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the United States Department of Agriculture (USDA) has tested and determined that these materials are not a host to the pine shoot beetle.

It is estimated that there are 1,899 nursery dealers, 1,408 nursery growers, 673 forest products companies, 119 arborists and 67 Christmas tree farms in the 37 counties which would be added to the pine shoot beetle quarantine under the proposed amendments. Most of these entities are small businesses.

Although it is not anticipated that local governments would be involved in the shipment of regulated articles from the expanded quarantined area under the proposal, in the event that they do, they would be subject to the same requirements and restrictions governing such movement set forth in 7 CFR sections 301.50 through 301.50-10 as are other regulated parties.

2. Compliance requirements: Under the proposed amendments, all regulated parties in the modified quarantined areas would be required to obtain state or federal phytosanitary certificates and limited permits in order to ship regulated articles from quarantined areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services: In order to comply with the proposed amendments, businesses and local governments shipping regulated articles from the modified quarantined areas will require professional inspection services, which would be provided by the Department and the USDA.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

(b) Annual cost for continuing compliance with the proposed rule:

Under the proposed amendments, regulated parties exporting host material from the modified quarantined area, other than pursuant to a compliance agreement, would require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most of these inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments will be made pursuant to compliance agreements for which there is no charge.

Local governments shipping regulated articles from the modified quarantined areas will incur similar costs.

5. Minimizing adverse impact: The Department has designed the proposed amendments to minimize adverse economic impact on small businesses and local governments. The proposed amendments limit the modified quarantined areas to only those areas where the pine shoot beetle has been detected and to those areas that will serve as a buffer to prevent the spread of the pest through transportation of infested materials to uninfested areas. The proposed amendments also limit the regulated articles to only those susceptible to infestation by the pine shoot beetle. Finally, the proposed amendments limit the inspection and permit requirements to only those necessary to detect the presence of the pine shoot beetle and prevent its movement in host materials from the quarantined areas. As set forth in the regulatory impact statement, the proposed amendments provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the proposed amendments were designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the proposed amendments minimize adverse economic impact as much as is currently possible.

6. Small business and local government participation: The Department has contacted representatives of the Empire State Forest Products Association, New York State Nursery/Landscape Association and the Christmas Tree Farmers Association of New York to discuss the proposed expansion of the pine shoot beetle quarantine. The representatives of these three trade organizations representing regulated parties, expressed support for the proposal.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments: The economic and technological feasibility of compliance with the proposed amendments by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the quarantined areas, other than pursuant to a compliance agreement, will require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas: The proposed amendments to the pine shoot beetle quarantine in section 131.1 of 1 NYCRR would extend that quarantine to the Counties of Albany, Broome, Cayuga, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne and Yates. The proposed amendments would also incorporate by reference, the most recent revisions to federal regulations at 7 CFR sections 301.50 through 301.50-10, revised as of January 1, 2004, which set forth requirements and restrictions for the movement of host materials. Finally, the proposed amendments delete spruce, larch and fir from the list of regulated host materials subject to regulation under the quarantine, since the United States Department of Agriculture (USDA) has tested and determined that these materials are not a host to the pine shoot beetle.

It is estimated that there are 1,899 nursery dealers, 1,408 nursery growers, 673 forest products companies, 119 arborists and 67 Christmas tree farms in the 37 counties which would be added to the pine shoot beetle quarantine under the proposed amendments. Many of these entities are located in rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Under the proposal, all regulated parties in the modified quarantined areas would be required to obtain state or federal phytosanitary certificates and limited permits in order to ship regulated

articles from quarantined areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the proposed amendments, entities that ship regulated articles from the modified quarantined areas would require professional inspection services, which would be provided by the Department and the USDA.

3. Costs: Under the proposal, regulated parties exporting host material from the modified quarantined area, other than pursuant to a compliance agreement, would require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most of these inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments will be made pursuant to compliance agreements for which there is no charge.

4. Minimizing adverse impact: In conformance with State Administrative Procedure Act Section 202-bb(2), the proposed amendments were drafted to minimize reporting and testing requirements for all regulated parties, including those in rural areas. The proposed amendments limit the modified quarantined areas to only those areas where the pine shoot beetle has been detected and those areas that will serve as a buffer to prevent the spread of the pest through transportation of infested materials to uninfested areas. The proposed amendments also limit the regulated articles to only those susceptible to infestation by the pine shoot beetle. Finally, the proposed amendments limit the inspection and permit requirements to only those necessary to detect the presence of the pine shoot beetle and prevent its movement in host materials from the quarantined areas. As set forth in the regulatory impact statement, the proposed amendments provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the proposed amendments were designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the proposed amendments minimize adverse economic impact as much as is currently possible.

5. Rural area participation: The Department has contacted representatives of the Empire State Forest Products Association, New York State Nursery/Landscape Association and the Christmas Tree Farmers Association of New York to discuss the proposed expansion of the pine shoot beetle quarantine. The representatives of these three trade organizations representing regulated parties, expressed support for the proposed amendments.

Job Impact Statement

The proposed amendments will not have a substantial adverse impact on jobs and employment opportunities. The proposed modification of the quarantine area is designed to prevent the spread of the pine shoot beetle to other parts of the State. It is estimated that there are 3,970 nursery dealers, 2,205 nursery growers, 673 forest products companies, 119 arborists and 116 Christmas tree farms in the State which engage in these industries. They employ an estimated 42,000 people and generate 1.51-billion dollars in revenue per year. A spread of the infestation would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the spread of the pine shoot beetle, the proposed amendments would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's Christmas tree, nursery and forest products industries.

Department of Civil Service

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

Jurisdictional Classification

I.D. No. CVS-42-04-00004-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Insurance Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, Insurance Department, by deleting therefrom the position of Special Counsel to the Superintendent and by adding thereto the position of Special Counsel.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-42-04-00005-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Refuse Derived Fuel Plant Electronic Specialist (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-42-04-00006-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Department of Economic Development.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by deleting therefrom the position of Secretary 2 (1) (Until first vacated after November 19, 1991) and by increasing the number of positions of Secretary 2 from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-42-04-00007-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Curator (1) and by adding thereto the position of General Services Curatorial and Tour Services Director (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

Delaware River Basin Commission

INFORMATION NOTICE DELAWARE RIVER BASIN COMMISSION NOTICE OF PROPOSED RULE MAKING AND PUBLIC HEARING

The Delaware River Basin Commission (Commission) is a federal-state regional agency charged with managing the water resources of the basin without regard to political boundaries. Its members are the governors of the four Basin states — New York, New Jersey, Pennsylvania and Delaware — and a federal representative appointed by the President of the United States. The Commission is exempt from the requirements of the New York State Administrative Procedure Act. This notice is published by the Commission for informational purposes.

Proposed Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters

Summary: The Delaware River Basin Commission (“Commission” or “DRBC”) will hold a public hearing to receive comments on proposed amendments to the Commission’s *Water Quality Regulations, Water Code and Comprehensive Plan* to classify as Special Protection Waters the reach of the main stem Delaware River known as the “Lower Delaware.” The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile (“RM”) 209.5 to the head of tide at Trenton, New Jersey, RM 133.4.

Background. The Special Protection Waters regulations, consisting of Section 3.10.3.A.1. of the *Water Quality Regulations* (also, “Regulations”), are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. They consist in large part of a series of policies relating to: water quality management (§ 3.10.3.A.2.b.), allowable discharges (§ 3.10.3.A.2.c.), wastewater treatment facilities (§ 3.10.3.A.2.d.), the control of non-point sources of pollution (§ 3.10.3.A.2.e.), and inter-governmental responsibilities (§ 3.10.3.A.2.f.). Other sections of the rule include definitions (§ 3.10.3.A.2.a.), a list of waters classified as Special Protection Waters (§ 3.10.3.A.2.g.), a table defining existing water quality with numeric values for a series of different parameters in each of the river sections classified as Special Protection Waters (Table 1), and a table describing the location of the Boundary and Interstate Special Protection Waters Control Points, which are the locations used to assess water quality for purposes of defining and protecting existing water quality (Table 2).

To be protected as Special Protection Waters, stream reaches must be classified as either “Outstanding Basin Waters” or “Significant Resource Waters.” “Outstanding Basin Waters” are defined as “interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that are classified by the Commission under Subsection 2.g.1. [of the Regulations] as having exceptionally high scenic, recreational and ecological values that require special protection” (§ 3.10.3.A.2.a.1.). “Significant Resource Waters” are defined as “interstate waters classified by the Commission under Subsection 2.g.2. [of the Regulations] as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection” (§ 3.10.3.A.2.a.2.).

In accordance with Section 3.10.3.A.2. of the Regulations, the Delaware Riverkeeper Network submitted to the Commission in April 2001 a nomination petition requesting that the Commission classify the Lower Delaware River as Special Protection Waters. The Commission initiated a five-year monitoring program in May of 2000 to characterize existing water quality in the Lower Delaware. Four years of data have been collected and analyzed. Data collection and analysis for the fifth year will be completed in 2004.

A series of studies, plans, and policies and a federal designation document the scenic, recreational, ecological and water supply values and uses of the Lower Delaware and support the goal of preserving these qualities. The four years of data and findings set forth in the report entitled, *Delaware Eligibility Determination for DRBC Declaration of Special Protection Waters* (DRBC, August 2004) demonstrate that water quality in the Lower Delaware River generally is better than the water quality criteria. The *Lower Delaware National Wild & Scenic River Study Report* (National Park Service, Northeast Region, 1999) documents that the Lower Delaware River includes islands, wetlands, and diverse ecosystems that support rare and endangered plant and animal species and constitute scenic and recreational amenities. The *Lower Delaware River Management Plan* (Lower Delaware River Wild and Scenic River Study Task Force and Local Government Committee, with assistance from the National Park Service, August 1997) (LDRMP) contains goals relating to water quality, natural resources, historic resources, recreation, economic development and open space preservation for the Lower Delaware River. Goal 1 of the LDRMP calls for maintaining, and where practical, improving existing water quality in the main stem of the Lower Delaware River and its tributaries. On November 1, 2000, the President of the United States signed Public Law 106-418, designating portions of the Lower Delaware River as part of the National Wild and Scenic Rivers System. The system was established by Congress in 1968 to preserve the character of rivers with “outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values” and to ensure that designated rivers remain free-flowing (P.L. 106-418, 106th Congress). The *Water Resources Plan for the Delaware River Basin* (DRBC Watershed Advisory Committee, September 2004) (“Basin Plan”), which is supported by each of the Commission’s signatories, directs, “[w]here water quality is better than standards for the protection of aquatic life and wildlife, implement

anti-degradation regulations, policies and/or other mechanisms to maintain or improve existing water quality.”

