# 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

**Asian Long Horned Beetle Quarantine**

**I.D. No.** AAM-34-03-00002-E
**Filing No.** 844
**Filing date:** Aug. 7, 2003
**Effective date:** Aug. 7, 2003

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

***Action taken:*** Amendment of sections 139.2 and 139.3 of Title 1 NYCRR.

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

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

***Specific reasons underlying the finding of necessity:*** The Asian Long Horned Beetle, Anoplophora glabripennis, an insect species non-indigenous to the United States, was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in and about Amityville, Queens and Manhattan. As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to modify the boundaries of the quarantine areas in Brooklyn and Queens described in 1 NYCRR section 139.2. This rule contains the needed modifications. This rule also amends 1 NYCRR section 139.3(b)(1) to add Celtis (Hackberry), Fraxinus (Ash), Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash) to the list of regulated host materials subject to regulation under the quarantine. These materials have been found to be subject to infestation by the Asian Long Horned Beetle. Finally, this rule deletes Hibicus Syriacus L. (Rose of Sharon), Malus (Apple), Melia (chinaberry), Morus (Mulberry), Prunus (Cherry), Pyrus (Pear), Robinia (Locust) and citrus from the list of regulated host materials subject to regulation under the quarantine. The United States Department of Agriculture (USDA) has tested and determined that these species are not a host to the Asian Long Horned Beetle. The Asian Long Horned Beetle (ALB) is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1¼ inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (⅜ inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots, leaving large piles of course sawdust around the base of the trees or where the branches meet the main stem. They fly for two or three days, during which they feed and mate. To lay eggs, adult females make grooves on branches where new shoots arise (crotch). The larvae bore into and feed on the interior of the trees, where they over-winter. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); and Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash), Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk. If the Asian Long Horned Beetle infestation were to expand beyond Manhattan, Brooklyn and Queens, the magnitude of the resulting damage could far exceed that of any previous insect infestation, including that involving the gypsy moth.

In 2001, approximately 25,000 trees were treated with Imidacloprid, a systemic insecticide. Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. Survey and pesticides do not presently appear to be effective methods of controlling this pest. As a result, the quarantine imposed by this rule has been determined to be the most effective means of preventing the spread of the Asian Long Horned Beetle. It will help to ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, it does not spread beyond those areas via the movement of infested trees and materials.

The effective control of the Asian Long Horned Beetle within the limited areas of the State where this insect has been found is also important to protect New York's nursery and forest products industry. The failure of

states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

Based on the facts and circumstances set forth above the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that the failure to immediately modify the quarantine area and restrict the movement of trees and materials from the areas of the State infested with Asian Long Horned Beetle could result in the spread of the pest beyond those areas and damage to the natural resources of the State and could result in a federal quarantine and quarantines by other states and foreign countries affecting the entire State. This would cause economic hardship to the nursery and forest products industries of the State. The consequent loss of business would harm industries which are important to New York State's economy and as such would harm the general welfare. Given the potential for the spread of the Asian Long Horned Beetle beyond the areas currently infested and the detrimental consequences that would have, it appears that the rule modifying the quarantine area should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

***Subject:*** Asian Long Horned Beetle quarantine.

***Purpose:*** To modify the Asian Long Horned Beetle quarantine to prevent the spread of the beetle to other areas, to add four species (Celtis, Fraxinus, Platanus and Sorbus) to the list of regulated host materials subject to regulation under the quarantine and to delete eight species from that list.

***Text of emergency rule:*** Subdivision (a) of Section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(a) That area in the boroughs of Manhattan, Brooklyn and Queens in the City of New York and bounded by a line beginning at a point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River, then west and north along the shoreline of the Hudson River to its intersection with Martin Luther King Jr. Boulevard, then east along Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Ward's Island, then east and south along the shoreline of Randall's and Ward's Island to its intersection with the Triborough Bridge, then east along the Triborough Bridge to its intersection with the Queens shoreline, then north and east along the Queens shoreline to its intersection with the City of New York and Nassau County line, then southeast along the City of New York and Nassau County line to its intersection with the Grand Central Parkway, then west along the Grand Central Parkway to its intersection with the Jackie Robinson Parkway, then west along the Jackie Robinson Parkway to its intersection with [Woodhaven Boulevard, then south along Woodhaven Boulevard to its intersection with Atlantic Avenue, then west along Atlantic Avenue to its intersection with the Eastern Parkway Extension, then south, and west along the Eastern Parkway Extension and Eastern Parkway to its intersection with Grand Army Plaza, then west along the south side of Grand Army Plaza to its intersection with Union Street then west along Union Street to its intersection with Van Brunt Street, then south along Van Brunt Street to its intersection with Hamilton Avenue and the] *Park Lane, then south along Park Lane to its intersection with Park Lane South, then south and west along Park Lane South to its intersection with 112th Street, then south along 112th Street to its intersection with Atlantic Avenue, then west along Atlantic Avenue to its intersection with 106th Street, then south along 106th Street to its intersection with Liberty Avenue, then west along Liberty Avenue to its intersection with Euclid Avenue then south along Euclid Avenue to its intersection with Linden Boulevard, then west along Linden Boulevard to its intersection with Caton Avenue, then west on Caton Avenue to its intersection with Prospect Expressway, then north and west along Prospect Expressway to its intersection with the Gowanus Expressway, then north and west along the Gowanus Expressway to its intersection with the* Brooklyn Battery Tunnel, then north along Hamilton Avenue and the Brooklyn Battery Tunnel to its intersection with the East River, then north along the Brooklyn Battery Tunnel across the East River to the point of beginning.

