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

EMERGENCY RULE MAKING

Farm Wineries

I.D. No. AAM-47-05-00001-E
Filing No. 1321
Filing date: Nov. 4, 2005
Effective date: Nov. 4, 2005

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

Action taken: Addition of Part 197 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 18(6); and Alcoholic Beverage Control Law, section 76-a(5)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this emergency rule is necessary for the preservation of the general welfare due to the adverse weather conditions during the grape growing season that have destroyed no less than forty percent of certain grape varietals grown or produced in New York State. Pursuant to subdivision 42 of section 16 of the Agriculture and Markets Law and subdivision 5 of section 76-a of the Alcoholic Beverage Control Law, as amended by L. 2005, ch. 286, under such circumstances, the Commissioner of Agriculture and Markets, in consultation with the Chairman of the State Liquor Authority, may give authorization to a duly licensed farm winery to manufacture or sell wine produced from grapes grown outside New York State. Said Laws further provide that no such authorization shall be granted to a farm winery licensee unless such licensee certifies to the commissioner the quantity of New York grown grapes unavailable to the licensee due to natural disaster, act of God or continuing adverse weather conditions and satisfies the Commissioner that reasonable efforts were made to obtain grapes from a New York State source for wine making purposes.

This rule establishes the form by which farm wineries may make the certification required by the new Laws and submit an application to the commissioner for authorization to manufacture or sell wine produced from grapes grown outside the State.

In light of the destruction of no less than forty percent of certain New York grape varietals during this growing season, it is imperative that farm wineries are able to immediately submit the certifications and applications necessary to obtain the authorization they must have in order to manufacture or sell wine from grapes grown outside New York State. The adoption of the emergency rule establishing the form for such certification and application will make this possible.

Subject: Farm wineries.

Purpose: To establish a form for farm wineries to use to make certifications and submit applications to the commissioner for authorization to manufacture or sell wine produced from grapes grown outside New York State.

Text of emergency rule: Part 197 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is added to read as follows:

PART 197

FARM WINERY CERTIFICATION AND APPLICATION FOR AUTHORIZATION TO MANUFACTURE OR SELL WINE PRODUCED FROM GRAPES GROWN OUTSIDE NEW YORK STATE

§ 197.1 Form for certification and application. Applications by farm wineries, pursuant to subdivision 42 of section 16 of the Agriculture and Markets Law and subdivision 5 of section 76-a of the Alcoholic Beverage Control Law for authorization to manufacture or sell wine produced from grapes grown outside New York State; and certifications as to the quantity of New York grown grapes unavailable due to natural disaster, act of God or continuing adverse weather condition shall be made using the following form: See Appendix.

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 February 1, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: William Kimball, Director Agricultural Protection and Development, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-7076

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Labeling Requirements and Hazardous Analysis and Critical Control Point (HACCP) Plan for Juices

I.D. No. AAM-47-05-00003-P

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

Proposed action: This is a consensus rule making to add Part 280 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 214-b

Subject: Labeling requirements and Hazardous Analysis and Critical Control Point (HACCP) plan for juices.

Purpose: To label certain juices which may contain harmful bacteria with a warning statement.

Text of proposed rule: A new Part 280 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is adopted to read as follows:

PART 280

Labeling Requirements and Hazard Analysis and Critical Control Point (HACCP) Plan for Juices

Section 280.1 Labeling Requirements and Hazard Analysis and Critical Control Point (HACCP) Plan for Juices.

(a) For purposes of the enforcement of article 17 of the Agriculture and Markets Law, and except where in conflict with the statutes of this State or with the rules and regulations promulgated by the commissioner, the commissioner hereby adopts the current Federal regulations as they appear in title 21 of the Code of Federal Regulations (revised as of April 1, 2005; U.S. Government Printing Office, Washington DC 20402), in the area of labeling and processing juices as follows:

(1) Subdivision (g) of section 101.17 of title 21 of the Code of Federal Regulations, entitled Food labeling warning, notice, and safe handling statements, at pages 73-74.

(2) Part 120 of title 21 of the Code of Federal Regulations, entitled Hazard Analysis and Critical Control Point (HACCP) Systems, at pages 265-275.

(b) Copies of these regulations, as published in title 21 of the Code of Federal Regulations, are maintained in a file at the Department of Agriculture and Markets, Division of Food Safety and Inspection, 10-B Airline Drive, Albany, New York 12235, and are available for public inspection and copying during regular business hours.

Text of proposed rule and any required statements and analyses may be obtained from: J. Joseph Corby, Director, Division of Food Safety and Inspection, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-4492

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

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

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

Consensus Rule Making Determination

The Department has considered the proposed addition of Part 280 of 1 NYCRR and has determined that no person is likely to object to the rule as written.

The proposed addition of Part 280 of 1 NYCRR would incorporate by reference, the Federal regulation at subdivision (g) of section 101.17 of Title 21 of the Code of Federal Regulations (21 CFR), relating to the labeling of certain juices. Section 101.17(g) of 21 CFR provides that the manufacturer of juices which have not been specifically processed to prevent, reduce or eliminate the presence of pathogens shall label their juices with the following warning statement: "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

The proposal would also incorporate by reference, Part 120 of 21 CFR, relating to requirements for a hazard analysis critical control point (HACCP) plan for juices. Part 120 of 21 CFR provides that a processor of juices shall develop a written hazard analysis to determine whether there are food hazards which are reasonably likely to occur for each type of juice processed by that processor and to identify control measures that the processor can apply to control those hazards. Part 120 also provides that whenever this analysis indicates one or more food safety hazards, a processor shall have and implement a written HACCP plan, which lists the food safety hazards, the point or step in the food process (critical control point) at which a control can be applied by the processor to prevent, eliminate or reduce to acceptable levels, the chance of a food safety hazard and a list of procedures to monitor those critical control points to ensure that the juices being produced are safe and wholesome for consumption.

Juices that have been improperly or inadequately processed may be a source of pathogens, such as *E. coli*. According to data from the New York State Department of Health, food-borne illness stemming from the consumption of contaminated juice or juice which had been improperly or inadequately processed was blamed for 213 illnesses last year. These illnesses were traced back to a cider manufacturer which had not implemented a juice HACCP plan.

There are approximately 415 juice manufacturers in New York State that would be affected by this rule. However, the rule would not impose any additional regulatory burden on these manufacturers, since they are already required to comply with the Federal regulations which are being incorporated by reference. Juice manufacturers and consumers alike would benefit by the rule, in that the rule would help prevent the introduction of natural toxins, chemical or biological contamination, unlawful pesticide residues or parasites in their food processing procedure, thereby better ensuring a safer and more wholesome food product. Consumers would also benefit by the labeling requirement, which would enable them to make informed decisions when deciding whether to purchase a juice which has not been specifically processed to prevent, reduce or eliminate the presence of pathogens.

Accordingly, since regulated parties and consumers would benefit by the rule and since regulated parties are already required to comply with the Federal regulations which are being incorporated by reference, it is unlikely that anyone will object to this rule as written.

Job Impact Statement

The proposed addition of Part 280 of 1 NYCRR would incorporate by reference, Federal regulations at section 101.17(g) of Title 21 of the Code of Federal Regulations (21 CFR), relating to labeling requirements for certain juices, and in Part 120 of 21 CFR, relating to requirements for a hazard analysis critical control point (HACCP) plan for juices. The rule would not have a substantial adverse impact on jobs and employment opportunities. The rule would not impose any additional regulatory burden on regulated parties, since they are already required to comply with the Federal regulations which are being incorporated by reference. In addition, the rule would help ensure a safer and more wholesome food product, thereby benefiting the State's juice manufacturing industry as a whole.