Proposed Amendments. The Commission proposes to amend the Special Protection Waters regulations by adding one section of the main stem Delaware River to the list of stream reaches classified as Outstanding Basin Waters (see § 3.10.3.A.2.g.1) and two sections of the main stem Delaware River to the list of stream reaches classified as Significant Resource Waters (see § 3.10.3.A.2.g.2). The section of the main stem proposed to be classified as “Outstanding Resource Waters” is the reach extending from RM 171.4, a point just south of the Gilbert Generating Station in Holland Township, New Jersey, to RM 141.8, at Washington Crossing, Pennsylvania. The sections of the main stem proposed to be classified as “Significant Resource Waters” extend from RM 209.5, the downstream boundary of the Delaware Water Gap National Recreation Area, to RM 171.4, the location of which is noted above, and from RM 141.8 at Washington Crossing, Pennsylvania, to RM 133.4, the location of the head of tide at Trenton, New Jersey.

The proposed amendments do not at this time include additions to Table 1, defining existing water quality in each classified reach with numeric values for a series of different parameters, or to Table 2, describing the location of the Boundary and Interstate Special Protection Waters Control Points. These amendments will be made at a later date, when analysis of a fifth year of water quality data for the Lower Delaware has been completed. Thus, the Commission proposes to add to Section 3.10.3.A.2.g. a new section 6), providing that the regulations that depend for enforcement upon the use of approved numeric values for existing water quality will not apply, under the proposed amendments, to regulated activities within the drainage area of the Lower Delaware River and that all other provisions of Section 3.10.3.A.2. shall apply for the Lower Delaware River upon the effective date of the proposed amendments. Provisions of the Special Protection Waters regulations that will apply within the drainage area to the Lower Delaware River include but are not limited to the following: Subsections 3.10.3.A.2.c.1. through 3., in part requiring an analysis of alternatives to new or expanded discharges; Subsections 3.10.3.A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and Subsections 3.10.3.A.2.e.1. and 2., conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by non-point source control plans approved by the Commission.

Dates: The public hearing will be held on October 27, 2004 at approximately 2:00 P.M. as part of the Commission’s regularly scheduled business meeting. This time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 P.M. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event all those who wish to testify cannot be heard on October 27, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Written comments will be accepted through Tuesday, November 30, 2004.

Addresses: The public hearing will be held in the Kirby Auditorium of the National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia. Written comments should be addressed to the Commission Secretary as follows: by e-mail to paula.schmitt@drbc.state.nj.us; by fax to 609-883-9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Additional Information, Contact: The full text of the draft resolution containing the proposed rule change, a map illustrating the proposed stream classifications, a map illustrating the Wild and Scenic Rivers System designations in the Lower Delaware, and reports about the Lower Delaware will be posted no later than October 1, 2004 on the Commission’s web site, <http://www.drbc.net>. The Commission will hold two informational meetings on the proposed rulemaking. One meeting will be held on Thursday, October 14, 2004 from 7:00 to 9:00 P.M. at the Delaware and Raritan Canal Commission office at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. Another will be held on Wednesday, October 20, 2004 from 7:00 to 9:00 P.M. in Room 315 of the Acopian Engineering Building at Lafayette College, located on High Street in Easton, Pennsylvania. Directions to the meeting locations will be posted on the Commission’s web site, <http://www.drbc.net> in advance of

the meeting dates. Please contact Pamela Bush, tel. 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sportfishing Regulations

I.D. No. ENV-42-04-00002-EP

Filing No. 1120

Filing date: Oct. 1, 2004

Effective date: Oct. 1, 2004

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

Action taken: Amendment of sections 10.1, 10.2, 10.3, 10.5 and 10.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-0317, 11-0319, 11-1301, 11-1303 and 11-1316

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

Specific reasons underlying the finding of necessity: Most significant fishery resources in New York State are monitored through annual or periodic survey and inventory by Bureau of Fisheries staff. These fisheries surveys identify particular situations where changes in fishing regulations may be required to maintain the quality of a particular fishery or significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of users groups or the need to correct or clarify existing regulations. Candidate regulations addressing identified needs are developed by Bureau of Fisheries staff and reviewed with sportsmen's groups at the local, regional or state-wide level, depending upon the significance of the proposal. Proposals may be amended based upon input received through public comment.

In order to facilitate compliance by the angling public, significant revisions to the department's fishing regulations are currently proposed on a biennial schedule. The schedule for review and adoption of proposed amendments to regulations is timed so that the changes can be included in the annual New York State Fishing Regulations Guide. The department proposed biennial changes were published in the February 25, 2004 issue of the *State Register*. Following the close of the 45-day public comment period, the Department determined that the proposed changes should be adopted as proposed with only one minor change. However, the Department received a high volume of comments from the public, and the proposed rule making expired before the Department could complete the assessment of public comment and publish the Notice of Adoption in the *State Register*.

The new sportfishing license year begins on October 1, 2004, and the 2004-2005 Fishing Regulations Guide has been printed and is currently available to the public. The Guide contains the changes proposed in the biennial rule making. Because the Department's proposed biennial rule making expired before it was adopted, there is currently a conflict between the Department's fishing regulations and the Fishing Regulations Guide. Therefore, in order to protect New York's freshwater fisheries, avoid angler confusion, and facilitate law enforcement, the Department is adopting the biennial amendments to the Department's fishing regulations by emergency rule making. Simultaneously, the Department is also proposing that these changes be adopted through normal (non-emergency) rule making.

Subject: Amendments to regulations governing sportfishing.

Purpose: To implement changes in fishing regulations that are necessary to maintain or improve the quality of New York's freshwater fisheries, and correct or clarify existing fishing regulations.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dec.state.ny.us): The purpose of this rulemaking is to amend and update the Department of Environmental

Conservation's (Department) general regulations governing sportfishing (6 NYCRR Part 10). The amendments contained in this proposed rulemaking were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. These amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments that the Department is proposing for 6 NYCRR Part 10:

1. General clarifications:

(a) Designating "largemouth and smallmouth bass" as "black bass";

(b) Replacing all instances of "no kill" with the more accurate description of "catch and release only";

(c) Replacing all instances of "Ice fishing allowed" with "Ice fishing permitted";

(d) Special regulations for trout in Wayne County: changing "All waters" to "All waters except the Great Lakes and tributaries";

(e) Special regulation for the section of the Hudson River where black bass can be taken all year: adding the wording "from Thurman Bridge upstream";

(f) Black bass regulations for tributaries of the Chemung River (Steuben County): adding language to indicate that all tributaries are included;

(g) Changing regulations for yellow perch and sunfish in Jefferson County to read "All waters except Sandy Pond";

(h) Changing regulatory boundary for Oneida Lake and its tributaries to be east of the Route 81 bridge;

(i) Changing Oneida Lake tributary regulations in Oneida County so that the upstream endpoint for the Barge Canal section is Lock 22.

2. Adopt catch and release only regulations for trout on:

(a) West Branch Saint Regis River (St. Lawrence County) from Route 11B to Allens Falls Reservoir Dam;

(b) Batten Kill (Washington County) from the Vermont State line to the covered bridge at Eagleville;

(c) West Branch of the Ausable River (Essex County) from the Whiteface Ski Center downstream to the Route 86 bridge;

(d) Saranac River (Clinton County) from North Branch Saranac River upstream 1.4 miles to Stord Brook;

(e) Saranac River (Clinton County) from intersection of Sand pond Road and NYS Route 22B in Morrisonville upstream to Kent Falls Dam;

(f) Ischua Creek in the area of Franklinville in Cattaraugus County.

3. Remove the baitfish prohibition on:

(a) Weed Mines Pond, Town of Copake, (Columbia County);

(b) Colgate Lake, Town of Jewett, (Greene County).

4. Prohibit the use of baitfish on:

(a) Little Black Pond, Town of Santa Clara, and Benz Pond, Town of Waverly, (Franklin County);

(b) Bog Pond, Clear Pond, Loon Pond and Lost Pond, Town of Long Lake, (Hamilton County);

(c) Sterling Lake (Orange County).

5. General corrections to Part 10:

(a) Correcting the daily limit for lake trout on Schroon Lake and the Schroon River from the lake proper downstream to the Starbuckville dam from three fish per day to two fish per day;

(b) Correcting the minimum length for trout in all tidal streams in Suffolk County from two inches to 12";

(c) Correcting the typographical error for the Cohocton River (Steuben County), from "...Route 145" to "...Route 415";

(d) Correcting the method of taking in Spring Creek (Livingston and Monroe County) and Oatka Creek (Monroe County) during the April 1 to October 15 season by removing the unintended restriction of artificial lures only;

(e) Correcting the existing description for the no kill section of the West Branch of the Ausable River (Essex County), changing "... 22 miles downstream..." to "...2.2 miles downstream...";

(f) Correcting minimum length for walleye Lake Ontario, the St. Lawrence River, Upper Niagara River and Lower Niagara River, changing from 15 inches to 18 inches;

(g) Correcting the ice fishing prohibition on Bigsby Pond and Copperas Pond (Essex County) by changing it to the intended tip-up prohibition.