Paragraph 1 of subdivision (b) of section 139.3 of Title 1 of the Official Codes, Rules and Regulations of the State of New York is amended to read as follows:

(1) Firewood (all hardwood species) and all host material living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of a half inch or more in diameter of the following genera: Acer (Maple); Aesculus (Horse Chestnut); Albizzia (Silk Tree or Mimosa); Betula (Birch); [Hibicus syriacus L. (Rose of Sharon); Malus (Apple); Melia (Chinaberry); Morus (Mulberry);] Populus (Poplar); [Prunus (Cherry); Pyrus (Pear); Robinia (Locust);] Salix (Willow); Ulmus (Elm) [and citrus]*; Celtis (Hackberry); Fraxinus (Ash); Platanus (Plane Tree, Sycamore) and Sorbus (Mountain Ash)* are regulated articles.

***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 November 5, 2003.

***Text of emergency rule and any required statements and analyses may be obtained from:*** Robert Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-2087

***Regulatory Impact Statement***

1. Statutory authority:

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

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

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

2. Legislative objectives:

The proposed modification of the quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Asian Long Horned Beetle.

3. Needs and benefits:

The Asian Long Horned Beetle, Anoplophora glabripennis, an insect species non-indigenous to the United States was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in and about Amityville, Queens and Manhattan.

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to modify the boundaries of the quarantine areas in Brooklyn and Queens described in 1 NYCRR section 139.2. This rule contains the needed modifications. This rule also amends 1 NYCRR section 139.3(b)(1) to add Celtis (Hackberry), Fraxinus (Ash), Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash) to the list of regulated host materials subject to regulation under the quarantine. These materials have been found to be subject to infestation by the Asian Long Horned Beetle. Finally, this rule deletes Habicus Syriacus L. (Rose of Sharon), Malus (Apple), Melia (Chinaberry), Morus (Mulberry), Prunus (Cherry), Pyrus (Pear), Robinia (Locust) and cirtus from the list of regulated host materials subject to regulation under the quarantine. The United States Department of Agriculture (USDA) has tested and determined that these species are not a host to the Asian Long Horned Beetle.

4. Costs:

(a) Costs to the State government:

None.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Nurseries exporting host material from the quarantined area, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of $25 per hour. Most inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year with a total annual cost of less than $1000.

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

Tree removal services must chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantined area may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestations.

The modification of the quarantine area in the borough of Brooklyn will affect one nursery located within the area.

The modification of the list of regulated host materials subject to infestation by the Asian Long Horned Beetle will affect fewer than 100 nurseries, arborists, tree removal services and firewood dealers located within all the quarantined areas.

(d) Costs to the regulatory agency:

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

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

5. Local government mandate:

Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of ½" or more in diameter of host species will require proper handling and disposal, *i.e.,* chipping and/or incineration if such materials are to leave the area under quarantine. An effort is underway to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

6. Paperwork:

Regulated articles inspected and certified to be free of Asian Long Horned Beetle moving from quarantined area must be accompanied by a state or federal phytosanitary certificate of a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The failure of the State to modify the proposed quarantine to reflect the areas in which the Asian Long Horned Beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

9. Federal standards:

The rule does not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated persons will be able to comply with the rule immediately.

***Regulatory Flexibility Analysis***

1. Effect on small business:

The small businesses affected by the changes in the quarantined area are the nurseries, arborists, tree removal services and firewood dealers located within that modified quarantined area. It is estimated that there is one such business within that area. The local governments involved in that modification of the boundaries of the quarantine areas are the City of New York and the boroughs of Brooklyn and Queens.

The small businesses affected by the changes to the list of regulated host materials subject to infestation by the Asian Long Horned Beetle are the nurseries, arborists, tree removal services and firewood dealers located within all the quarantined areas. It is estimated that there are fewer than 100 such businesses within these quarantined areas. The local governments involved are the City of New York, and the boroughs of Brooklyn, Queens and Manhattan.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the quarantine area, in the event that they do, they would be subject to the same quarantine requirements as other regulated parties.

2. Compliance requirements:

All regulated parties in the modified quarantined areas will be required to obtain certificates and limited permits in order to ship regulated articles from quarantined areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services:

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

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule:

None.