Banking Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Allowable Investments by Banks and Trust Companies

I.D. No. BNK-47-05-00004-P

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

Proposed action: This is a consensus rule making to add section 31.13 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1)(d) and 97(5)

Subject: Allowable investments by banks and trust companies not otherwise specifically authorized by the Banking Law.

Purpose: To permit banks and trust companies to make purchases of the stock of Atlantic Central Bankers Bank.

Text of proposed rule: It is proposed to add a new Section 13 to Part 31 of the General Regulations of the Banking Board, Title 3 NYCRR, to read as follows:

Part 31 (Investments of Banks or Trust Companies in Certain Corporations)

* * * *

§ 31.13. Atlantic Central Bankers Bank.

Any bank or trust company is permitted to make an investment in the common stock of the Atlantic Central Bankers Bank not to exceed the

minimum number of shares of such stock required to become a member of such bankers' bank and thereafter may increase such investment upon the written approval of the Superintendent, provided that such approval shall be given only upon a finding that such investment is consistent with the declaration of policy set forth in section 10 of the Banking Law. In no instance shall the aggregate investment by any bank or trust company in the Atlantic Central Bankers Bank exceed 10 percent of the bank or trust company's capital stock, surplus fund and undivided profits, or exceed 5 percent of any class of voting securities of such bankers' bank.

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

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

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

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

Consensus Rule Making Determination

The proposed rule making enables state chartered banks and trust companies to make a stock membership investment in the Atlantic Central Bankers Bank (ACBB) without the approval of the Banking Board. ACBB is a bankers' bank. Bankers' banks provide services to other banks, such as, cash management services, credit card programs, federal funds transactions, international/correspondent banking services, loan services to officers and directors, marketing support services, investment securities services, compliance and auditing consulting, electronic and internet services and core processing services. The member or investing banks in bankers' banks are predominantly community banks. The services provided by bankers banks enable community banks to engage in business operations and offer financial products to their customers that would not be otherwise cost effective, or even supportable, if a community bank attempted to do so directly. Bankers' banks operate essentially as any other bank except their "customers" are other banks. Such banks are insured by the Federal Deposit Insurance Corporation (FDIC). These types of memberships or investments, then, from a regulatory and supervisory perspective are non-controversial.

The rule making is made necessary by the absent of any statutory authority in Article III of the Banking Law that would enable banks and trust companies to specifically make such investments. Consequently, section 97.5 of the Banking Law must be relied upon to enable banks and trust companies to do so. Section 97.5 enables banks and trust companies to make stock investments in "any other corporation as may be specifically authorized by the laws of this state or by resolution of the banking board..." Though section 97.4-b of the Banking provides a general authorization for banks and trust companies to make investments in the common and preferred stock of any domestic corporation, a long-standing FDIC rule generally prohibits any state chartered banks from further investment in corporate stocks. (National banks never had such authority.) Thus, such investments are possible only if the Banking Board authorizes a specific bank or trust company to make an investment in a specific corporation or adopts a rule which permits any bank or trust company to make such an investment in a specific corporation.

Finally, it is noted that federal banks and thrifts have express authority under the United States Banking Code (12 USC) to make such investments, and state chartered thrifts and credit union have other statutory authority under the Banking Law that enables them to make similar investments, not necessitating such a rule making.

Job Impact Statement

The amendment adding a new section 31.13 permitting banks and trust companies to make a membership investment in the stock of Atlantic Central Bankers Bank will permit such banks and trust companies, especially community banks, to offer financial services products and conduct business operations which they might otherwise not be able to do. If they did not have the capability to offer such services, the banks would be in a less competitive position compared to large regional, national and possibly international banks that may be competing for the same customer basis. Presumably such non-community banks can offer more diversified services and at a cheaper per unit cost than their community bank counterparts.

If such banks cannot compete effectively with their larger bank counterparts, they are potentially susceptible to takeovers by mergers or purchase of assets by other banks. In addition to the lost of management and rank-and-file jobs through consolidation of positions and facilities that such takeovers inevitably lead to, the removal of banking facilities from communities and areas within communities can lead to economic stagnation and potential loss of employment by other businesses in the affected areas as they may not be able to obtain necessary credit and other banking products to finance and also expand business operations.

Thus, authorizing banks and trust companies to invest in bankers' bank may well serve to sustain employment broadly in those communities and areas served by community banks.

Department of Civil Service

ERRATUM

A Notice of Proposed Rule Making, I.D. No. CVS-44-05-00003-P, pertaining to Jurisdictional Classification printed in the November 2, 2005 issue of the *State Register* contained an error in the text. The corrected text follows:

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by decreasing the number of positions of AIDS Program Representative 1 from 67 to 27 and AIDS Program Representative 2 from 18 to 5.

The Department of State apologizes for any confusion this may have caused.

Education Department

NOTICE OF ADOPTION

Monetary Assessments of Schools

I.D. No. EDU-33-05-00014-A
Filing No. 1330
Filing date: Nov. 8, 2005
Effective date: Nov. 24, 2005

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

Action taken: Amendment of sections 126.10(j)(2)(i)(*a*), (11) and 126.17(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 5001(1), (4)(e) and (f) and (9); and 5007(10) and (12)

Subject: Monetary assessments of licensed private schools, registered business schools/computer training facilities and for-profit English as a Second Language (ESL) schools.

Purpose: To clarify the requirements for the tuition reimbursement account and the proprietary vocational school supervision account.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-05-00014-P, Issue of August 17, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Evaluation of a Prior Disciplinary History

I.D. No. EDU-33-05-00015-A

Filing No. 1329

Filing date: Nov. 8, 2005

Effective date: Nov. 24, 2005

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

Action taken: Amendment of section 24.6 and Part 28 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6504 (not subdivided); 6506(1), (6)(h) and (10); and 6507(5)

Subject: Procedures for the evaluation of a prior disciplinary history for authorization to practice a licensed profession.

Purpose: To establish procedures for the State Education Department's evaluation of an applicant's prior disciplinary history in another jurisdiction to determine whether the applicant is qualified to practice a licensed profession in New York State under title VIII of the Education Law.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-05-00015-P, Issue of August 17, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Duties and Responsibilities of the Chief of Staff and Counsel

I.D. No. EDU-36-05-00013-A

Filing No. 1328

Filing date: Nov. 8, 2005

Effective date: Nov. 24, 2005

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

Action taken: Amendment of sections 3.8 and 3.9 of Title 8 NYCRR.

Statutory authority: Education Law, section 101 (not subdivided)

Subject: Duties and responsibilities of the chief of staff and counsel of the State Education Department.

Purpose: To repeal provisions relating to the chief of staff; and designate the counsel as the deputy commissioner of education as specified in Education Law, section 101, who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties of the commissioner.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-36-05-00013-P, Issue of September 7, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Migratory Game Bird Hunting Regulations for the 2005-2006 Season

I.D. No. ENV-38-05-00002-A
Filing No. 1331
Filing date: Nov. 8, 2005
Effective date: Nov. 23, 2005

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

Action taken: Amendment of sections 2.25 and 2.30 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0307, 11-0903, 11-0905, 11-0909 and 11-0917

Subject: Migratory game bird hunting regulations for the 2005-2006 season.

Purpose: To adjust State migratory bird hunting regulations to conform with Federal regulations.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ENV-38-05-00002-EP, Issue of September 21, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Bryan L. Swift, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8919, e-mail: blswift@gw.dec.state.ny.us

Additional matter required by statute: State Environmental Quality Review Act (SEQR; ECL Article 8). Establishment of hunting regulations is addressed by a Final Programmatic Impact Statement (FPIS) on wildlife game species management (DEC 1980) and Supplemental Findings (DEC 1994), and by a Federal EIS on issuance of annual regulations permitting the sport hunting of migratory birds (USFWS 1988). The proposed action does not involve any significant departure from established and accepted practices as described in the FPIS, and is therefore classified as a "Type II" action pursuant to DEC's SEQR regulations (6 NYCRR § 618.2[d][5]).