6. Eliminate special regulations for:

(a) Crappie on Whitney Point Reservoir (Broome County) and Chautauqua Lake (Chautauqua County), and for trout on the Roeliff-Jansen Kill (Columbia County and Dutchess County) since the species are now regulated under statewide regulations;

(b) American shad on the West Branch Delaware River since general angling regulations apply during the time when fishing is not prohibited in this water;

(c) Chittenango Creek (Madison County) Route 20 downstream because the section duplicates that found in the special regulation from Route 20 north to Conrail railroad line;

(d) Eliminating the special regulation for Lake Mahopac (Putnam County);

(e) No kill brook trout fishing in Whey Pond (Franklin County) and changing the daily limit for all trout to three per day in combination;

(f) Black bass and northern pike in the Saranac River (Clinton County) downstream of Union Falls since said regulation now has little or no practical application.

7. Change the daily creel limit for trout from five trout per day to five trout per day, with no more than two longer than 12" to better distribute harvest opportunity for two year old hatchery brown trout and to emphasize the value of larger brown trout for all waters not covered under special regulations in Allegany, Cattaraugus, Chautauqua, Erie and Wyoming counties and for the following waters currently covered under special regulations:

(a) Rushford Lake, Allen Lake and the Genesee River (excluding the newly proposed catch and release section from the Route 19 bridge in Shongo downstream 2.5 miles) in Allegany County;

(b) Case Lake, Harwood Lake, and New Albion Lake in Cattaraugus County.

8. Amend the daily limit for trout on the waters below to 5 per day, with no more than 2 larger than 12 inches from April 1 through October 15 and keeping the stream open for fishing the remainder of the year under a catch and release artificial lures only regulation

(a) Clear Creek, Lime Lake Outlet and McKinstry Creek (Cattaraugus County);

(b) Hosmer (Sardinia) Brook (Erie County);

(c) Clear Creek, and all of Wiscoy Creek except 0.5 miles upstream to 0.5 miles downstream of East Hillside Rd. Bridge (Wyoming County).

9. Adopt new special regulations that will allow for a year-round trout season, ice fishing permitted, with a daily creel limit of five trout per day, with no more than two longer than 12" for Red House Lake and Quaker Lake in Cattaraugus County.

10. Remove the Salmon River and Little Sandy Creek as exceptions from the 15 inch minimum size limit for trout and salmon in Lake Ontario tributaries and eliminate the Monroe County qualifier from Irondequoit Creek to allow a 9 inch minimum size limit for the entire creek.

11. Reduce the minimum length for crappie from 9 inches to 8 inches on Lake Champlain for consistency with regulations in effect for the State of Vermont.

12. Increase the minimum length of yellow perch to 8 inches in all Nassau County waters except Hempstead Lake.

13. Increase the minimum size from 15 inches to 18 inches and reducing the daily limit from 5 fish to 3 fish for walleye in Chautauqua Lake (Chautauqua County), Fern Lake (Clinton County), Harris Lake, (Essex County), Rainbow Lake (Franklin County), Lake Algonquin (Hamilton County), Butterfield Lake (Jefferson County), Burden Reservoir (Rensselaer County), and Horseshoe Lake (St. Lawrence County) to afford increased protection and maximize the restoration potential for the species.

14. Reduce the minimum length for walleye in Oneida Lake and its tributaries (Madison, Oneida, Onondaga and Oswego Counties) from 18 inches to 15 inches.

15. Extend the open season for muskellunge and tiger muskellunge on the St. Lawrence River, Lake Ontario and Lower Niagara River from November 30 to December 15 to expand trophy muskellunge angling opportunities.

16. Amend the closing date of the walleye season for the Lower Niagara River, from March 15 to December 31 to provide greater protection of spawning stock prior to the opening of the fishing season in May.

17. Amend regulations in the Lower Niagara River for Atlantic Salmon so that only one fish greater than or equal to 25 inches can be harvested.

18. Broaden the current one fish per day creel limit for rainbow trout and steelhead in Jefferson County to include all waters tributary to Lake Ontario (from the lower most bridge upstream to the first barrier impassible by fish).

19. Adopt special regulations for Sylvan Lake (Dutchess County) to establish a year-round trout season with no minimum size, a five fish per day limit and ice fishing is permitted.

20. Adopt special regulations for a year-round catch and release bass season in Artist Lake and Belmont Lake (Suffolk County) to protect and restore the quality of the bass populations.

21. Adopt a year-round catch and release only season for all species in Hempstead Lake (Nassau County) except black bass.

22. Amend the special regulation for lake trout in Piseco Lake (Hamilton County) by increasing the minimum size to 21 inches and decreasing the daily limit to two fish per day to increase the average size of lake trout being caught by anglers.

23. Adopt a special regulation for Round Lake (Town of Long Lake, Hamilton County) where brook trout will be regulated under a 12 inch minimum size limit, three fish per day daily limit, artificial lures only and the use or possession of baitfish is prohibited.

24. Institute a catch-and-release regulation for American shad in the: Susquehanna River (Tioga and Broome County), Tioughnioga River (Broome County), Chenango River (Chenango County) and Chemung River and tributaries (Chemung County).

25. Amend regulations for New York City Park waters so that all species will be regulated under a year round catch and release only season, and eliminating the special regulations for largemouth and smallmouth bass to all other waters in Bronx, Kings, NY, Queens and Richmond Counties to provide greater fishing opportunity and consistency between the State and City regulations.

26. Amend the trophy section of the Saranac River (Clinton County) from Imperial Dam upstream to accommodate the newly proposed catch and release trout section from Morrisonville upstream to Kent Falls Dam.

27. Shorten the current catch and release only section on the Beaver Kill (Delaware County) to end at the Iron Bridge in Horton to accommodate the newly proposed regulation that prohibits fishing in the thermal refuge area.

28. Prohibit all fishing in the thermal refuge area of the Beaver Kill (Delaware County) from the Iron Bridge at Horton downstream to the first Rt. 17 overpass from July 1 through August 31 so aggregations of trout that concentrate in this section of stream during periods of high temperature can be protected.

29. Amend the special regulations for Floodwood Pond, Square Pond, and Rollins Pond (Franklin County) to permit ice fishing.

30. Add a special regulation that permits ice fishing on Beardsley Lake (Montgomery County).

31. Eliminate the misprint of an April 1 though October 15 trout season for Oneida Creek from Peterboro Road downstream to the NYS Thruway (Oneida County) and adding the same to the special regulations for Oriskany Creek (Oneida County) as originally intended.

32. Amend the special regulations for Skaneateles Creek (Onondaga County) to include landlocked salmon.

33. Remove Ramapo River (Rockland County) from the special regulation that excludes it from those rivers and streams where black bass are regulated under a ten inch minimum size limit.

34. Prohibit the use or possession of rainbow smelt in Lake George (Essex, Warren and Washington Counties) to help protect the population numbers of this forage species for lake trout and landlocked salmon.

35. Change the special regulations for chain pickerel on Delaware River border waters to include all species of pickerel.

36. Change the wording for the special prohibition on fishing in Dutch Hollow Brook in Cayuga County to include a prohibition on dipnetting during the walleye spawning period.

37. Amend the special regulation for muskellunge on Chautauqua Lake to also include tiger muskellunge.

38. Remove "Gaff hook and clubs prohibited" for Chautauqua Lake since statewide regulations already prohibit the use of gaffs for open water fishing.

39. Repeal the special regulations for the Finger Lakes as they are currently constructed with a new table format for increased readability.

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 December 29, 2004.

Text of rule and any required statements and analyses may be obtained from: Shaun Keeler, Bureau of Fisheries, Division of Fish, Wildlife and Marine Resources, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4753, (518) 402-8920, e-mail: sxkeeler@gw.dec.state.ny.us

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

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

Additional matter required by statute: A programmatic environmental impact statement on fish species management activities of the Department of Environmental Conservation, Division of Fish and Wildlife, prepared in accordance with art. 8 of the Environmental Conservation Law, is on file with the department and available for review.

Summary of Regulatory Impact Statement

1. **Statutory Authority:** Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department of Environmental Conservation (Department) to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety and the safety and protection of private property. Sections 11-1301 and 11-1303 of the ECL empower the Department to fix by regulation open seasons, size and catch limits and manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the Environmental Conservation Law), in all waters of the state. Section 11-0317 of the ECL empowers the Department to adopt regulations, after consultation with the appropriate agencies of the neighboring states and the Province of Ontario, establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara River and the St. Lawrence River. Section 11-0319 of the ECL empowers the Department to adopt regulations establishing open seasons, minimum size limits, manner of taking and daily and seasonal limits for taking fish in the waters of the New York City water supply which are open or may be opened in the future to the public for fishing. Section 11-1316 of the Environmental Conservation Law empowers the Department of Environmental Conservation to designate by regulation waters in which the use of bait fish is prohibited.

2. **Legislative Objectives:** Open seasons, size restrictions, daily creel limits and restrictions regarding the manner of taking fish are the basic tools used by the Department in achieving the Legislature's intent. The purpose of setting seasons is to prevent the over-exploitation of fish populations during vulnerable periods, such as spawning, thereby insuring a healthy population. Size limits are necessary to maintain quality fisheries and to insure that adequate numbers survive to spawning age. Creel limits are used to distribute the harvest of fish among many anglers and angling days and optimize resource benefits. Regulations governing the manner of taking fish upgrade the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences and limit exploitation. Catch-and-release fishing regulations are used in waters capable of sustaining outstanding growth and survival of fish to reduce fishing mortality to the lowest possible level. Relaxation of fishing mortality results in a large population of desirable-sized fish which provides an outstanding recreational opportunity for those anglers willing to forego the opportunity to harvest fish.

3. **Needs and Benefits:** Most significant fishery resources in New York State are monitored through annual or periodic survey and inventory by Bureau of Fisheries staff. These fisheries surveys identify particular situations where changes in fishing regulations may be required to maintain the quality of a particular fishery or significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of users groups or the need to correct or clarify existing regulations. Candidate regulations addressing identified needs are developed by Bureau of Fisheries staff and reviewed with sportsmen's groups at the local, regional or state-wide level, depending upon the significance of the proposal. Proposals may be amended based upon input received through public comment.