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

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

Tree removal services must chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantined area may not move outside that area due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

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

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments by limiting the modified quarantined areas to only those areas where the Asian Long Horned Beetle has been detected; by limiting the regulated articles to only those susceptible to infestation by the Asian Long Horned Beetle and to firewood and by limiting the inspection and permit requirements to only those necessary to detect the presence of Asian Long Horned Beetle and prevent its movement in host materials from the quarantined areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has contacted various representatives of nurseries, arborists, the forestry industry, and local government to discuss the quarantine. It has also had extensive consultation with the United States Department of Agriculture.

The Department is involved in a continuing outreach program involving all of the parties affected by the rule. The quarantine has been discussed with the members of the Department's Plant Industry Advisory Committee, which includes representatives of the various types of regulated parties affected by the rule. In addition, a press release was issued at the time the original quarantine was imposed announcing the steps the State is taking to address the problem presented by the Asian Long Horned Beetle. Department representatives also attended a public meeting in Brooklyn, New York at which these issues were discussed and input was received. This outreach program will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

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

***Rural Area Flexibility Analysis***

The rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that the modified quarantine area and the addition of species to the list of regulated host materials subject to regulation under the quarantine imposed by the rule, is limited to portions of the Boroughs of Manhattan, Brooklyn and Queens in the City of New

York, areas which do not fall within the definition of rural areas set forth in section 481(7) of the Executive Law.

***Job Impact Statement***

The rule will not have a substantial adverse impact on jobs and employment opportunities. The modification of the quarantine area and the addition of species to the list of regulated host materials subject to regulation under the quarantine, are designed to prevent the spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the Asian Long Horned Beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry, fruit and maple product industries.

Forest related activities in New York State provide employment for approximately 122,400 people. Of that number, 73,740 jobs are attributable to forest-based recreation and approximately 48,670 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than $1.789 billion with $1.133 billion attributable to forest-based manufacturing and $655.3 million for forest recreation. Forest-based economic activity accounts for 2% of New York's employment and 1% of the State's payroll. Wood energy also makes an important contribution to the State's economy. In 1985, wood energy accounted for 3,647 direct jobs and $78.4 million in direct income.

The nursery industry employed 6,011 persons in New York State in 1985. Approximately $40.1 million in wages were paid by the industry. As set forth in the regulatory impact statement, the cost of the rule to regulated parties is relatively small. The responses received during the Department's outreach to regulated parties indicate that the rule will not have a substantial adverse impact on jobs and employment opportunities.

# Department of Correctional Services

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Merit Time and Earned Eligibility

**I.D. No.** COR-34-03-00001-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 280.1, 280.2 and 2100.3 of Title 7 NYCRR.

***Statutory authority:*** Correction Law, sections 112, 803 and 805

***Subject:*** Merit time and earned eligibility.

***Purpose:*** To implement changes to sections 803 and 805 of the Correction Law as enacted in L. 2003, ch. 62.

***Text of proposed rule:*** Section 280.1 is amended as follows:

Inmates serving indeterminate sentences for certain nonviolent crimes may receive merit time allowances against the minimum terms of their sentences provided they have achieved certain significant programmatic objectives, have not committed any serious disciplinary infractions and have not filed any frivolous lawsuits. The merit time allowance is one-*third*[sixth] of the minimum term or period imposed by the court *for an inmate convicted of an A-1 felony under article 220 of the Penal Law and one-sixth of the minimum term or period imposed by the court for an inmate convicted of any other offense*. The merit eligibility date is the parole eligibility date minus the merit time allowance. When granted, merit time allowances enable inmates to appear before the Board of Parole for possible release on parole on their merit eligibility dates. A merit time allowance is a privilege to be earned by the inmate and no inmate has the right to demand or require that any such allowance be granted. This Subchapter sets forth the policy and procedures for granting and withholding merit time allowances.

Paragraph (1) of subdivision (a) of section 280.2 is amended as follows:

(1) An inmate cannot be presently serving a sentence for an A-1 felony *other than an A-1 felony defined in article 220 of the Penal Law* or a violent felony offense (this will include any sentence for a violent felony offense which has been imposed by another state).

Paragraph (3) of subdivision (a) of section 280.2 is amended as follows:

(3) An inmate cannot be presently serving an indeterminate sentence of imprisonment authorized for an A-1 felony *other than an A-1 felony defined in article 220 of the Penal Law.*

Subdivision (a) of Section 2100.3 is amended as follows:

(a) Eligible inmate means an inmate who is serving an indeterminate sentence with a minimum term of *eight*[six] years or less.

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

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

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

***Consensus Rule Making Determination***

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written because it merely implements or conforms to non-discretionary statutory revisions, under Chapter 62 of the Laws of 2003, to sections 803.1(d) and 805 of the Correction Law.

The revision to section 803.1(d) now renders a person serving an indeterminate sentence for an A-1 felony offense defined in article 220 of the Penal Law eligible to receive a merit time allowance in the amount of one-third of the minimum period imposed by the court. The revision at section 805 now provides that earned eligibility certificates may be awarded to inmates with minimum terms of eight years, up from six years.

These changes in the Correction Law do not require the commissioner to develop further regulations but actually provide the specific detail necessary for processing expanded groups of inmates for merit time and earned eligibility certificates. The Department's proposed amendments merely incorporate the substance of these statutory changes without further development.