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Part-Time Clinics

I.D. No. HLT-32-04-00007-A
Filing No. 1327
Filing date: Nov. 8, 2005
Effective date: Nov. 23, 2005

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

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

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

Subject: Part-time clinics.

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

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-32-04-00007-P, Issue of August 11, 2004.

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

Text of rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415,

Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Assessment of Public Comment

Comment:

The Department received two comments on the proposed rule. The first commenter contended that the rules do not establish a transition period for operators of part-time clinics to close non-compliant clinics or, alternatively, to file a Certificate of Need (CON) application to convert the sites into extension clinics.

A second comment opposed the provision in the proposed 703.6(f) which restricts part-time clinics to no more than 20 percent of an operator's total volume of outpatient services visits.

Response:

The Department responds that the absence of a provision for a transition period for the closure of non-compliant clinics or for the filing of a CON application for conversion to an extension clinic does not preclude the granting of such a transition interval by the Commissioner under the waiver provisions of the proposed rule. In addition, most of the provisions of the regulation have already been in effect on an emergency basis for a period of time sufficient to allow an orderly transition; and the new provision relating to the 20 percent cap on part-time clinic visits specifically provides for a 90 day transition period. Similarly, the 20 percent cap on part-time clinic visits as a portion of an operator's total outpatient visits is eligible for waiver by the Commissioner. Furthermore, the disapproval of any waiver request submitted in accordance with the proposed rule, which results in a disapproval of the application, may be appealed under the appeal provisions of PHL Section 2802.

Based on the above responses, the Department believes that no changes in the proposed rule are necessary.

NOTICE OF ADOPTION

Water Well Construction

I.D. No. HLT-33-04-00004-A
Filing No. 1333
Filing date: Nov. 8, 2005
Effective date: Nov. 23, 2005

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

Action taken: Amendment of Subparts 5-1 and 5-2; repeal of Appendix 5-B and addition of new Appendixes 5-B and 5-D to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206(18), 225 and 1120

Subject: Water well construction.

Purpose: To establish standards for water well construction.

Substance of final rule: The regulation contains the following provisions:

Appendix 5-B applies to water supply wells used for drinking, culinary, and/or food processing purposes. Appendix 5-D specifies additional requirements that need to be met for certain water supply wells that serve a public water system as defined in Chapter 1, Subpart 5-1 of the State Sanitary Code.

Appendix 5-B establishes the minimum standards for construction, renovation, development and abandonment of such water supply wells; Appendix 5-D augments these for wells serving public water systems.

Defines acceptable water supply well drilling methods which include cable-tool drilling, percussion drilling, rotary drilling, jet drilling, sonic drilling, driving water supply well casing, and boring with earth augers to obtain ground water.

Requires proper well location and protection and provides required minimum separation distances to protect water supply wells from contamination.

Establishes specific requirements for casing and grouting of water supply wells.

Requires a well yield test to provide evidence that a particular well will produce a sustained flow for a specified period of time.

Requires proper selection of pumps and appurtenances and proper installation, repair and maintenance of water supply well pumps.

Establishes standards for proper decommissioning (abandonment) of any water supply well.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendixes 5-B and 5-D as follows: 5-B.3(b)(7), 5-B.4(a), (b), (c), 5-B.5(c), (i), 5-B Table 1, 5-D.2(b), 5-D.4(a), (e), 5-D Tables 1 and 2 and 5-D.4 preamble.

Revised rule making(s) were previously published in the State Register on July 13, 2005.

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: regsqna@health.state.ny.us

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

Although the regulation has been changed since it was published in the *State Register* on July 13, 2005, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

The Department of Health mailed 600 copies of the revised rule to all registered well drillers, city/county health departments, individuals who commented on the original proposed rule, and other interested parties, and 390 copies of a notice of availability published in the July 13, 2005 issue of the *State Register* to interested parties. In response to these mailings, the Department received 119 letters of comment from registered well drillers and pump installers, home construction contractors, geologists, county health department officials, elected state and local officials, the NYS Farm Bureau and the Long Island Water Conference (LIWC). Of these submittals, 82 were form letters from registered well drillers and home construction contractors. Five letters from state legislators forwarded the drillers' form letter comments. The following summarizes the comments and the Department's response in order of the sections of the rule.

Section 5-B.1, Applicability and Definitions

Comment:

Some well drillers, county health departments, and one home builder asked that provision be allowed for minor deviations without the issuance of a formal waiver.

Response:

No change. The rule accommodates some flexibility without the need for formal waiver.

Comment:

One county health department asked about the acceptability of wells on lots previously approved for development by the State or county health department and the acceptability of local health department requirements for individual water supply wells that may differ from Appendix 5-B.

Response:

No change needed. A provision was included in the revised rule that allows for installation of water wells in accordance with written approvals issued by health departments prior to December 1, 2005. Another provision allows well installation in accordance with a written approval granted by a county health department pursuant to a county sanitary code.

Section 5-B.2, Well Location and Separation Distances (Table 1)

Comment:

Many commenters asked for more flexibility to locate wells on smaller, tightly constrained lots, particularly for replacement wells on existing properties.

Response:

No change. New construction should meet all standards. In unusual situations or cases of undue hardship, or for non-conformances of replacement wells on existing lots, variance or waiver mechanisms are allowed as well as certain installation practices that comply with county sanitary codes.

Comment:

Several commenters noted that the requirement for increasing separation distances by 50% for wells with depths less than 50 feet may be impractical to implement.

Response:

No change. Plans for new construction should consider available information about potential ground water availability and should incorporate enhanced separation distances, where possible, if adequate water is only expected at a relatively shallow depth. Where this is not possible, the rule allows flexibility along with the use of additional measures to prevent contamination of the water supply. This flexibility does not require the need for formal approval unless the change deviates from a prior plan approval.

Comment:

A few commenters indicated that the terms "tillable fields" and manure piles were ambiguous. Commenters expressed concern that the "tillable field" ambiguity could cause larger lot sizes and unnecessary separation distances.

Response:

Agree. For clarity, the term "tillable fields" has been removed. The term manure piles also has been clarified to indicate that the separation distances apply to manure storage areas.

Comment:

The Farm Bureau asked for an exemption from separation distances for replacement wells on existing farms.

Response:

No change. Existing agricultural wells do not need to comply with these regulations. Wells used for non-potable agricultural purposes should be constructed in accordance with the requirements of the agencies that oversee such uses. Farmers (individuals who install wells for no compensation) are not subject to the requirements of the Water Well Drillers' Registration Law.

Comment:

The Farm Bureau requested that the rule require compensation of farmers where well siting separation distances are used by local agencies as a tool to prevent manure spreading on croplands that are near wells.

Response:

No change. The proposed rule is only applicable to the location of water wells at the time of construction and does not regulate existing or future agricultural activities.

Section 5-B.3, Well Construction

Comment:

One driller asked that Schedule 40 PVC be allowed for well casing and the LIWC asked that it be allowed where experience supports its adequacy for long-term use.

Response:

No change. The Department acknowledges that Schedule 40 PVC casing is widely used in Long Island and experience indicates its effectiveness as a casing material in the sand and gravel aquifers there. The Department has no objections to allowing this material based on issuance of a specific or general waiver pursuant to 10 NYCRR Part 75.

Section 5-B.4, Well Yield and Water Flow

Comment:

Eighty two well driller and home builder form letters requested that the proposed requirement for a 4 hour stabilized drawdown yield test recognize alternative test methods for residential home wells.