In order to facilitate compliance by the angling public, significant revisions of the Department's fishing regulations are currently conducted on a biennial schedule. The schedule for review and filing of proposed amendments to regulations is timed to allow publication of changes to regulations in the annual New York State Fishing Regulations Guide. The Department proposed biennial changes which were published in the February 25, 2004 issue of the State Register. Following the close of the 45-day public comment period, the Department determined that the proposed changes should be adopted as proposed with only one minor change. However, due to the high volume of comments received from the public, the proposed rulemaking expired before the Department could complete and publish Notice of Adoption and assessment of the public comment.

The new license year begins on October 1, 2004, and the 2004-2006 Fishing Regulations Guide is currently available to the public. The Guide contains the changes proposed in the biennial rulemaking. Due to the expiration of the Department's proposed biennial rulemaking, there is currently a conflict between the Department's fishing regulations and the Fishing Regulations Guide. Therefore, in order to protect New York's

freshwater fisheries, avoid public confusion, and facilitate law enforcement, the Department is adopting the biennial amendments to the Department's fishing regulations by emergency rulemaking. Simultaneously, the Department is also proposing that these changes be adopted through normal (non-emergency) rulemaking.

4. **Costs:** Enactment of the rules and regulations described herein governing fishing will not result in increased expenditures by the State, local governments or the general public.

5. **Local Government Mandates:** These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. **Paperwork:** No additional paperwork will be required as a result of these proposed changes in regulations.

7. **Duplication:** There are no other state or federal regulations which govern the taking of fish.

8. **Alternatives:** The alternative to the proposed regulations would be to retain current fishing regulations. In the absence of the proposed changes, opportunities to enhance the quality or public use and enjoyment of fisheries may be deferred or lost. Some fish populations may decline if the proposed regulations are not enacted in a timely manner.

9. **Federal Standards:** There are no minimum federal standards that apply to the regulation of sportfishing.

10. **Compliance Schedule:** The emergency regulations will become effective immediately upon filing with Department of State. It is anticipated that regulated persons will be able to immediately comply with these regulations.

Regulatory Flexibility Analysis

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. These amendments were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The Department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, recordkeeping or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with sportfishing are administered by the Department. The proposed regulations are not anticipated to change the number of participants or the frequency of participation in regulated activities. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rulemaking proposal does not change this process.

Based on the above, the Department has determined that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. These amendments were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The Department has determined that the proposed rules will not impose an adverse impact or any new or additional reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with sportfishing are administered by the Department. The proposed regulations are not anticipated to change the number of participants or the frequency of participation in regulated activities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rulemaking proposal does not change this process.

Since the Department's proposed rulemaking will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, recordkeeping, or other compliance requirements, the Department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. The proposed regulations affect people who angle for fish for recreational purposes. Fishing regulation changes of the nature and magnitude of those proposed generally occur biennially as part of the Department's efforts to regularly review and update existing regulations.

Based upon extensive past experience with such rule making efforts, the Department does not anticipate any direct effects from the subject proposed rulemaking on employment opportunities in New York State. The Department's proposed rulemaking is not expected to change the number of participants or the frequency of participation in regulated activities. Moreover, the proposed regulations would not directly apply to or affect any specific jobs. Some jobs may be indirectly affected, such as fishing guides, but indirect effects are not the subject of this impact statement. Nevertheless, the impacts to guides should be generally positive because the proposed amendments are intended to improve New York's freshwater fisheries and the angling experience associated with these fisheries. Therefore, the Department has concluded that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a job impact statement is not required.

The Department does not want to be overly prescriptive of where an owner of a regulated site has to place the Required Notice. Given that the public places affected by this rule are varied, the guidelines for placement of the required sign had to recognize that each site would have different needs in terms of meeting legislative intent to have the notice "provided to patrons". The proposed rules permit the regulated party to place the notice in the form of a poster or informational brochures as long as the owner provides an opportunity for all patrons to read the notice upon entry or shortly after being seated. In the case of a restaurant this requirement provides sufficient latitude for compliance as long as all patrons have access to the information; e.g., placing a poster in the entry way, near the hostess, putting the information in a brochure or including it in a menu.

Similarly, given the diversity of the regulated sites and patrons, the Department did not want to be very prescriptive on placement of the required equipment. The proposed rules do require the owner of a public place to have available "in an accessible public place, resuscitation equipment sufficient to assure that patrons and/or staff can access it for use and bring it to the victim within 3 minutes of onset of an incident."

Periodic inquiries of the organization listed on the poster or brochure that offers CPR training would suffice to determine if that organization is still providing such public education. The regulations make mention of two nationally organizations known for their long-term commitment to public CPR training. Given their long-standing commitment to this endeavor, it is expected that they will continue to be community leaders in this field.

Stellaris Health Network

The company supports the proposed rule.

Stellaris recommends that instead of requiring two adult and two pediatric masks that a mask approved by FDA for use on adult and pediatric victims be permitted.

Owners of regulated sites should be required to check for expiration date of products and replenishment should be mandated if the products expire or go bad.

Response

The issue of type of required facemask will be addressed in another segment of this assessment as more than one comment was received on this issue.

Resuscitative facemasks and gloves generally have long shelf lives. Thus, the Department did not find it necessary to prescribe that owners of regulated public places check to identify expiration dates other than when the equipment is used and needs to be replaced.

American Red Cross

The American Red Cross in New York State supports the proposed regulation.

Recommends that in lieu of separate adult and pediatric facemasks, regulated parties be permitted to have on site, masks that can be used on either adults, children or infants.

Suggest that the signage on posters or brochures be amended to indicate that CPR trainers "shall" instead of "may" include but are not limited to the American Red Cross and American Heart Association. In the association's view, the use of "may" makes the American Red Cross as a CPR training provider optional.

Response

The governing statute states "Resuscitation equipment means (i) an adult exhaled air resuscitation mask, which the federal food and drug administration has granted permission to market, accompanied by a pair of disposable gloves, and (ii) a pediatric exhaled air resuscitation mask, for which the federal food and drug administration has granted permission to market, accompanied by a pair of disposable gloves." The proposed regulations mirror the requirements specified in the legislation; e.g., affected parties must have at least an adult and a pediatric mask on site. It should be noted that indeed there are several FDA approved multi-use facemasks on the market. They are designed to fit both adults and pediatric victims. This is accomplished by positioning the device differently for the size of the patient. In an emergency this would require the layperson (such as an employee of the regulated party or the public) to read the instructions on how to "fit" the mask of the victim depending on whether the victim was an adult or child. Although current CPR training does use these single use masks, the regulations and governing legislation recognize that individuals who may use the masks may not be trained in the use of such devices. It will be less confusing to the lay public when a mask specifically earmarked for the adult and pediatric victim is available.

It was not the intent of the Department to exclude the American Red Cross or any other credible organization from being listed on the poster providing notice of that organization's ability to teach CPR in the community.

Department of Health

NOTICE OF ADOPTION

Resuscitation Equipment in Public Places

I.D. No. HLT-14-04-00013-A

Filing No. 1118

Filing date: Sept. 30, 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: Addition of Part 801 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 3000-d

Subject: Resuscitation equipment in public places.

Purpose: To provide for the availability of resuscitation equipment in certain public places.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-14-04-00013-P, Issue of April 7, 2004.

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

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

Assessment of Public Comment

The public comment period ended for proposed amendments to Part 801: Availability of Resuscitation Equipment in Certain Public Places. These regulations implement Chapter 349 of the Laws of 2001. In response to the request for public comments, the Department of Health received comments from the following organizations:

1. New York State Restaurant Association
2. Stellaris Health Network
3. American Red Cross in New York State
4. The Medicine Chest

The comments are summarized as follows:

New York State Restaurant Association

The NYSRA has an issue with the definition of "public place" in that from their perspective it is too narrow. NYSRA feels it should include other public places such as grocery stores, stadiums, shopping malls or museums.

The regulations do not indicate where the public notice to patrons should be placed.

The regulations do not indicate where the equipment should be placed.

Restaurant owners are required to place on the poster information on CPR classes, which the NYSRA feels is an implication that restaurant owners must keep this information current.

Response

The definition of public place contained in the proposed regulation reflects that provided in the authorizing statute. The legislation defines public places to include bars, restaurants, theaters or health clubs. The proposed regulations will apply to all those public places as mandated under the terms of the governing legislation.

The Medicine Chest

The Medicine Chest states that a "great opportunity is being missed here by not mandating these kits in these very populated and public places." The author refers to town buildings, state schools, community colleges, high schools, etc. The author feels public places other than those listed in the regulation should be required to have the equipment on site.

The author feels the labeling size is too large and would cover two full sheets of paper. Instead of a 1/2 inch font, the author recommends a font of 1/8 inch to 3/16-inch font.

Response

As stated above, the authorizing legislation specified the types of public places to be included in this new requirement.

The size of lettering selected is appropriate for this type of notice to employees and members of the public looking for the equipment.

Conclusion

The regulations have not been revised in response to these comments. Two of the issues identified as clinical and of potential impact on the program are addressed specifically in legislation. The types of facemasks that must be provided by the owners of public places are identified in legislation and thus not subject to negotiation or change. Therefore, the regulation will continue to require affected parties to have on site, adult and pediatric facemasks. The types of entities that must comply with the law and regulation are also specified in legislation. There were two comments requesting that the definition of public place be expanded. However, the governing legislation established definitions of public places or covered entities, which exclude other organizations.

Our recommendation is that these comments be duly noted and that the proposed regulation be adopted as published in the *State Register* on April 7, 2004.