***Job Impact Statement***

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely implements changes to sections 803 and 805 of Correction Law, as enacted in Chapter 62 of the Laws of 2003, expanding inmate eligibility for programs which may shorten terms of confinement.

# Education Department

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### School Bus Monitors and Attendants

**I.D. No.** EDU-34-03-00009-P

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

***Proposed action:*** Amendment of section 156.3(c) of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 207 (not subdivided) and 3624 (not subdivided); Vehicle and Traffic Law, section 1229-d(3); and L. 2003, ch. 159

***Subject:*** Requirements for school bus monitors and attendants.

***Purpose:*** To clarify the training and testing requirements for school bus monitors and attendants.

***Text of proposed rule:*** 1. Paragraph (4) of subdivision (c) of section 156.3 of the Regulations of the Commissioner of Education is amended, effective December 4, 2003, as follows:

(4) Required certifications. [Each attendant employed by a school district, board of cooperative educational services or contractor on July 1, 2003 shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation. Individuals hired after July 1, 2003 must obtain training and certification prior to assuming their duties as a school bus attendant. Thereafter, current certification in cardiopulmonary resuscitation must be maintained.] *Any person employed by a school district, board of cooperative educational services or pupil transportation contractor as a school bus attendant serving pupils with a disabling condition on January 1, 2004, shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation where such skills are required as part of the individualized education plan prepared for the student. Any such person hired after January 1, 2004 shall, prior to assuming their duties as a school bus attendant, obtain training and certification in cardiopulmonary resuscitation where such skills are required as part of the individualized education plan prepared for the student.* School districts, boards of cooperative educational services or contractors may require monitors or attendants to maintain certification in first aid.

2. Paragraph (5) of subdivision (c) of section 156.3 of the Regulations of the Commissioner of Education is amended, effective September 12, 2003, as follows:

(5) Pre-Service, safety training, and refresher training. *Except as otherwise provided in this paragraph,* [Each] *each* school bus monitor or attendant employed by a board of education, board of cooperative educational services, or pupil transportation contractor on July 1, 2003 shall comply with the training requirements of this paragraph no later than July 1, 2004. Individuals hired after July 1, 2003 shall comply with such requirements before assuming their duties on a school bus.

(i) *Pre-service instruction.* All school bus monitors or attendants shall receive 3 hours of pre-service instruction as prescribed by the commissioner upon recommendation of the commissioner's School Bus Driver Instructor Advisory Committee, which shall include, but is not limited to, [instruction relating to special needs transportation,] school bus safety practices, child management techniques, and the proper techniques for assisting children [and special needs children] to safely embark and disembark a school bus. *In addition to such instruction, any person employed on January 1, 2004 as a school bus monitor, or as a school bus attendant serving pupils with a disabling condition, shall, by July 1, 2004, receive instruction as prescribed by the commissioner upon recommendation of the commissioner's School Bus Driver Instructor Advisory Committee relating to special needs transportation, including, but not limited to, the proper techniques for assisting disabled students in entering and exiting the school bus. Any person hired after January 1, 2004 shall complete such special needs instruction prior to assuming their duties as a school bus monitor or as a school bus attendant.*

(ii) A certified school bus driver instructor's physical presence shall not be required during training conducted upon initial employment of a school bus monitor or attendant by a board of education or transportation contractor, provided that such training is conducted under the general supervision of such certified instructor.

(iii) Specialized training. Each school bus monitor or attendant hired after July 1, 2003 shall complete within their first year of employment a Basic Course of Instruction for Monitors and Attendants. Multiple curricula may be approved for use by the commissioner. Such courses shall provide not less than 10 hours of instruction on a range of topics prescribed by the commissioner upon recommendation of the commissioner's School Bus Driver Instructor Advisory Committee.

(iv) All school bus monitors and attendants shall receive 2 two-hour refresher training sessions annually at sessions conducted between July 1st and the first day of school and between December 1st and March 1st of each school year.

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

***Data, views or arguments may be submitted to:*** James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

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

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

***Regulatory Impact Statement***

STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Vehicle and Traffic Law (VTL) section 1229-d(3), as added by Chapter 472 of the Laws of 2002, requires the Commissioner of Education to promulgate regulations requiring that school bus attendants, as defined in VTL section 1229-d(1), who serve pupils with a disabling condition, receive school bus safety training and instruction relating to their special needs. Such safety training shall include techniques for assisting disabled students in entering and exiting the school bus, and instruction in cardiopulmonary resuscitation (CPR), as well as any additional first aid or health emergency skills as deemed necessary and appropriate by the Commissioner. In addition, such attendants shall demonstrate the ability to perform procedures necessary in emergency situations as deemed appropriate by the Commissioner. Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, provides that the CPR instruction shall be given where such skills are required as part of the individualized education plan prepared for the student, and further provides that any person employed as a school bus attendant serving pupils with a disabling condition on January 1, 2004 shall comply with VTL section 1229-d(3) by July 1, 2004 and that any person hired after January 1, 2004 shall complete training, instruction and testing prior to assuming their duties as a school bus attendant serving pupils with a disabling condition.

LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to the provisions of Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, with respect to training, instruction and certification requirements for attendants serving pupils with a disabling condition.

NEEDS AND BENEFITS:

The proposed amendment is needed to conform the Commissioner's Regulations to the provisions of Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003. Consistent with the statute, section 156.3(c)(4) has been revised to provide that CPR instruction shall be given where such skills are required as part of the individualized education plan prepared for the student, and to further provide that any person employed as a school bus attendant serving pupils with a disabling condition on January 1, 2004 shall comply with VTL section 1229-d(3) by July 1, 2004 and that any person hired after January 1, 2004 shall complete training, instruction and testing prior to assuming their duties as a school bus attendant serving pupils with a disabling condition.

COSTS:

The proposed amendment is necessary to implement Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and does not impose any additional costs beyond those inherent in the statute.

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to the regulating agency for implementation and continued administration of the rule: None.

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and does not impose any additional program, service duty or responsibility on local governments beyond those imposed by the applicable statutes.

Any person employed by a school district, board of cooperative educational services (BOCES) or pupil transportation contractor as a school bus attendant serving pupils with a disabling condition on January 1, 2004, shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation (CPR) where such skills are required as part of the individualized education plan (IEP) prepared for the student. Any person hired after January 1, 2004 shall, prior to assuming their duties as a school bus attendant, obtain training and certification in CPR where such skills are required as part of the IEP.

Any person employed on January 1, 2004 as a school bus monitor, or as a school bus attendant serving pupils with a disabling condition, shall, by July 1, 2004, receive instruction as prescribed by the Commissioner upon recommendation of the School Bus Driver Instructor Advisory Committee relating to special needs transportation, including, but not limited to, the proper techniques for assisting disabled students in entering and exiting the

school bus. Any person hired after January 1, 2004 shall complete such special needs instruction prior to assuming their duties as a school bus monitor or as a school bus attendant.

PAPERWORK:

The proposed amendment conforms the Commissioner's Regulations to Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and does not impose any new reporting or record keeping requirements beyond that already imposed by the statutes.

DUPLICATION:

The proposed amendment is necessary to implement Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and will not duplicate any other requirement in State or federal law.

ALTERNATIVES:

The proposed amendment conforms the Commissioner's Regulations to Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003. There are no significant alternatives for meeting the statutory requirements and none were considered.

FEDERAL STANDARDS:

The proposed amendment relates to State standards for school bus monitors and attendants and does not exceed any minimal Federal standards.

COMPLIANCE SCHEDULE:

The proposed amendment conforms the Commissioner's Regulations to Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

***Regulatory Flexibility Analysis***

EFFECT OF RULE:

The proposed amendment applies to all public school districts, boards of cooperative educational services (BOCES) and privately owned school bus contractors under contract with a school district or BOCES for the provision of pupil transportation services.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and does not impose any new reporting or recordkeeping requirements, other than those already imposed by law.

Any person employed by a school district, BOCES or pupil transportation contractor as a school bus attendant serving pupils with a disabling condition on January 1, 2004, shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation (CPR) where such skills are required as part of the individualized education plan (IEP) prepared for the student. Any person hired after January 1, 2004 shall, prior to assuming their duties as a school bus attendant, obtain training and certification in CPR where such skills are required as part of the IEP.

Any person employed on January 1, 2004 as a school bus monitor, or as a school bus attendant serving pupils with a disabling condition, shall, by July 1, 2004, receive instruction as prescribed by the Commissioner upon recommendation of the School Bus Driver Instructor Advisory Committee relating to special needs transportation, including, but not limited to, the proper techniques for assisting disabled students in entering and exiting the school bus. Any person hired after January 1, 2004 shall complete such special needs instruction prior to assuming their duties as a school bus monitor or as a school bus attendant.

PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on local governments, other than those already required by law.

COMPLIANCE COSTS:

The proposed amendment is necessary to implement Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and does not impose any additional costs beyond those inherent in the statutes. The amendment of qualifications and standards for school bus monitors and attendants will not result in an increase in cost to localities or in State Aid for pupil transportation. There will be no additional cost of the proposed amendment on private parties. Many private contractors exceed the requirements of the amendment and are already requiring all school bus attendants to obtain certification in CPR.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on small businesses or local government. Economic feasibility is addressed above under Compliance Costs.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations with Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and will not have an adverse impact on school districts, boards of cooperative education services (BOCES) or private pupil transportation contractors. School pupil transportation and small business associations have been given the opportunity to provide suggestions and raise issues concerning the statutes and the proposed regulations.

SMALL BUSINESS PARTICIPATION:

Staff has contacted the New York School Bus Contractors Association in order to provide small businesses with an opportunity to participate in the rule making process. The association made suggestions and raised important issues concerning the testing and training requirements for school bus monitors and attendants. Their suggestions and concerns have been taken into account and incorporated into the final proposal.