Response:

Agree. The revised rule recognized that certain scenarios justified the use of different testing methods to quantify sustainable yield and explicitly referenced two such examples for household wells. For the final rule, Section 5-B.4 was rearranged to clarify the minimum performance requirements that would apply to all yield tests, regardless of testing method, and to more clearly identify the conditions where the alternative, equivalent test methods may be used. This latter category explicitly includes wells with a design rate of less than 500 gallons per day, which includes most (*i.e.*, four plus bedroom) household wells.

Comment:

One driller asked that the rule specify who can perform water well yield tests.

Response:

No change. Registered water well contractors can perform yield tests. The Department considers licensed engineers and hydrogeologists also to be technically qualified to perform yield tests, and recognition of this has been made in the final rule. The Water Well Drillers Registration Law requires that any individual who performs for compensation yield tests that require opening the casing be registered with New York State Department of Environmental Conservation (DEC) as a water well contractor.

Section 5-B.5, Pump Requirements

Comment:

The drillers' form letter asked that language in the revised rule clarify where splicing plastic drop pipe is allowed.

Response:

Agree. The revised rule would have accommodated purposefully spliced connections that enable better long-term performance of the well pump system, though this was not clear. The final rule explicitly recognizes that these types of splices are acceptable and does so in a manner that will minimize the number of overall splices and prevent a patchwork of miscellaneous pipe pieces. More specifically, the final rule clarifies that plastic drop pipe may be spliced and properly rejoined to accommodate use of check valves and to deepen an existing well pump. The final rule also requires that drop pipe be installed in a manner that will withstand the normal working stresses developed in a well water system.

Comment:

The drillers' form letter asked that the requirement for disinfecting wells, pumping equipment, and building plumbing be clarified to explicitly include pump replacement.

Response:

Agree. Text in the rule has been clarified to indicate, consistent with the Water Well Drillers Registration Law, that any pump service that requires the opening of the well casing is subject to the disinfection requirement.

Comment:

The drillers' form letter asked that the rule include a requirement for annual disinfection of water wells.

Response:

No change. Annual well disinfection is not an appropriate item for inclusion in a statewide well driller requirement limited to the construction of water supply wells.

Appendix 5-D, Requirements for Public Water Supply (PWS) Wells

Comment:

LIWC asked that allowance be made for in-kind replacements of existing PWS wells in non-conforming circumstances. LIWC also commented that ownership of land at PWS wellheads is not always possible.

Response:

Agree. The revised rule allowed flexibility for such cases in Section 5-D.2 of the rule. This language has been further clarified to recognize the in-kind well replacement scenario as one that lends itself to flexibility on siting criteria. A sentence has also been included in the final rule that notes the types of data and information to be considered when evaluating the adequacy of protection from potential contaminant sources.

As with the revised rule, the final rule also allows flexibility on land ownership at PWS wellfields. Adequate ownership of land and control of activities in the immediate vicinity of PWS wellheads is necessary to ensure that access and space are available for well servicing and maintenance, that space is available for installation and protection of required facilities and appurtenances, and that sanitary protection is provided against practices and discharges that may adversely affect water facilities and/or water quality. Where ownership of land at a wellhead is not possible (for example, State parkland), legal long-term easements or deed restrictions should be used to allow for access, construction, maintenance and sanitary protection.

Comment:

The Farm Bureau asked that allowance be made to reduce the manure spreading separation distance for PWS wells to the reduced distance allowed for wells for residential homes.

Response:

PWS wells typically withdraw much more water than household wells and exert a correspondingly greater area of influence on an aquifer; hence no change was made with respect to manure spreading. For clarity the term "tillable field" was removed (similar to the revision made in Appendix 5-B). Past practices using similar Department requirements have not adversely impacted the agricultural community.

Comment:

LIWC asked that allowance be made for wellhead completion in properly constructed and protected subsurface vaults.

Response:

No change. Subpart 5-1 and Appendix 5-D allow deviations from established standards in unusual situations, provided public health is protected. Where the use of new watertight, monitored vaults is justified, local health departments may allow such via the plan approval process, along with whatever engineering controls and operational conditions are necessary to ensure proper sanitary protection.

Comment:

Geologists requested that a stabilized drawdown test not be required in addition to the constant rate test that DEC requires for all community water system wells.

Response: The final rule was clarified to recognize, consistent with Department practice, that constant rate tests are adequate to determine sustainable yield for sand and gravel wells but maintains a requirement that stabilized drawdown be achieved for rock well tests unless waived by the reviewing health department. When opting to forego a stabilized yield test for rock wells, the following factors should be considered: available yield demonstrated during the constant rate test relative to design rate, tendency of the test toward stabilization, rate of recovery following termination of pumping, local hydrogeologic experience, and availability of auxiliary source capacity.

Miscellaneous Comments

Comment:

Geologists asked that the rule recognize the role of hydrogeologists in yield testing.

Response:

Agree. The revised rule required certain activities but did not expressly identify any category of professionals that could be involved with water well yield testing; the involvement of registered well drillers is implicit in the context of the regulation and the Water Well Drillers Registration Law. The final rule includes language in the yield test sections of Appendix 5-B and Appendix 5-D that recognizes the potential involvement of hydrogeologists and experienced engineers in well yield testing.

Comment:

County health departments asked who will be responsible for enforcing the proposed individual water supply standards, under what situations enforcement would commence, what procedures would be followed, and who would issue variances/waivers from minimum separation distances. One geologist asked that enforcement provisions be included in the rule.

Response:

The DEC is the primary agency responsible for enforcement of these standards relative to water well drilling activities. Counties with programs for individual water supply permits or approvals may also be involved with enforcement. The Department will issue written guidance regarding implementation of the regulation and the roles and responsibilities of state, county and local agencies.

Comment:

The drillers' form letter stated that the rule making impact statements underestimated the potential cost impacts due to the proposed yield testing requirements.

Response:

The cost estimates were based upon discussions with drillers who offered the types of tests in the revised rule. The final rule accommodates, for household wells, the use of alternative yield tests that drillers indicate are less costly.

Comment:

Some geologists, engineering consultants and local health departments requested that water quality testing for individual water supplies be included in the regulation.

Response:

No change. The Well Drillers Registration Law did not specify water quality testing in the categories to be covered in the subject regulation.

NOTICE OF ADOPTION

Newborn Screening Panel

I.D. No. HLT-34-05-00001-A

Filing No. 1326

Filing date: Nov. 8, 2005

Effective date: Nov. 23, 2005

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

Action taken: Amendment of sections 69-1.1, 69-1.2 and 69-1.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

Subject: Newborn screening panel.

Purpose: To add 33 disorders to the newborn screening panel.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-34-05-00001-P, Issue of August 24, 2005.

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: regsqna@health.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Surrogate Decision-Makers

I.D. No. MRD-38-05-00010-A
Filing No. 1332
Filing date: Nov. 8, 2005
Effective date: Nov. 23, 2005

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

Action taken: Amendment of section 633.11 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Expansion of the list of surrogate decision-makers who are authorized to make informed consent decisions, when professional medical treatment is recommended for a person who lives in an OMRDD operated or certified residence and the person does not have the capacity to make the decision for himself or herself.

Purpose: To add actively involved siblings, actively involved family members and the Willowbrook Consumer Advisory Board to the existing list of surrogates authorized to make informed consent decisions.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-38-05-00010-P, Issue of September 21, 2005.

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

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

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

Assessment of Public Comment

OMRDD received comments from attorneys for the Willowbrook class members and five voluntary agencies. Three voluntary agency commentors were enthusiastically in favor of the revisions. Another voluntary commentor observed that the amendments would save valuable time and resources. The attorneys for the Willowbrook class member strongly supported the revisions.