Office of Mental Health

EMERGENCY RULE MAKING

Residential Treatment Facilities for Children and Youth**I.D. No.** OMH-42-04-00001-E**Filing No.** 1119**Filing date:** Oct. 1, 2004**Effective date:** Oct. 1, 2004

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

Action taken: Amendment of section 584.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

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

Specific reasons underlying the finding of necessity: To address the immediate needs of children being served in Residential Treatment Facilities for Children and Youth (RTF) it is necessary to continue to temporarily expand the capacity of certain RTF's.

Subject: Operation of residential treatment facilities for children and youth.

Purpose: To continue the temporary increase in the capacity of certain RTF's to serve the needs of emotionally disturbed children and youth.

Text of emergency rule: Subdivision 584.5(e) of Part 584 of 14 NYCRR is amended to read as follows:

(e) An operating certificate shall be issued for a residential treatment facility for a resident capacity of no less than 14 and no more than 56; provided, however, that for the period commencing April 1, 2000 through September 30, [2004,] 2005, bed capacity for facilities primarily serving New York City residents may be temporarily increased up to an additional ten beds over the maximum certified capacity with the prior approval of the Commissioner. In order to receive such approval, the residential treatment facility must demonstrate that the additional capacity will be used to serve those children and youth deemed most in need of RTF services by the New York City Preadmission Certification Committee as set forth in Section 583.8.

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 December 29, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Regulatory Impact Statement

1. **Statutory Authority:** §§ 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

2. **Legislative Objectives:** NYCRR Part 584 sets forth standards for the operation of Residential Treatment Facilities for Children and Youth. This amendment to Part 584 allows for the temporary increase of capacity of certain facilities to allow additional children and youth to be served in the program.

3. **Needs and Benefits:** The Office of Mental Health has determined that it is necessary to continue the existing capacity of these Residential Treatment Facilities for Children and Youth (RTFs) which serve seriously emotionally disturbed children and youth who are residents of New York City. Under the existing regulation, (14 NYCRR Section 584.5(e)), RTF bed capacity serving primarily New York City residents may be temporarily increased until September 30, 2004 by up to 10 additional beds over the permitted maximum of 56 per facility. This amendment would extend the referenced expiration date, to September 30, 2005.

There are a number of initiatives underway that focus on improving the use of the current RTF resources by decreasing the length of stay. These initiatives include focused development of supervised community residences, family based treatment programs, case management and family support to assist the youth discharged from an RTF to successfully reintegrate into the community.

To expand capacity, a total of 21 temporary beds were added to 5 existing RTF facilities serving New York City residents. These beds were added on a voluntary basis with the cooperation of the facilities and the support of the New York City Department of Mental Health. Three of the facilities that were not at the 56 bed maximum had their capacity increased administratively by a total of 13, without going over the maximum. One of the facilities, St. Christopher Otilie, was at 56 beds and another, Linden Hill, was at 55 beds. St. Christopher Otilie added 5 beds. Linden Hill added 3 beds. Therefore, 7 beds are permitted to be added under 14 NYCRR Section 584.5(e) as it currently exists. That permission expired on September 30, 2004. Significant improvements in development of residential alternatives, such as the supervised community residences and the family based treatment beds, have been made in the last four years. However, these additional beds are still needed.

4. **Costs:**

(a) **Costs to private regulated parties:** There will be no mandated costs to the regulated parties associated with allowing an increase in capacity to the RTF program.

(b) **Cost to state and local government:** The annual state cost for the 7 beds is estimated to be \$465,000. These additional funds will be covered by the State share of Medicaid appropriation. There is no local share for the RTF program. Funding for these beds is included in the enacted budget for State Fiscal Year 2004-05.

(c) **The cost projection was calculated by applying the per bed projected Medicaid rate to the 7 additional beds.**

5. **Local Government Mandates:** There will be no additional mandates to local government.

6. **Paperwork:** There are no new paperwork requirements associated with this amendment.

7. **Duplication:** There are no duplicate, overlapping or conflicting mandates which may effect this rule.

8. **Alternatives:** The only alternative would be to allow the temporary additional capacity authority to expire, which is not acceptable given the critical need for these services.

9. **Federal Standards:** The rule does not exceed any Federal standards.

10. **Compliance Schedule:** Providers will be able to comply with this rule immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules

will not impose any adverse economic impact on small businesses, or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules impact only Residential Treatment Facilities for Children and Youth serving children who are New York City residents.

Job Impact Statement

This amendment will have no impact on jobs. At present only two providers of Residential Treatment Facilities for Children and Youth have received permission to exceed the 56 bed limit by a total of seven beds. These beds have been in operation for the past four years.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rate Settings for Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. MRD-42-04-00010-P

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

Proposed action: Amendment of section 681.14 of Title 14 NYCRR.

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

Subject: Rate setting for intermediate care facilities for persons with developmental disabilities (ICF/DD).

Purpose: To implement an efficiency adjustment applicable to under 31-bed ICF/DD facilities.

Text of proposed rule: Add new subdivision 681.14(g) to read as follows:

(g) *Adjustments. Effective January 1, 2005 for Region II and III facilities, and effective July 1, 2005 for Region I facilities, there shall be an efficiency adjustment for under-31 bed facilities as described herein and applied as a reduction to reimbursable operating costs.*

(1) *A determination shall be made as to whether each provider has a per bed surplus or loss for all its under-31 bed facilities.*

(i) *Surplus/loss shall equal operating revenue minus operating costs.*

(a) *For purposes of this efficiency adjustment, operating revenue and costs are net of day treatment, day service, transportation, and regional FTE add-ons.*

(b) *Revenue for determining the surplus/ loss calculations for all facilities in all regions is from the rate effective July 1, 2004.*

(c) *Costs for determining the surplus/ loss calculations are from the 2001 or 2001-2002 cost reporting year, trended to 2004 or 2004-2005 dollars.*

(ii) *The value of the surplus/ loss is divided by the total number of beds in all of the provider's under-31 bed facilities to determine the provider's per bed surplus/ loss value.*

(2) *Regional ranking of the per bed surplus/ loss value.*

(i) *Within each of the three regions, the per bed surplus/loss values are ranked and identified in descending order.*

(ii) *Within each region, the ranking is divided into five groups.*

Region I	Surplus/ Loss Range (Per Bed)
Efficiency Group 5	\$17,498 to \$4,289
Efficiency Group 4	\$4,288 to \$523
Efficiency Group 3	\$522 to (\$2,986)
Efficiency Group 2	(\$2,987) to (\$7,465)
Efficiency Group 1	(\$7,466) to (\$42,035)
Region II	Surplus/Loss Range (Per Bed)
Efficiency Group 5	\$17,478 to \$6,354
Efficiency Group 4	\$6,353 to \$4,081
Efficiency Group 3	\$4,080 to \$873
Efficiency Group 2	\$872 to (\$5,343)
Efficiency Group 1	(\$5,344) to (\$16,087)

Region III	Surplus/Loss Range (Per Bed)
Efficiency Group 5	\$12,398 to \$7,216
Efficiency Group 4	\$7,215 to \$2,207
Efficiency Group 3	\$2,206 to (\$1,049)
Efficiency Group 2	(\$1,050) to (\$6,440)
Efficiency Group 1	(\$6,441) to (\$15,631)

(3) *Each of the five groups within each region is assigned an ordinal weight.*

Group 5 = 5 Group 4 = 4 Group 3 = 3 Group 2 = 2 Group 1 = 1

(4) *Determination of total adjustment per facility.*

(i) *The number of beds in the facility is multiplied by its assigned ordinal weight and the result is multiplied by \$334.*

(ii) *The facility's reimbursable operating costs are reduced by the amount determined in subparagraph (i) of this paragraph.*

(5) *Reallocation of costs. The following changes to cost allocations for all under-31 bed facilities are effective January 1, 2005 for Region II and III facilities, and effective July 1, 2005 for Region I facilities.*

(i) *General insurance costs are reallocated from base year administration OTPS costs to base year support OTPS costs.*

(ii) *Property and casualty insurance costs are removed from base year administration OTPS costs. Property and casualty insurance costs from the appropriate cost report period are included in capital costs.*

(iii) *Expensed equipment costs from the base year cost report are included in Support OTPS costs. Expensed equipment costs are not included in capital costs.*

Note: Current subdivisions (g)-(i) are renumbered accordingly.

Text of proposed 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

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

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

Additional matter required by statute: Pursuant to the requirements of 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.

Regulatory Impact Statement

1. **Statutory authority:**

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09.

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates and fees for services in facilities licensed or operated by OMRDD.

2. **Legislative objectives:** These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law by making revisions to the under 31-bed facility rate-setting methodology for Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD). The enactment of proposed amendments will ensure the timely adjustment of funding to voluntary agency providers of ICF/DD services.

This funding is necessary in order to enable voluntary agencies that operate under 31-bed ICF/DD facilities to maintain such services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and other developmental disabilities.

3. **Needs and benefits:** From the time of their inception, OMRDD has provided funding for ICF/DD facilities. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities who need such services. The proposed amendments address the timely adjustment and appropriate continuation of such funding. Specifically, the proposed amendments revise the reimbursement methodology for under 31-bed ICF/DD facilities to adjust payments made to providers, consistent with State mandates and goals for increased operational efficiency.

OMRDD determined that it could adjust rates for ICF/DD facilities to encourage efficiencies in operation and still adequately reimburse voluntary agency operators of these facilities. OMRDD has also decided to make such adjustments to the rates in time for the January 1, 2005 beginning of the rate year for facilities in Regions II and III in order to minimize disruption.