LOCAL GOVERNMENT PARTICIPATION:

Staff from the State Education Department have met with members of the Commissioner's School Bus Driver Instructor Advisory Committee, and members of the New York Association for Pupil Transportation in order to provide local government representatives with an opportunity to participate in the rule making process. The committee and association have made suggestions and raised important issues concerning the testing and training requirements for school bus monitors and attendants. Their suggestions and concerns have been taken into account and incorporated into the final proposal.

***Rural Area Flexibility Analysis***

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts, boards of cooperative educational services (BOCES), and private school bus contractors in the State, including the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and does not impose any new reporting or record keeping requirements, other than those already imposed by law.

Any person employed by a school district, BOCES or pupil transportation contractor as a school bus attendant serving pupils with a disabling condition on January 1, 2004, shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation (CPR) where such skills are required as part of the individualized education plan (IEP) prepared for the student. Any person hired after January 1, 2004 shall, prior to assuming their duties as a school bus attendant, obtain training and certification in CPR where such skills are required as part of the IEP.

Any person employed on January 1, 2004 as a school bus monitor, or as a school bus attendant serving pupils with a disabling condition, shall, by July 1, 2004, receive instruction as prescribed by the Commissioner upon recommendation of the School Bus Driver Instructor Advisory Committee relating to special needs transportation, including, but not limited to, the proper techniques for assisting disabled students in entering and exiting the school bus. Any person hired after January 1, 2004 shall complete such special needs instruction prior to assuming their duties as a school bus monitor or as a school bus attendant.

The proposed amendment proposes no additional professional service requirements other than those already required by law.

COSTS:

The proposed amendment is necessary to implement Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and does not impose any additional costs beyond those inherent in the statutes.

There should be no additional costs to rural school districts as a result of the proposed changes. The proposed amendment lessens the number of school bus attendants who are required to obtain and maintain certification in CPR, and thus lessens the cost to rural school districts and the state. It also provides more time before which school districts will be required to begin complying with the regulations.

The proposed amendment will lessen the cost of compliance to private parties. Only those school bus attendants, who are required by a child's IEP, will be mandated to obtain certification in CPR. Also, private contractors working for public school districts or boards of cooperative educa-

tional services will have additional time before they will be required to begin complying with the regulations.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations with Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, and will not have an adverse impact on school districts, boards of cooperative education services (BOCES) or private pupil transportation contractors. The amount and degree of cost savings will vary among school districts across the state. The savings may accrue to a larger degree for rural districts, which have fewer children with handicapping conditions that may require the specialized skill of CPR. School district and small business associations have been given the opportunity to provide suggestions and raise issues concerning the statutes and the proposed regulations.

RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided for review and comment to the Department's Rural Advisory Committee, whose memberships include schools located in rural areas.

***Job Impact Statement***

The proposed amendment is necessary to conform the Commissioner's Regulations to the provisions of Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003, relating to the qualifications, testing and training requirements for school bus monitors and attendants. The proposed amendment prescribes requirements for those individuals who are already employed, or who seek to become employed, as monitors and attendants, but it will not affect the number of jobs or employment opportunities available in such occupations. Because it is evident from the nature of the rule that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

# Department of Environmental Conservation

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Managed Harvest of Beaver and River Otter

**I.D. No.** ENV-34-03-00003-P

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

***Proposed action:*** Amendment of section 6.1 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 11-0303, 11-1101 and 11-1103

***Subject:*** Managed harvest of beaver and river otter.

***Purpose:*** To establish beaver and river otter trapping seasons for the 2003-2004 license year.

***Text of proposed rule:*** Title 6 NYCRR Section 6.1, entitled "Beaver and otter trapping seasons and bag limits," is amended as follows:

Section 6.1 through subdivision 6.1(a) remains unchanged.

Paragraphs 6.1(a)(1) and (2) are REPEALED and new paragraphs 6.1(a)(1) and (2) are adopted to read as follows:

*(1) Beaver.*

| *Wildlife management units* | *Trapping season dates* |
|---|---|
| *1A, 1C, 2A* | *Closed* |
| *3R, 3S* | *November 25 to December 28* |
| *3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4B, 4C, 4J, 4K, 4L, 4M, 4S, 4T, 4U, 4Y, 4Z, 5N, 5P* | *November 25 to February 15* |
| *5A, 5G, 5J* | *November 1 to March 28* |
| *5F, 5H, 6J, 6N* | *November 1 to March 15* |
| *5C, 6A, 6C, 6F, 6H* | *November 1 to April 15* |
| *6G, 6K* | *November 15 to March 28* |
| *3A, 4A, 4F, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 5K, 5R, 6P, 6R, 6S, 7A, 7F, 7H, 7J, 7M, 7R, 7S* | *November 25 to March 15* |
| *8A, 8C, 8F, 8G, 8H, 8J, 8K, 8M, 8N, 8P, 8R, 8S, 9A, 9C, 9F, 9G, 9H* | *December 20 to January 4* |
| *8T, 8W, 8X, 8Y* | *January 24 to February 8* |
| *9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, 9Y* | *December 20 to March 7* |