One voluntary provider agreed that the additions to the list of surrogates were "very worthwhile." The provider also agreed with the inclusion of the Surrogate Decision Making Committee (SDMC) when others on the list are not "reasonably available." The same provider had several additional suggestions, with OMRDD's responses, as follows:

Comment: The commentor suggested the addition of non-related actively involved advocates.

Response: There is no legal basis or precedent for such an addition. However, advocates may testify at a hearing before a SDMC panel.

Comment: The commentor suggested that the definition of "actively involved" should include "ongoing involvement in the person's life."

Response: The regulatory language already includes this phrase.

Comment: The commentor suggested an addition to the definition of "sibling" to reference siblings by adoption.

Response: Siblings by adoption are already included. The definition of "sibling" is "one or more parties having at least one common parent." Since the definition of "parent" includes "legally adoptive mother or father" an adoptive sibling is clearly an authorized surrogate and no further language change is necessary.

Comment: The commentor advocates a change in the process established by the regulation so that when someone objects to proposed medical treatment, consent can be sought from the next party on the list. The regulations require that consent be sought from a court of competent jurisdiction in this situation.

Response: OMRDD disagrees. An authorized surrogate decision maker would be legally entitled to an opportunity to be heard regarding their objection to the proposed professional medical treatment.

Comment: The commentor supports application to court as a last resort.

Response: OMRDD agrees. This concept was already included in the proposed regulation.

Comment: The commentor proposes the use of a corporate committee of five with at least two of the members having a medical background for emergent or urgent situations, and also when no surrogate is available.

Response: Pursuant to 14 NYCRR Sec. 633.11(a)(1)(ii) and Public Health Law § 2504(4), informed consent is not required at all in an emergency situation. OMRDD does not support the use of corporate committees to provide informed consent for professional medical treatment. By adding Article 80 to the Mental Hygiene Law, the Legislature found and declared that the public interest would "be served by the establishment of a statewide quasi-judicial surrogate decision-making process, which would determine patient capacity to consent to or refuse medical treatment and assess whether the proposed treatment promotes the patient's best interests, consistent with the patient's values and preferences." OMRDD considers that the Legislature's intent would be undermined by the establishment of corporate committees for this purpose.

Comment: The commentor made recommendations regarding consent for research. The commentor suggests that no individual should be allowed to be a surrogate for any consumer for the purposes of research (including experimental treatments), and that a corporate committee be used.

Response: OMRDD observes that consent to research per se is not the subject of these regulations. OMRDD regulations in 14 NYCRR Sec. 633.13 include requirements related to research, including informed consent for research. This regulatory action does not change regulatory requirements for research.

To the extent that "professional medical treatment" is experimental in nature or includes treatment that is considered "research," OMRDD does not agree that a different process should be utilized for obtaining informed consent. OMRDD considers that individuals identified as surrogates in the regulation, such as parents and other family members, are the most appropriate people to make these informed consent decisions if the person does not have the capacity to make the decision for himself or herself.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deletion of Obsolete Cross References

I.D. No. MRD-47-05-00013-P

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

Proposed action: This is a consensus rule making to amend sections 602.1, 602.7, 603.1, 621.1, 624.1, 635-1.1, 635-10.1, 671.1, 671.2, 671.99, 679.3, 679.4, 686.1, 686.13, 690.5 and 690.6 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Deletion of obsolete cross references.

Purpose: To update regulations by removing obsolete cross references.

Text of proposed rule: Section 602.1 is amended as follows:

Applicability

[Notwithstanding sections 73.3 and 73.4 of this Title,] *T*[t]his Part shall apply [and be controlling] in the following appeal proceedings and requests for declaratory rulings brought by or before the Office of Mental Retardation and Developmental Disabilities pursuant to the Mental Hygiene Law and/or regulations issued pursuant thereto:

Section 602.7(a) is amended as follows:

(a) Applicability. In addition to section 602.2 of this Part, this section shall apply to hearings held pursuant to any law or regulation giving a right to a hearing before OMRDD to appeal audit findings except that this section shall not apply to audit hearings requested pursuant to section *681.14 or 690.7* [681.12 or 690.12] of this Title. Where a conflict exists between this section and section 602.2 of this Part, the provisions of this section shall be controlling.

Section 603.1 is amended as follows:

Applicability

This Part [supersedes Part 8 of this Title as it] relates to public access to records of the Office of Mental Retardation and Developmental Disabilities (hereinafter referred to as OMRDD) and its operated and/or certified facilities.

Section 621.1 is amended as follows:

Applicability

This Part shall apply to applicants (see glossary, section 621.17 of this Part) that propose to develop or finance community facilities (see glossary) for persons with mental retardation and/or developmental disabilities, based on expenditures for those costs as set forth herein. This Part [supersedes Part 101 of this Title as it] relates to community facilities subject to certification by the Office of Mental Retardation and Developmental Disabilities. In addition this part is applicable to those applicants that propose to develop or finance community facilities for persons with mental retardation and/or developmental disabilities which may be subject to certification or licensure by another appropriate New York State Agency.

Section 624.1(a) is amended as follows:

(a) This Part [supersedes Part 24 of 14 NYCRR as it] relates to services for persons (see glossary) with developmental disabilities (see glossary) and applies to persons receiving services in any facility (see glossary) operated or certified by the Office of Mental Retardation and Developmental Disabilities, hereinafter referred to as OMRDD.

Section 635-1.1 is amended by the deletion of subdivision (c). The remainder of the subdivision is renumbered accordingly.

Section 635-10.1(c) is amended as follows:

(c) In addition, all authorized HCBS waiver providers shall comply with the requirements of Parts 624[,] *and* 633 [and 636] of this Title.

Section 671.1(m) is amended as follows:

(m) Nothing herein shall be interpreted as precluding the applicability of Parts 604, 624, 633[,] *and* 635 [and 636] of this Title to each setting as specified pursuant to each Part. In the event that there is a conflict between the requirements contained herein and any other applicable law or regulation, the commissioner shall resolve issues relative to the conflicting requirements.

Section 671.2(c) is amended as follows:

(c) In addition, all authorized HCBS waiver community residential habilitation providers shall comply with the requirements of Part 624[,] *and* 633 [and 636] of this Title.

Section 671.99(v) is amended as follows:

(v) Services, plan of. A written person-oriented record system, by whatever name known, maintained in accordance with this Part, which documents the process of developing, implementing, coordinating, reviewing and modifying that plan. It is maintained as the functional record indicating current assessments, all planning activities as well as all services (i.e., activities, therapies and interventions), and interventions provided to the person. It contains, at a minimum, person specific identification data, health information, assessment information, service plans, a general description of activities, program planning recommendations and reports, expected outcomes, and staff action records. It constitutes the main portion of the clinical record or "record" as such terms are used in [Parts 636 and] *sections 33.13 and 33.16 of the Mental Hygiene Law and Part* 604 of this Title. The community residential habilitation services plan of service shall be incorporated into the annual case management plan which shall be considered functionally equivalent to the individualized service plan (ISP) as such term is used at section 635-10.4(b) of this Title.

Section 679.3(b) is amended as follows:

(b) The governing body shall be responsible for the operation of the clinic treatment facility according to the principles and standards established in this Part and other applicable rules, regulations and statutes. This includes, but is not limited to, Parts 620, 624, 633[,] *and* 635 [and 636] of this Title.

Section 679.4(g) is amended as follows:

(g) OMRDD shall verify that the facility has assigned a staff member to each person admitted for service, to perform the functions of treatment coordinator and who is the contact point for the person's [comprehensive Medicaid case manager] *service coordinator* (if applicable). The person's clinical record [(per Part 636 of this Title)] reflects the activities of this treatment coordination.

Section 686.1 is amended by the deletion of subdivisions (a), (b), (c) and (e). The remainder of the subdivision is renumbered accordingly.