4. Costs:

a. Costs to the Agency and to the State and its local governments: As of September 2004, there were 592 voluntary-operated under 31-bed sites certified by OMRDD to provide ICF/DD services in New York State. The estimated cost to the State of New York on an aggregate basis is \$688.0 million for the rate periods beginning January 1, 2005 and July 1, 2005. This represents approximately \$344.0 million in State, and \$344.0 million in Federal funding. The efficiency adjustment implemented by the proposed amendments would result in a decrease in funding for ICF/DD services of approximately \$6.0 million on an annual aggregate basis. This represents a savings of approximately \$3.0 million for New York State. There will be no fiscal impact for local governments as a result of the proposed amendments.

b. Costs to private regulated parties: As stated, under 31-bed ICF/DD facilities will experience a reduction in reimbursements of approximately \$6.0 million on an annual aggregate basis as a result of the proposed amendments. OMRDD estimates that, on a statewide statistical average, an ICF/DD would experience a per bed reduction in reimbursement of approximately \$1,075 annually, which would need to be addressed by increased efficiencies in operations. There are no initial capital investment costs nor initial non-capital expenses. There are no other costs associated with implementation and continued compliance with the amendments.

These estimated cost impacts have been derived by applying the proposed revisions in the reimbursement methodology for under 31-bed ICF/DD facilities to the current levels of funding for facilities certified as of September, 2004.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork will be required by the proposed amendments. The changes to the reimbursement will only change the rate-setting provisions for under 31-bed ICF/DD facilities.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to ICF/DD facilities.

8. Alternatives: The only alternative would be to leave the current reimbursement methodology unchanged, and to not make the adjustment which OMRDD considers possible. The enactment of these proposed amendments reflects what OMRDD believes to be fiscally prudent, cost-effective adjustments to the reimbursement of under 31-bed ICF/DD facilities. The proposed changes implement variable functions and measures which represent OMRDD's best effort at adjusting rates of reimbursement for under 31-bed ICF/DD facilities in a way that will accommodate the realization of operational efficiencies where they can best be achieved and afforded, and in the most equitable distribution possible. Through the weighting of values used in calculating the efficiency adjustment, there will be a greater impact on providers with surpluses and a lesser impact on providers with losses.

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

10. Compliance schedule: OMRDD expects to adopt the proposed amendments so as to implement the revisions to the under 31-bed ICF/DD reimbursement methodology in time for the beginning of the new rate periods of January 1, 2005 and July 1, 2005.

Regulatory Flexibility Analysis

1. Effect on small business: These proposed regulatory amendments will apply to voluntary not-for-profit corporations that operate under 31-bed Intermediate Care Facilities serving persons with developmental disabilities in New York State. As of September 2004, there were 592 such voluntary-operated sites certified by OMRDD to provide ICF/DD services in New York State.

The OMRDD has determined, through a review of the certified cost reports, that the organizations which operate these under 31-bed ICF/DD facilities employ fewer than 100 employees at the discrete certified sites and would, therefore, be classified as small businesses.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses. OMRDD has determined that these

amendments will not cause undue hardship to providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: There are no additional compliance requirements resulting from the implementation of these proposed amendments. The proposed amendments revise the reimbursement methodology for under 31-bed ICF/DD facilities to adjust payments made to providers, consistent with State mandates and goals for increased operational efficiency. While operators of the referenced facilities will need to address adjustments in funding through increased operational efficiencies, the amendments do not specifically impose any new requirements with which regulated parties are expected to comply.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments.

4. Compliance costs: There are no additional compliance costs to regulated parties associated with the implementation of, and continued compliance with, these amendments.

5. Economic and technological feasibility: The proposed amendments are concerned with fiscal and reimbursement issues, and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The purpose of these proposed amendments is to revise the reimbursement methodologies of the referenced programs and services to adjust payments made to providers, consistent with State mandates and goals for increased operational efficiency. OMRDD determined that it could adjust rates for ICF/DD facilities to encourage efficiencies in operation and still adequately reimburse voluntary agency operators of these facilities. The proposed amendments which implement variable functions and measures to adjust the under 31-bed reimbursement methodology represent OMRDD's best effort at adjusting rates of reimbursement in a way which will accommodate the realization of efficiencies where they can best be achieved and afforded, and in the most equitable distribution possible. Through the weighting of values used in calculating the efficiency adjustment, there will be a greater impact on providers with surpluses and a lesser impact on providers with losses.

OMRDD has filed these amendments so as to enable their effective date to coincide with the beginning of rate periods for ICF/DD facilities in Regions II and III, thus minimizing confusion and disruption associated with the changes.

OMRDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. However, since these amendments require no specific compliance response of regulated parties, the approaches outlined cannot be effectively applied.

7. Small business participation: In an effort to include small businesses as much as possible in the decisionmaking process, OMRDD has continued to meet regularly with the Commissioner's Provider Council. At these meetings, OMRDD has provided representatives of the provider associations that make up the council with accounts of the changes to the methodology being considered to achieve the desired efficiencies.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these proposed amendments is not being submitted because the amendments will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments. While the efficiency adjustment contained in the proposed amendments may have a slight adverse fiscal impact on under 31-bed ICF/DD facilities, the geographic location of any given ICF/DD facility (urban or rural) will not be a contributing factor to any such impact.

This is because the reimbursement methodology OMRDD uses to reimburse under 31-bed ICF/DD facilities is primarily based upon reported historical costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same geographic area. In addition, OMRDD's rate/fee setting methodologies, including that used for under 31-bed ICF/DD facilities, already consider and adjust for three geographic areas when regional comparisons are involved in determining reimbursable costs. They are: Region I (New York City), Region II (New York City Suburban) and Region III (Upstate New York). Thus, the under 31-bed ICF/DD reimbursement methodology, and the efficiency adjustment contained in the proposed amendments, have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and employment opportunities. The proposed rule making revises the reimbursement methodology for under 31-bed ICF/DD facilities to implement an efficiency adjustment. As is apparent from the information provided in the Regulatory Impact Statement, the efficiency adjustment will result in a reduction in reimbursements to under 31-bed ICF/DD facilities that represents only a fraction of one percent of the total funding provided to these programs. The magnitude of the efficiency adjustment is, therefore, very unlikely to affect the staffing patterns of these facilities in any significant way.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Dealers and Transporters

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

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

Proposed action: This is a consensus rule making to amend section 78.18 of Title 15 NYCRR.

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

Subject: Dealers and transporters.

Purpose: To amend Part 78 in relation to search fees for certain documents.

Text of proposed rule: Part 78.18 is amended to read as follows:

78.18 Cancellation of sale. If before taking possession of a vehicle, for which the dealer has already applied for registration and/or title, the customer cancels the sale, the dealer must retrieve his *or her* proofs of ownership. He *or she* must do this (a) by contacting the local office immediately and reporting such cancellation and requesting the return of his *or her* proofs of ownership, or (b) if the registration transaction has already been processed, by telephoning the title bureau and reporting such cancellation, giving the year, make and vehicle identification number and the name of the former customer. This notification must be confirmed in writing and be accompanied by [a \$2] *the search fee provided for in section 202(2)(a) of the Vehicle and Traffic Law* for retrieval of the ownership documents. If a lien was recorded for a lending institution, other than a lending institution established to finance the sale of vehicles of a franchised dealer, the dealer should submit, with his *or her* written confirmation, written notice from the lending institution of cancellation of the lien before the transaction is cancelled on department records and the proofs of ownership returned.

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

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

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

Consensus Rule Making Determination

15 NYCRR 78.18 provides that if a consumer cancels a sale prior to taking possession of a motor vehicle, for which the dealer has already made application for registration/ and or title, such dealer must notify the Department of Motor Vehicles in writing of such cancellation, accompanied by a two dollar search for retrieval of the ownership documents. Chapter 62(U1) of the Laws of 2003 amended Vehicle and Traffic Law section 202(2)(a) to increase the search fee from two dollars to six dollars. This proposed regulation reflects this increased fee, but rather than referencing the six dollars, it references the section of law. By referencing the

section of law, this regulation will not need to be amended every time the statutory fee is increased.

Since the regulatory change simply reflects a statutory change in fees, this consensus rulemaking is appropriate.

Job Impact Statement

A Job Impact Statement is not submitted with this regulation because it will have no impact on job creation and development in New York State.

Niagara Falls Water Board

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Schedule of Rates, Fees and Charges

I.D. No. NFW-42-04-00003-EP

Filing No. 1121

Filing date: Sept. 30, 2004

Effective date: Sept. 30, 2004

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

Action taken: Repeal of section 1950.20 and addition of new section 1950.20 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-j

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

Specific reasons underlying the finding of necessity: The board acquired the water, wastewater and stormwater facilities of the City of Niagara Falls (the "system") on Sept. 25, 2003. Emergency adoption of a new Schedule of rates, fees and charges is necessary to enable the board to sufficiently fund its operations and in order to preserve public health, safety and welfare of the people of Niagara Falls, New York and the service area of the system.

Subject: Adoption of a schedule of rates, fees and charges.

Purpose: To establish a schedule of rates, fees and charges sufficient to pay for increases in costs to operate, maintain and manage the system and to achieve covenants with bondholders.

Text of emergency/proposed rule: *Schedule of Rates, Fees and Charges.*

(a) *This schedule sets forth the rates, fees and other charges applicable to the provision of water supply, wastewater and related services by the Niagara Falls Water Board to all property owners, users and other persons during the period October 1, 2004 through December 31, 2005. All property owners, users and other persons who receive services from the water board shall pay to the water board the rates, fees and charges set forth in this schedule.*

(b) *The following rates shall be charged and collected for the use of water within the city, supplied by the water board as hereby fixed and established:*

- First 20,000 cu. ft. per quarter, \$2.39 per 100 cu. ft.*
- Next succeeding 60,000 cu. ft. per quarter, \$2.08 per 100 cu. ft.*
- Next succeeding 120,000 cu. ft. per quarter, \$1.76 per 100 cu. ft.*
- Over 200,000 cu. ft. per quarter, \$1.46 per 100 cu. ft.*

The minimum charge for water consumed in any premises within the city for any quarter or portion thereof shall not be less than \$31.07.