*(2) Otter.*

| *Wildlife management units* | *Trapping season dates* |
|---|---|
| *3R, 3S* | *November 25 to December 28* |
| *3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4B, 4C, 4J, 4K, 4L, 4M, 4S, 4T, 4U, 4Y, 4Z, 5N, 5P* | *November 25 to February 15* |
| *5A, 5G, 5J* | *November 1 to March 28* |
| *5F, 5H, 6J, 6N* | *November 1 to March 15* |
| *5C, 6A, 6C, 6F, 6H* | *November 1 to April 15* |
| *6G, 6K* | *November 15 to March 28* |
| *1A, 1C, 2A, 3A, 4A, 4F, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 5K, 5R, 6P, 6R, 6S, 7A, 7F, 7H, 7J, 7M, 7R, 7S, 8A, 8C, 8F, 8G, 8H, 8J, 8K, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9A, 9C, 9F, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, 9Y* | *Closed.* |

Subdivisions 6.1(b) and (c) remain unchanged.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatche@gw.dec.state.ny.us

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

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

***Additional matter required by statute:*** State Environmental Quality Review Act (SEQR; ECL art. 8). Establishment of trapping regulations are covered by a final programmatic impact statement (FPIS) on wildlife game species management (DEC 1980) and supplemental findings (DEC 1994). 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 the department's SEQR regulations (6 NYCRR § 618.2[d][5]).

***Regulatory Impact Statement***

1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law directs the Department of Environmental Conservation to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Sections 11-1101 and 11-1103 authorize the Department to provide for the managed harvest of beaver and river otter through the establishment of open trapping seasons.

2. Legislative Objectives

The legislative objective behind the statutory provisions listed above is to establish, or authorize the Department to establish by regulation, certain basic wildlife management tools, including the setting of open seasons, and restrictions on methods of take and possession. These tools are used by the Department to maintain desirable wildlife species in ecological balance, while observing sound management practices.

3. Needs and Benefits

Beaver and otter season changes are made to facilitate desirable harvest levels. The Department annually estimates the beaver harvest needed to meet beaver population objectives for each wildlife management unit (WMU). The population objectives are based on: (1) the benefits derived

from wetland habitat created by beaver, and (2) an assessment of public tolerance for beaver activities. The remaining criteria for season setting include considerations of fur harvesters' preferences, pelt value, recreational opportunity, and trapping conditions within each WMU. The specified opening and closing dates established for the 2003-2004 seasons address those considerations.

The proposed seasons will maintain beaver population levels at or close to desirable levels. In establishing dates for the 2003-2004 trapping season, the Department consolidated opening and closing dates whenever possible, especially in contiguous wildlife management units. The consolidation of seasons will enhance both compliance with and enforcement of beaver and otter trapping regulations.

In the fall of 2003, beaver populations are expected to be close to established management objectives in many wildlife management units. The proposed season dates are designed to provide a harvest that maintains those population levels. The 2003-2004 beaver seasons are similar to the 2002-2003 seasons in most of central and western New York, the Lake Plains, Finger Lakes, and Hudson River Valley. They are lengthened by two to five weeks in parts of central New York and the Catskills. In most of northern New York, the beaver trapping season dates are proposed to be lengthened to increase opportunities for trapping areas with normally severe winter weather, since deep snow conditions restrict trapping activity.

Beaver damage problems continue to be significant in New York. The Department receives approximately 2,000 public complaints of beaver damage per year. Beaver primarily damage farms and roadways, but residences also are effected. Annual trapping seasons, as proposed by this rulemaking, are essential to manage these problems and maintain public tolerance of beaver.

Otter occur in the same habitats as beaver. Where otter numbers are adequate to sustain harvest, their seasons are set concurrent with the beaver season because they may be taken in a trap set for beaver. Concurrent season dates also facilitate law enforcement activities. The river otter trapping season in a portion of the Catskills (WMUs 4G, 4H, 4P, 4R, and 4W) is proposed for closure because of very low reported harvests in recent years. Currently, otter pelts are the most valuable of any species in the North American fur market. The proposed rule will close an area with relatively few otter, while continuing otter trapping in areas with relatively higher otter populations. The season closure is needed to assure river otter population stability in this area of the State. The remaining open areas for otter trapping include all of northern New York, and parts of eastern New York, including the Hudson River Valley, the Taconics, and the southern portion of the Department's Region 3.

4. Costs

Adoption of regulations that establish methods of taking, possessing, transporting, and disposing of furbearing animals do not result in increased expenditures by state or local governments, or the general public. Normal expenses of the management program and the enforcement of trapping regulations are not affected. The Legislature establishes fees for trapping licenses by statute.

5. Local Government Mandates

This rule-making does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed rules do not impose additional reporting requirements upon the regulated public (trappers).