Section 686.13(b)(ii) is amended as follows:

(ii) To be considered allowable, costs must be properly chargeable to necessary [client] care *for individuals* rendered in accordance with the requirements of *this section and sections 635.10-4 and 671.5* [Part 86] of this Title.

Section 690.5(a)(2) is amended as follows:

(2) The governing body shall be responsible for the operation of the day treatment facility according to the principles and standards established in this Part and other applicable rules, regulations, and statutes. This

includes, but is not limited to, Parts 620, 624, 633[,] and 635 [and 636] of this Title. Further it shall:

Section 690.5(b)(2)(xiii)(d) is amended as follows:

(d) maintaining the confidentiality of, and appropriate access to clinical records [consistent with the requirements of Part 636 of this Title];

Section 690.6(v) is amended as follows:

(v) OMRDD shall verify that[, consistent with Part 636 of this Title,] before releasing information to parties who are otherwise not authorized to receive it, the facility had obtained written consent from the person, except that the written consent may have been obtained from the parent or guardian when the following applies:

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.

Consensus Rule Making Determination

The primary purpose of the amendments is to delete or update obsolete cross references in OMRDD regulations. The referenced text has been repealed over time; however references to the same still appear in current regulations. Thus, OMRDD has determined due to the nature and purpose of the amendments that no person is likely to object to the rule as written.

Job Impact Statement

A JIS for these amendments was not submitted because it is apparent from the nature and purpose of the amendments that they will not have an impact on jobs and/or employment opportunities. The finding is based on the fact that the proposed rule making is the deletion or updating of obsolete cross references. The proposed revisions will not have any effect on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

New Types of Electricity Meters, Transformers and Ancillary Devices by NxtPhase Incorporated

I.D. No. PSC-29-04-00003-A
Filing date: Nov. 4, 2005
Effective date: Nov. 4, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 04-E-0763 approving the petition of NxtPhase Incorporated for approval of the NxtPhase NXCT, NXVT and NXVCT instrument transformer models.

Statutory authority: Public Service Law, section 67(1)

Subject: Petition for use of the NxtPhase instrument transformer models, NXCT, NXVT and NXVCT.

Purpose: To approve NxtPhase instrument transformer models.

Substance of final rule: The Commission approved the petition of NxtPhase Incorporated for use of the NxtPhase Instrument Transformers Models, NXCT, NXVT and NXVCT, for use in revenue metering and billing applications.

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-0763SA1)

NOTICE OF ADOPTION

New Types of Electricity Meters by Kuhlman Electric Corporation

I.D. No. PSC-25-05-00008-A
Filing date: Nov. 4, 2005
Effective date: Nov. 4, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-E-0373 approving the petition of Kuhlman Electric Corporation for approval of the Kuhlman current transformer type PH-982.

Statutory authority: Public Service Law, section 67(1)

Subject: Petition for use of the Kuhlman current transformer type PH-982.

Purpose: To approve Kuhlman Electric Corporation's petition.

Substance of final rule: The Commission approved the petition of Kuhlman Electric Corporation for the use of the Kuhlman Current Transformer Type PH-982 for use in metering applications.

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.

(05-E-0373SA1)

NOTICE OF ADOPTION

New Types of Water Meters and Auxiliary Devices by New York Water Service Corporation

I.D. No. PSC-25-05-00014-A
Filing date: Nov. 4, 2005
Effective date: Nov. 4, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-W-0335 approving the petition of New York Water Service Corporation for approval of the Mars MUN IV portable tester.

Statutory authority: Public Service Law, section 89(d)(1)

Subject: Petition for the use of the Mars MUN IV portable tester.

Purpose: To approve New York Water Service Corporation's petition.

Substance of final rule: The Commission approved the petition of New York Water Service Corporation for the use of the Mars MUN IV Portable Tester to field test revenue grade commercial type water meters greater than 2 inches in size.

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.

(05-W-0335SA1)

NOTICE OF ADOPTION

Applications for Certificate of Public Convenience and Necessity

I.D. No. PSC-27-05-00008-A
Filing date: Nov. 2, 2005
Effective date: Nov. 2, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-C-0730 concerning the procedure for obtaining a certificate of public convenience and necessity.

Statutory authority: Public Service Law, sections 91(1) and 99(1)

Subject: Certificate of public convenience and necessity (CPCN).

Purpose: To modify the process for obtaining a CPCN.

Substance of final rule: The Commission approved modifications to the procedure for obtaining a Certificate of Public Convenience and Necessity.

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.

(05-C-0730SA1)

NOTICE OF ADOPTION

Transfer of Certain Cable System Facilities between Adelphia Communications Corporation and Time Warner Cable Inc.

I.D. No. PSC-29-05-00026-A
Filing date: Nov. 7, 2005
Effective date: Nov. 7, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-V-0771 approving the joint petition of Time Warner Cable Inc. and Adelphia Communications Corporation for the transfer of certain assets.

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system facilities.

Purpose: To authorize Time Warner Cable Inc. to acquire certain cable system facilities currently owned and operated by Adelphia Communications Corporation.

Substance of final rule: The Commission approved the joint petition of Time Warner Cable Inc. (Time Warner) and Adelphia Communications Corporation (Adelphia) to transfer certain cable system facilities currently owned and operated by Adelphia to Time Warner, 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.

(05-V-0771SA1)

NOTICE OF ADOPTION

Transfer of Certain Cable System Facilities between Adelphia Communications Corporation and Comcast Corporation

I.D. No. PSC-29-05-00027-A
Filing date: Nov. 7, 2005
Effective date: Nov. 7, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-V-0747 approving the joint petition of Adelphia Communications Corporation (Adelphia), Comcast Corporation (Comcast) and Time Warner Cable Inc. to transfer certain assets.

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system facilities.

Purpose: To transfer certain cable television system facilities currently owned and operated by Adelphia to Comcast.

Substance of final rule: The Commission approved the joint petition of Time Warner Cable Inc., Adelphia Communications Corporation (Adelphia) and Comcast Corporation for the approval to transfer certain cable system facilities currently owned and operated by Adelphia to Comcast, 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.

(05-V-0747SA1)

NOTICE OF ADOPTION

Eligible Customer-Sited Tier Resources by the New York Farm Bureau

I.D. No. PSC-30-05-00010-A
Filing date: Nov. 2, 2005
Effective date: Nov. 2, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 03-E-0188 regarding New York Farm Bureau's request to include the technology of methane digestion systems in the category of renewable portfolio standard (RPS) customer-sited tier resources.

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

Subject: Eligible customer-sited tier resources regarding the retail renewable portfolio standard.

Purpose: To approve the request for inclusion of methane digester systems as eligible technologies in the customer-sited tier.

Substance of final rule: The Commission approved the petition of the New York Farm Bureau requesting that methane digester systems be added to the list of eligible Customer-Sited Tier resources regarding the Retail Renewable Portfolio Standard, subject to the 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-0188SA8)

NOTICE OF ADOPTION

Submetering of Electricity by The Witkoff Group, LLC

I.D. No. PSC-31-05-00009-A
Filing date: Nov. 2, 2005
Effective date: Nov. 2, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-E-0808 approving the petition of 55 Wall Associates, LLC to submeter electricity.

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

Subject: Petition of the submetering of electricity.

Purpose: To approve a request by 55 Wall Associates, LLC to submeter electricity at 55 Wall St., New York, NY.

Substance of final rule: The Commission approved the petition of 55 Wall Associates, LLC to submeter Electricity at 55 Wall Street, New York, New York, 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.

(05-E-0808SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Windsor Tov, LLC

I.D. No. PSC-31-05-00010-A
Filing date: Nov. 3, 2005
Effective date: Nov. 3, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-E-0831 approving the request of Windsor Tov, LLC to submeter electricity at 100 W. 58th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the Windsor Tov, LLC's petition to submeter electricity.