(c) *The following rates shall be charged and collected for the use of water outside the city for residential and commercial purposes supplied by the water board as hereby fixed and established:*

- First 20,000 cu. ft. per quarter, \$7.22 per 100 cu. ft.*
- Next 60,000 cu. ft. per quarter, \$6.30 per 100 cu. ft.*
- Next succeeding 120,000 cu. ft. per quarter, \$5.25 per 100 cu. ft.*
- Over 200,000 cu. ft. per quarter, \$4.42 per 100 cu. ft.*

The minimum charge for water consumed in any premises located outside the city for domestic purposes for any quarter or portion thereof shall not be less than \$93.86.

(d) *Water used for testing fire hoses, filling tanks, swimming pools, testing sprinkler systems, and like use shall be billed at \$2.39 per 100 cu. ft. in the city. The amount used may be either estimated in accordance with*

the size of the pipe through which taken at the pressure furnished, or determined by the use of a temporary meter rented to the user by the water board. The use of the latter method shall be at the discretion of the director and may require a refundable deposit.

(e) Use of hydrant for any purpose whatsoever shall be subject to a rental charge of one dollar and 50 cents (\$1.50) per day or partial day.

(f) The cost of hydrant use will include a fee of thirty-five (\$35.00) for backflow device certification, payable at the time of hydrant use application. In addition, daily hydrant and meter rental rates and security deposit amounts shall be established by the director based upon the real cost to the water board.

(g) In addition to the above schedule of rates for water consumed there shall be assessed a demand charge for each user's meter as set forth below.

Size and Type	Charge Per Quarter
Under 1" Disc	\$2.80
1" Disc	\$6.99
2" Disc	\$10.07
2" Compound	\$16.79
3" Compound	\$32.17
4" Compound	\$47.56
6" Compound	\$78.61
8" Compound	\$94.00
10" Compound	\$109.38
12" Compound	\$126.17

(h) The rates set forth in section 2 herein, however, shall not apply to any user of water with whom there is now outstanding a valid and binding contract with the city and/or water board to supply water at a rate different than the rates stated in this Schedule, or to users obtaining water service from the Village of LaSalle prior to May 4, 1927.

(i) In the event the water board or the director terminates water supply service to any property owner or user, such property owner, user or users located at such property shall pay a reactivation fee in the amount of seventy-five dollars (\$75.00) to the water board prior to the supply of water.

(j) There shall be small meter testing charge of one hundred dollars (\$100.00) for the bench testing of any meter less than two inches in size.

(k) An account reactivation charge of one hundred dollars (\$100.00) shall be applied whenever a meter is re-installed and an account reactivated.

(l) The water board shall charge a twenty-five dollar (\$25.00) final read fee for all owner requested meter reads.

(m) A hydrant flow test charge shall be applied whenever an owner, user or his agent requests a hydrant flow test.

(n) The annual availability charge for private fire protection service shall be:

Diameter of Service Connection	Annual Fee
2" or less	\$56.00
3"	\$80.00
4"	\$144.00
6"	\$325.00
8"	\$575.00
10"	\$898.00
12"	\$1,295.00

(o) A backflow submittal fee of twenty-five dollars (\$25.00) shall be charged for all backflow plans submitted to the water board for approval and forwarding to the state health department.

(p) There shall be a fifty dollar (\$50.00) inspection fee for each request for a cross-connection inspection.

(q) In addition to the above rates, fees and charges, the following rates shall apply to all users with respect to sewer or wastewater services prescribed in the water board's wastewater regulations 21 N.Y.C.R.R. Part 1960. There shall be two (2) user classes as provided in Part 1960, to wit:

Commercial/Small Industrial/Residential Users (CSIRU) and Significant Industrial Users (SIU).

(a) CSIRU

Sewer rates for the CSIRU class are determined by total metered water consumption in each quarter.

The schedule of quarterly charges for the CSIRU class shall be as follows:

SCHEDULE I

Minimum charge per quarter	\$35.36 with a usage allowance of up to 1,300 cubic feet
Additional usage in excess of 1,300 cubic feet	\$3.19 per 100 cubic feet

(b) SIU

1. CONVENTIONAL POLLUTANT PARAMETER CHARGES.

Sewer rates for the SIU class each quarter are based on measured quantities of the actual discharge parameters: flow, suspended solids and soluble organic carbon. Such determination shall be made by the water board and shall be based upon five (5) representative 24-hour composite samples taken quarterly, at such locations as are adequate to provide proper representation.

The schedule of charges for conventional pollutant parameters shall be as follows:

SCHEDULE II

POLLUTANT PARAMETERS	RATE
Flow	\$2269.73 per million gallons
Suspended Solids	\$0.75 per pound
Soluble Organic Carbon	\$1.27 per pound

2. SUBSTANCES OF CONCERN PARAMETER CHARGES.

SIU's, who have wastewater discharge permits which limit any substance of concern listed in Schedule III below, will be billed for discharge of these substances based on the unit rates shown in Schedule III. Discharge loading for billing purposes shall be determined by arithmetic average of the last six acceptable self-monitoring results. At the option of the SIU, increased self-monitoring can be performed. For billing purposes, when six (6) or more acceptable results are obtained over the three (3) month billing period, all such results shall be used in the computation of the arithmetic average, with a requirement that there be at least two (2) sample results for each month. Average discharge loadings will then be multiplied by the corresponding unit rates from Schedule III to obtain total charges per quarter for each substance of concern listed in the SIU's wastewater discharge permit. All substances of concern charges will be added to the charges for conventional parameters, as specified above, to compute the total quarterly sewer rate.

SCHEDULE III

SUBSTANCES OF CONCERN UNIT CHARGES

PARAMETERS	UNIT RATE
Benzene	\$255.33 per pound
Chloroform	\$45.42 per pound
Dichloroethylenes	\$277.42 per pound
Toluene	\$12.28 per pound
Trichloroethanes	\$57.69 per pound
Trichloroethylene	\$73.65 per pound
Vinyl Chloride	\$36.83 per pound
Monochlorotoluenes	\$2.46 per pound
Tetrachloroethylene	\$34.37 per pound
Total Phenols	\$5.60 per pound

3. BILLING.

SIU charges shall be billed on a monthly basis by the water board. The first and second monthly billings in each quarter shall be estimated and shall be one-third (1/3) of the total billing in the immediately preceding quarter. The third monthly bill in each quarter shall be based upon actual discharge quantities for that quarter and shall reflect adjustments for the estimated billings in that quarter.

(r) Unless the context specifically indicates otherwise, all terms contained herein shall have the meanings set forth in the regulations adopted by the water board 21 N.Y.C.R.R. Part 1950 and 1960, as applicable.

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 December 28, 2004.

Text of rule and any required statements and analyses may be obtained from: Charles Martorana, c/o Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 566-1512, e-mail: cmartorana@hiscockbarclay.com

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 ADOPTION

Transfer of Certain Cable Franchises by KEP, LLC d/b/a Alfred Cable Systems

I.D. No. PSC-23-04-00007-A
Filing date: Sept. 29, 2004
Effective date: Sept. 29, 2004

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

Action taken: The commission, on Aug. 25, 2004, adopted an order in Case 04-V-0614 authorizing the transfer of certain cable system facilities from KEP, LLC d/b/a Alfred Cable Systems (Alfred Cable) to Time Warner Entertainment-Advance/Newhouse Partnership (TWEAN).

Statutory authority: Public Service Law, section 22

Subject: Transfer of cable system facilities.

Purpose: To allow TWEAN to acquire certain cable system facilities from Alfred Cable.

Substance of final rule: The Commission approved the transfer of certain cable television system assets and franchises owned by KEP, LLC d/b/a Alfred Cable Systems to Time Warner Entertainment-Advance/Newhouse Partnership, 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-V-0614SA1)

NOTICE OF ADOPTION

Petition for Rehearing by Nucor Steel Auburn, Inc.

I.D. No. PSC-25-04-00013-A
Filing date: Oct. 1, 2004
Effective date: Oct. 1, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 03-E-1306 denying Nucor Steel Auburn, Inc.'s (Nucor) petition for rehearing and directing New York State Electric & Gas Corporation (NYSEG) to adjust bills for electric service to Nucor.

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

Subject: Rehearing and clarification of the commission's April 19, 2004 order.

Purpose: To modify NYSEG's billing adjustment calculation methods and resolve billing disputes.

Substance of final rule: The Commission denied the petition by Nucor Steel Auburn, Inc. for rehearing of the Commission's April 19, 2004 Order regarding New York State Electric & Gas Corporation's (NYSEG) bill adjustment calculation methods and directed NYSEG to adjust bills for electric service to Nucor Steel Auburn, Inc., subject to the terms conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1306SA2)

NOTICE OF ADOPTION

Petitions for Rehearing by Corning Incorporated

I.D. No. PSC-25-04-00014-A
Filing date: Oct. 1, 2004
Effective date: Oct. 1, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 03-E-1307 approving in part the petition of Corning Incorporated (Corning) for clarification and directing New York State Electric & Gas Corporation (NYSEG) to adjust bills for electric service to Corning.

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

Subject: Rehearing and clarification of the commission's April 19, 2004 order.

Purpose: To modify NYSEG's billing adjustment calculation methods and resolve billing disputes.

Substance of final rule: The Commission granted in part Corning Incorporated's (Corning) petition for clarification of the Commission's April 19, 2004 Order regarding New York State Electric & Gas Corporation's (NYSEG) bill adjustment calculation methods and directed NYSEG to adjust bills for electric service to Corning.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1307SA2)

NOTICE OF ADOPTION

Submetering of Electricity by AMPS, Inc.

I.D. No. PSC-25-04-00016-A
Filing date: Sept. 29, 2004
Effective date: Sept. 29, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-E-0657 approving the petition of Kent Waterfronts, LLC, to submeter electricity at the Schaefer Landing Project at 440, 444 and 450 Kent Avenue, Brooklyn, New York.

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

Subject: Request to submeter electricity.

Purpose: To allow the submetering of electricity to three residential buildings.