Substance of final rule: The Commission approved the petition of Windsor Tov, LLC to submeter electricity at 100 West 58th Street, New York, New York 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.

(05-E-0831SA1)

NOTICE OF ADOPTION

Provision of Water Service by Saratoga Water Services, Inc.

I.D. No. PSC-31-05-00012-A
Filing date: Nov. 7, 2005
Effective date: Nov. 7, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 04-W-0065 approving the petition of Saratoga Water Services, Inc. for the provision of water service and a waiver of the main extension provisions in 16 NYCRR Parts 501 and 502.

Statutory authority: Public Service Law, section 89(b)

Subject: Petition for the provision of water service and waiver of 16 NYCRR, Parts 501 and 502.

Purpose: To approve the petition of Saratoga Water Services, Inc.

Substance of final rule: The Commission approved an agreement between Saratoga Water Services, Inc. and Albany Partners, LLC for the provision of water service to the Steeple Chase of Malta/Saint Ledgers Woods PDD real estate subdivision and approved a waiver of the main extension provisions in 16 NYCRR Sections 501 and 502, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-W-0065SA1)

NOTICE OF ADOPTION

Submetering of Electricity by the Hudson Waterfront Company A, LLC

I.D. No. PSC-34-05-00003-A
Filing date: Nov. 3, 2005
Effective date: Nov. 3, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order in Case 05-E-0932 approving the petition of Hudson Waterfront Company A, LLC to submeter electricity at 120 Riverside Blvd., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve Hudson Waterfront Company A, LLC's petition to submeter electricity.

Substance of final rule: The Commission approved the petition of Hudson Waterfront Company A, LLC to submeter electricity at 120 Riverside Boulevard, New York, New York 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.

(05-E-0932SA1)

NOTICE OF ADOPTION

Changes to the Performance Metrics of the Gas Operations and Safety Measures by New York State Electric & Gas Corporation

I.D. No. PSC-35-05-00007-A
Filing date: Nov. 7, 2005
Effective date: Nov. 7, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order approving the terms of a joint proposal concerning new incentives and metrics for some of New York State Electric & Gas Corporation's (NYSEG) activities related to gas safety.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Changes to the performance metrics for NYSEG's gas operations and safety measures.

Purpose: To approve the joint proposal.

Substance of final rule: The Commission adopted the terms of a joint proposal establishing a new set of incentives and metrics to supplant New York State Electric & Gas Corporation's current program for replacement of cast iron mains, when the current program reaches its expected completion date, 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.

(01-G-1668SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rate Adjustments by Central Hudson Gas & Electric Corporation

I.D. No. PSC-47-05-00006-P

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

Proposed action: The Public Service Commission is considering a petition for rehearing filed on Oct. 31, 2005 by Central Hudson Gas & Electric Corporation regarding the establishment of rate adjustments related to electric reliability performance targets for 2002 and 2004, as discussed in an order issued Sept. 30, 2005 in Case 00-E-1273.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (2), (3), (5), (8), (10) and (12)

Subject: Rate adjustments related to electric reliability performance targets for 2002 and 2004.

Purpose: To establish rate adjustments.

Substance of proposed rule: The Commission is considering a petition for rehearing filed on October 31, 2005 by Central Hudson Gas & Electric Corporation regarding the establishment of rate adjustments related to electric reliability performance targets for 2002 and 2004, as discussed in an Order issued September 30, 2005 in Case 00-E-1273. The Commission may approve, modify or reject in whole or in part the relief requested.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(00-E-1273SA10)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Statement of Policy Regarding Gas Procurement Practices by Corning Natural Gas Corporation

I.D. No. PSC-47-05-00007-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a proposal to require Corning Natural Gas Corporation (Corning) to follow the provisions of the commission's statement of policy regarding gas procurement practices issued April 28, 1998 in Case 97-G-0600 (policy statement).

Statutory authority: Public Service Law, sections 4(1), 66(1), (2) and 72

Subject: Consideration of requiring Corning to follow the policy statement.

Purpose: To require Corning to follow the policy statement.

Substance of proposed rule: Pursuant to its Order Instituting Proceedings and to Show Cause, dated October 28, 2005, the Commission is considering whether to require Corning Natural Gas Corporation to follow the provisions of the Commission's Statement of Policy Regarding Gas Procurement Practices issued April 28, 1998 in Case 97-G-0600 (Policy Statement).

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-G-1268SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Temporary Operator for Corning Natural Gas Corporation

I.D. No. PSC-47-05-00008-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a proposal to order that a temporary operator be required for Corning Natural Gas Corporation (Corning) for its gas procurement, accounting and fiscal operations.

Statutory authority: Public Service Law, sections 4(1); 65(i); 66(1), (2) and 72

Subject: Consideration of requiring a temporary operator for Corning.

Purpose: To require a temporary operator.

Substance of proposed rule: Pursuant to its Order Instituting Proceedings and to Show Cause, issued October 28, 2005, the Commission is considering whether to adopt, modify or reject, in whole or in part, a proposal to order that a temporary operator be required for Corning Natural Gas Corporation for its gas procurement, accounting and fiscal operations.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-G-1268SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transferral of Gas Supplies by Corning Natural Gas Corporation

I.D. No. PSC-47-05-00009-P

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

Proposed action: The commission is considering whether to adopt, modify or reject, in whole or in part, proposals to transfer gas supplies that may be available to New York gas corporations or other gas suppliers in order to alleviate a gas shortage anticipated by Corning Natural Gas Corporation (Corning).

Statutory authority: Public Service Law, sections 4(1); 66(1), (2), (2-a); 72; 107 and 110(4)

Subject: Consideration of transferring gas supplies.

Purpose: To approve the transfer of gas supplies.

Substance of proposed rule: Pursuant to its Order Instituting Proceedings and to Show Cause, issued October 28, 2005, the Commission is considering whether to adopt, modify or reject, in whole or in part, proposals to transfer gas supplies that may be available to New York gas corporations or other gas suppliers in order to alleviate a gas shortage anticipated by Corning Natural Gas Corporation (Corning).

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-G-1268SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Uniform System of Accounts by Corning Natural Gas Corporation

I.D. No. PSC-47-05-00010-P

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

Proposed action: The Public Service Commission will review a request from Corning Natural Gas Corporation (Corning) for deferred accounting treatment of incremental expenses incurred by Corning as a result of increased uncollectible account expense in the fiscal year ended Sept. 30, 2005. (c. 9218)

Statutory authority: Public Service Law, section 66-9

Subject: Uniform system of accounts—request for accounting authorization.

Purpose: To allow the company deferred accounting treatment of expense beyond the end of the year in which it occurred.

Substance of proposed rule: The Public Service Commission will review a request from Corning Natural Gas Corporation (Corning) for the deferral of incremental uncollectible account expense incurred in the fiscal year ended September 30, 2005. The Commission may approve, reject or modify, in whole or in part, the relief requested by Corning.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-G-1283SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Securities by Orange and Rockland Utilities, Inc.

I.D. No. PSC-47-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition of Orange and Rockland Utilities, Inc. for authority to issue and sell up to $325 million of unsecured debt obligations having a maturity of more than one year.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To permit Orange and Rockland Utilities, Inc. to issue and sell securities.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition of Orange and Rockland Utilities, Inc. (O&R) to issue up to $325 million of unsecured debt obligations with a maturity of greater than one year pursuant to one or more revolving credit agreements to be entered into by O&R.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-M-1287SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of a Surcharge by Aquarian Water Company of New York

I.D. No. PSC-47-05-00012-P

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

Proposed action: The Public Service Commission is considering a petition filed by Aquarion Water Company of New York for permission to implement a surcharge that would recover the increased costs of purchased water from Aquarion Water Company of Connecticut and Westchester Joint Water Works.