Substance of final rule: The Commission authorized Kent Waterfronts, LLC to submeter electricity at the Schaefer Landing North Tower at 440 Kent Avenue, Schaefer Landing South Tower at 444 Kent Avenue and Schaefer Landing East Tower at 450 Kent Avenue, Brooklyn, 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-0657SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Aquarion Water Company of Sea Cliff

I.D. No. PSC-31-04-00028-A

Filing date: Sept. 29, 2004

Effective date: Sept. 29, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 02-W-1564 approving revisions to Aquarion Water Company of Sea Cliff's (Sea Cliff) tariff schedule, P.S.C. No. 3—Water.

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

Subject: Second rate year compliance filing by Sea Cliff.

Purpose: To increase annual water revenues.

Substance of final rule: The Commission approved the second rate year compliance filing by Aquarion Water Company of Sea Cliff (Sea Cliff) authorizing an increase in Sea Cliff's revenues by \$138,586 or 5.5%, to become effective on October 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. (02-W-1564SA2)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Federal Tax Refunds by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

I.D. No. PSC-42-04-00020-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, petitions filed by Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) regarding the disposition of Federal tax refunds realized by the companies and incremental to their existing rate plans.

Statutory authority: Public Service Law, sections 65, 66 and 113(2)

Subject: Disposition of Federal tax refunds.

Purpose: To consider petitions of Con Edison and O&R for disposition of Federal tax refunds realized by the companies and incremental to their existing rate plans.

Public hearing(s) will be held at: 10:00 a.m., Nov. 16, 2004 at Department of Public Service, Three Empire Plaza, Albany, NY.

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

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

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant, modify or deny, in whole or in part, petitions filed by Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) regarding the disposition of federal tax refunds realized by the Companies and incremental to their existing rate plans. The issues that will be considered include whether to distribute the monetary benefit of the federal tax refunds, in whole or in part, to customers of Con Edison and O&R.

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

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

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

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

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

(04-M-0026SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

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

I.D. No. PSC-42-04-00022-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 the petition of Central Hudson Gas & Electric Corporation, pursuant to Public Service Law, section 113(2), of a proposed allocation of an approximately \$6,513,984 refund from the New York State Department of Taxation and Finance.

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

Subject: Disposition of the State tax refund.

Purpose: To determine whether or not such State tax refund should be passed on, in whole or in part, to customers.

Public hearing(s) will be held at: 10:00 a.m., Nov. 8, 2004 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

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

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

Substance of proposed rule: The Commission is considering the petition of Central Hudson Gas & Electric Corporation of a proposed allocation of an approximately \$6,513,984 refund from the New York State Department of Taxation and Finance. The company is requesting to retain twenty-five percent of the refund for the benefit of shareholders with the remaining balance being deferred for customer use. The Commission may approve, modify, or reject, in whole or in part the request of the Central Hudson Gas & Electric Corporation.

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

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

Public comment will be received until: five days after the last scheduled public hearing.

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-M-0612SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing by Glenn Gardens Tenants' Association

I.D. No. PSC-42-04-00011-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 approve or reject, in whole or in part, the petition for rehearing by Glenn Gardens Tenants' Association (GGTA) seeking reversal of the order issued on Feb. 18, 2004 (order) allowing the submetering of electricity at 175 W. 87th St., New York, NY (Glenn Gardens) and refund monies paid by tenants for electric service measured by submeters prior to the commission's order approving submetering at Glenn Gardens.

Statutory authority: Public Service Law, sections 2, 4(1), 5, 22, 43, 53, 65 and 66

Subject: Petition for rehearing.

Purpose: To reverse the order allowing submetering of electricity.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition for rehearing by Glenn Gardens Tenants' Association (GGTA) seeking reversal of the order issued on February 18, 2004 (Order) allowing the submetering of electricity at 175 West 87th Street, New York, NY (Glenn Gardens) and to refund monies paid by tenants for electric service measured by submeters prior to the Commission's Order approving submetering at Glenn Gardens.

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

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

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

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

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

(03-E-1425SA3)

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

Interconnection of the Networks between Sprint Communications Company, L.P. and Berkshire Telephone Corporation

I.D. No. PSC-42-04-00012-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 Sprint Communications Company, L.P. and Berkshire Telephone Corporation for approval of an interconnection agreement executed on Sept. 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: Sprint Communications Company, L.P. and Berkshire Telephone Corporation have reached a negotiated agreement whereby Sprint Communications Company, L.P. and Berkshire Telephone Corporation 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 for the term of an underlying agreement.

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

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

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

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

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

(04-C-1076SA1)

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

Interconnection of the Networks between Sprint Communications Company, L.P. and Taconic Telephone Company

I.D. No. PSC-42-04-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Sprint Communications Company L.P. and Taconic Telephone Company for approval of an interconnection agreement executed on Sept. 9, 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: Sprint Communications Company L.P. and Taconic Telephone Company have reached a negotiated agreement whereby Sprint Communications Company L.P. and Taconic Telephone Company 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 September 9, 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. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-C-1099SA1)

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

Interconnection of the Networks between Sprint Communications Company L.P. and Delhi Telephone Company

I.D. No. PSC-42-04-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Sprint Communications Company L.P. and Delhi Telephone Company for approval of an interconnection agreement executed on Sept. 10, 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: Sprint Communications Company L.P. and Delhi Telephone Company have reached a negotiated agreement whereby Sprint Communications Company L.P. and Delhi Telephone Company 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 September 10, 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. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-C-1103SA1)

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

Interconnection of the Networks between Frontier Telephone of Rochester, Inc. and Frontier Communications of America, Inc.

I.D. No. PSC-42-04-00015-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 whether to approve or reject, in whole or in part, a proposal filed by Frontier Telephone of Rochester, Inc. and Frontier Communications of America, Inc. for approval of an interconnection agreement executed on June 29, 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: Frontier Telephone of Rochester, Inc. and Frontier Communications of America, Inc. have reached a negotiated agreement whereby Frontier Telephone of Rochester, Inc. and Frontier Communications of America, Inc. 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 29, 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. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-C-1133SA1)

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

Interconnection of the Networks between Sprint Communications Company L.P. and Middleburgh Telephone Company

I.D. No. PSC-42-04-00016-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 Sprint Communications Company L.P. and Middleburgh Telephone Company for approval of an interconnection agreement executed on Sept. 20, 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: Sprint Communications Company L.P. and Middleburgh Telephone Company have reached a negotiated agreement whereby Sprint Communications Company L.P. and Middleburgh Telephone Company 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 29, 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. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-C-1140SA1)

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

Interconnection of the Networks between Sprint Communications Company L.P. and Crown Point Telephone Corporation

I.D. No. PSC-42-04-00017-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 whether to approve or reject, in whole or in part, a proposal filed by Sprint Communications Company L.P. and Crown Point Telephone Corporation for approval of an interconnection agreement executed on Sept. 20, 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: Sprint Communications Company L.P. and Crown Point Telephone Corporation have reached a negotiated agreement whereby Sprint Communications Company L.P. and Crown Point Telephone Corporation 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 September 20, 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. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-C-1141SA1)

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

Interruptible and Temperature Controlled Transportation Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-42-04-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: Service Classification No. 7—interruptible transportation service and Service Classification No. 13—temperature-controlled transportation service.

Purpose: To revise the calculation of the penalty charge assessed for unauthorized use and implement a procedure outlining the course of action to be taken whenever a customer fails twice, during a winter period, to switch to their alternative fuel as directed by the company.

Substance of proposed rule: KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island proposes to revise its S.C. No. 7 – Interruptible Transportation Service and S.C. No. 13 – Temperature-Controlled Transportation Service by 1) making a change in the calculation of the penalty charge assessed for unauthorized use and 2) implementing a procedure outlining the course of action to be taken whenever a customer fails twice during a winter period to switch to their alternative fuel as directed by the company. The company is making this filing to ensure operational compliance by all customers electing service under a dual fuel tariff.

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

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

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

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

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

(04-G-0944SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendment to Waiver by Central Hudson Gas & Electric Corporation

I.D. No. PSC-42-04-00019-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 by Central Hudson Gas & Electric Corporation (Central Hudson) to amend the terms of a previously granted waiver of certain requirements of the commission's rules and regulations, 16 NYCRR Part 255 - Transmission and Distribution of Gas.

Statutory authority: Public Service Law, section 66(2)

Subject: Waiver of design pressure of plastic pipe.

Purpose: To allow the use of mechanical fittings in place of heat fusions.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson) seeks an amendment of its existing waiver of the requirements of 16 NYCRR 255.123(a) which prescribes requirements for design pressure of plastic pipe used in natural gas distribution systems. The current waiver allows the company to design plastic pipe for operation up to 120 psig, but stipulates that only heat-fused connections may be used.

The intent of the waiver is to allow use of mechanical fittings in place of heat fusions. Certain mechanical fittings have been authorized for use in plastic pipe designs up to 124 psig in other New York State natural gas distribution systems. Central Hudson is also requesting permission to utilize these approved fittings. Central Hudson claims that the use of this technology would be considered an alternate method of installation and could, in some cases, provide a safer working environment and cost effective option. The Commission may approve, reject or modify, in whole or in part, the petition of Central Hudson.

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

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

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

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

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

(04-G-1079SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

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

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedules, P.S.C. Nos. 207 and 214—Electricity to become effective Jan. 1, 2005.

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

Subject: Distribution delivery and competitive transition charge adjustments.

Purpose: To revise the competitive transition charges in retail delivery rates to reflect forecast market prices.

Substance of proposed rule: On October 1, 2004, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff revisions to Schedules P.S.C. Nos. 207 and 214 – Electricity to become effective January 1, 2005. In compliance with the Commission's Opinion No. 01-6, Opinion and Order authorizing Merger and Adopting Rate Plan, issued and effective December 3, 2001, Niagara Mohawk Proposes to revise its Distribution Delivery and Competitive Transition Charge (CTC) rates to reflect the proper recovery of revenues associated with these two pricing components for calendar year 2005. The changes to the Distribution Delivery and the CTC rates are revenue neutral on a company-wide basis. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk'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: Jaelyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(01-M-0075SA23)