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

Subject: Implement a surcharge.

Purpose: To approve the surcharge.

Substance of proposed rule: On September 30, 2005, Aquarion Water Company of New York (AWC-NY) filed a petition for permission to implement an on-going surcharge of 0.25% for all customers' bills. The filing also requests an additional 3.43% surcharge on all customers' bills except public fire customers, and an addition 1.72% surcharge for public fire customers, to be recovered over a 12-month period. The filing is designed to recover increased costs of purchased water from Aquarion Water Company of Connecticut and Westchester Joint Water Works. The Commission may approve or reject, in whole or in part, or modify the company's petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-W-1399SA1)

Department of State

NOTICE OF ADOPTION

Shared Municipal Services Incentive Awards Grant Program

I.D. No. DOS-38-05-00003-A
Filing No. 1325
Filing date: Nov. 8, 2005
Effective date: Nov. 23, 2005

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

Action taken: Addition of Part 814 to Title 19 NYCRR.

Statutory authority: State Finance Law, section 54(10)(H)

Subject: Shared Municipal Services Incentive Awards Grant Program.

Purpose: To establish eligibility requirements and criteria for Shared Municipal Services Incentive Awards Grant Program.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-38-05-00003-P, Issue of September 21, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Richard L. Hoffman, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: rhoffman@dos.state.ny.us

Assessment of Public Comment

Following is a summary of the comments received and the Department of State's responses.

Comment:

Strongly support the Shared Municipal Services Incentive Program.

Response:

No response necessary.

Comment:

The program should have funds allocated for evaluative case summaries done by an outside entity other than grantees.

Response:

The appropriation is for aid to localities, which does not permit grant funds to be used for case study evaluation. The Department of State may conduct such an evaluation with its staff depending on available resources.

Department of Taxation and Finance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-47-05-00002-P

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

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

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

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

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Jan. 1, 2006, and ending March 31, 2006, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

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

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xl) October - December 2005					
15.2	23.2	38.4	16.5	24.5	37.95
(xli) January - March 2006					
18.3	*26.3*	*42.2*	*19.5*	*27.5*	*41.65*

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

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

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

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

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

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Divisible Load Overweight Permits Vehicle Requirements

I.D. No. TRN-47-05-00005-P

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

Proposed action: This is a consensus rule making to amend sections 154-2.2, 154-2.4 and 154-2.11 of Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 385.15(f)

Subject: Divisible load overweight permits vehicle requirements.

Purpose: To clarify procedures for 2006 and newer model year vehicles.

Text of proposed rule: A new paragraph (1) is added to section 154-2.2(t) of Title 17 of the New York Codes, Rules and Regulations to read as follows:

Model year for a vehicle (power unit or trailer) that is assigned by the vehicle manufacturer and specified within the Vehicle Identification Number.

New paragraphs (3) and (4) are added to section 154-2.4(d) of Title 17 of the New York Codes, Rules and Regulations to read as follows:

(3) Any 2006 or newer model year power unit or combination shall be equipped with at least four axles.

(4) After January 1, 2015 any model year power unit or combination shall be equipped with at least four axles.

New paragraphs (3), (4), (5) and (6) are added to section 154-2.4(i) of Title 17 of the New York Codes, Rules and Regulations to read as follows:

(3) Effective January 1, 2004, permits issued pursuant to this paragraph shall be subject to the following limitations: the steering axle shall not exceed 22,400 pounds; any other single axle shall not exceed 25,750 pounds; any tandem-axle group weight shall not exceed 48,000 pounds; any tridem-axle group weight shall not exceed 63,000 pounds; and, any quad-axle group weight shall not exceed 65,000 pounds;

(4) Any power unit acquired after April 1, 2004 must be less than 15 years old.

(5) After December 31, 2006, no new Type 6A permits shall be issued, however, vehicles issued Type 6A permits prior to that date may continue to receive renewals.

(6) On December 31, 2014, all Type 6A permits will expire.

A new subdivision (j) is added to section 154-2.4 of Title 17 of New York Codes, Rules and Regulations to read as follows:

(j) File Type 6B. Effective January 1, 2004 on State highways in the counties of Westchester, Rockland, Nassau, Suffolk, Putnam, Orange and Dutchess, a permit may be issued for up to a maximum of 120,000 pounds for the operation of a vehicle, or combination of vehicles, which have a minimum of seven axles and a wheelbase of at least 43 feet. The length of any trailer used in a combination cannot exceed 48 feet. The steering axle shall not exceed 22,400 pounds; any other single axle shall not exceed 25,750 pounds; any tandem-axle group shall not exceed 48,000 pounds, any tridem-axle group weight shall not exceed 63,000 pounds; and, any quad-axle group weight shall not exceed 65,000 pounds.

A new subdivision (k) is added to section 154-2.4 of Title 17 of the New York Codes, Rules and Regulations to read as follows:

(k) Infrastructure-Friendly vehicle requirements.

(1) All 2006 or newer model year power units or 2006 or newer model year trailers issued permits pursuant to this subpart shall be equipped as follows:

(i) All lift axles must be steerable or trackable;

(ii) Any air pressure controls for lift axles must be located outside the cab of the power unit and beyond the reach of the occupants of the cab while the power unit is in motion;

(iii) All axles, other than steerable or trackable axles, must be equipped with two tires on each side of the axle; and

(iv) All vehicles should be constructed to facilitate a uniform distribution of load within tandem, tridem and quad axle groupings such that no axle in the grouping carries less than 80 percent of the weight of any other axle in such grouping.

(2) Effective January 1, 2015 all 2005 model year and older power units or trailers issued permits pursuant to this subpart shall be equipped to comply with requirements i, ii and iii of paragraph (1).

(3) Effective January 1, 2020 all 2005 model year and older power units or trailers issued permits pursuant to this subpart shall be equipped to comply with all four requirements of paragraph (1).

Paragraph (a)(1) of section 154-2.11 of Title 17 of the New York Codes, Rules and Regulations is amended to read as follows:

(1) F1 permit:

(i) Type 1 - $360

(ii) Type 1A *(less than seven axles)* - $750

(iii) Type 1A (seven or more axles) - $900

Text of proposed rule and any required statements and analyses may be obtained from: Barbara O'Neill, Department of Transportation, Office of Legal Services, 50 Wolf Rd., Albany, NY 12232, (518) 457-2411, e-mail: bo'neill@dot.state.ny.us

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

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

Consensus Rule Making Determination

Among the provisions of Chapter 59 of the Laws of 2004, which amended Section 385 of the Vehicle and Traffic Law regarding the issuance of Divisible Load Overweight Permits were certain new Infrastructure-Friendly vehicle requirements associated with 2006 or newer model year vehicles. The Department of Transportation and various industry associations representing divisible load overweight permits agree that the law as written requires clarification as to when and how these new requirements apply. The Department and industry conducted months of meetings regarding how best to accomplish our goals. The proposed amendments to Title 17 NYCRR Subpart 154-2 put forth in this proposed rulemaking represent a consensus between NYSDOT and various industry associations representing Divisible Load Overweight Permit customers. The clarification provided herein provides customers with the maximum flexibility possible under the law and minimizes any extra investment in equipment in order to comply with the law.

Job Impact Statement

A Job Impact Statement is not submitted because the proposed revisions to 17 NYCRR Subpart 154-2 consist entirely of technical clarifications to policies and requirements already set forth in Section 385 of the Vehicle and Traffic Law. The revisions are designed to simplify compliance with the law and minimize equipment investment costs for Divisible Load Overweight Permit customers.