7. Duplication

There are no other local, state or federal regulations concerning the taking, possession, transporting, or disposal of furbearing animals. The Department of Environmental Conservation is the only branch of government with the legal authority to regulate the managed harvest of furbearing animals in New York.

8. Alternatives

An alternative to making the proposed changes is to leave the regulations intact. However, this would make it more difficult to appropriately manage beaver and river otter populations.

9. Federal Standards

There are no federal government standards for the managed harvest of furbearing animals in New York. The Convention on International Trade in Endangered Species of Wild Fauna and Flora requires every state allowing the export of river otter products to certify annually that harvest of river otter will not be detrimental to their continued survival in that state.

10. Compliance Schedule

Trappers will be expected to comply with the new rules as soon as they take effect.

***Regulatory Flexibility Analysis***

This proposed rulemaking will revise regulations concerning beaver and river otter trapping seasons. The Department of Environmental Conservation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on small businesses or local governments. The proposed revisions are not expected to significantly change the number of participants or the frequency of participation in the regulated activities.

The Department has also determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with trapping are administered by the Department.

Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

***Rural Area Flexibility Analysis***

This proposed rulemaking will revise regulations concerning beaver and river otter trapping seasons. The Department of Environmental Conservation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on rural areas. The proposed revisions are not expected to significantly change the number of participants or the frequency of participation in the regulated activities.

The Department has also determined that this rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with trapping are administered by the Department.

Therefore, the Department has concluded that a rural area flexibility analysis is not required.

***Job Impact Statement***

This proposed rulemaking will revise regulations concerning beaver and river otter trapping regulations for the 2003-04 trapping season. The Department of Environmental Conservation (Department) has historically made regular revisions to its trapping regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually trap as a means of employment. Trappers will not suffer any substantial adverse impact as a result of this proposed rulemaking because it is not expected to significantly change the number of participants or the frequency of participation in the regulated activities. For this reason, the Department anticipates that this rulemaking will actually have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

# Department of Health

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

### Smallpox Vaccine

**I.D. No.** HLT-34-03-00005-P

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

***Proposed action:*** Amendment of sections 2.1 and 2.2 of Title 10 NYCRR.

***Statutory authority:*** Public Health Law, sections 225(4), (5)(a), (g), (h), 206(1)(d) and (e)

***Subject:*** Communicable diseases, smallpox vaccine-adverse effects.

***Purpose:*** To enable the department to monitor for complications associated with smallpox vaccination and enable it to request on a timely basis, vaccinia immune globulin used to treat some adverse reactions from the CDC.

***Text of proposed rule:*** Subdivision (a) of Section 2.1 is amended to read as follows:

2.1 Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

Amebiasis
Anthrax
Babesiosis
Botulism
Brucellosis
Campylobacteriosis
Chancroid
Chlamydia trachomatis infection
Cholera
Cryptosporidiosis
Cyclosporiasis
Diphtheria
E. coli 0157:H7 infections
Ehrlichiosis
Encephalitis
Giardiasis
Glanders
Gonococcal infection
Group A Streptococcal invasive disease
Group B Streptococcal invasive disease
Hantavirus disease
Hemolytic uremic syndrome
Hemophilus influenzae (invasive disease)
Hepatitis (A; B; C)
Hospital-associated infections (as defined in section 2.2 of this Part)
Legionellosis
Listeriosis
Lyme disease
Lymphogranuloma venereum
Malaria
Measles
Melioidosis
Meningitis
  Aseptic
  Hemophilus
  Meningococcal
  Other (specify type)
Meningococcemia
Mumps
Pertussis (whooping cough)
Plague
Poliomyelitis
Psittacosis
Q Fever
Rabies
Rocky Mountain spotted fever
Rubella
Congenital rubella syndrome
Salmonellosis
Shigellosis
Smallpox
Staphylococcal enterotoxin B poisoning
Streptococcus pneumoniae invasive disease
Syphilis, specify stage
Tetanus
Toxic Shock Syndrome
Trichinosis
Tuberculosis, current disease (specify site)
Tularemia
Typhoid
*Vaccinia disease (as defined in section 2.2 of this Part)*
Viral hemorrhagic fever
Yellow Fever
Yersiniosis

* * *

A new subdivision (g) is hereby added to Section 2.2 to read as follows:

2.2 Definitions.

* * *

*(g) As used in this part, the term vaccinia disease shall mean:*

*(1) persons with vaccinia infection due to contact transmission; and*

*(2) persons with the following complications from vaccination: eczema vaccinatum, erythema multiforme major or Stevens-Johnson syndrome, fetal vaccinia, generalized vaccinia, inadvertent inoculation, ocular vaccinia, post-vaccinial encephalitis or encephalomyelitis, progressive vaccinia, pyogenic infection of the vaccination site, and any other serious adverse events (i.e. those resulting in hospitalization, permanent disability, life-threatening illness or death).*

***Text of proposed 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

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

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

***Regulatory Impact Statement***

Statutory Authority:

Sections 225(4) and 225(5)(a) and (h) of the Public Health Law ("PHL") authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health. PHL Section 206(1)(d) authorizes the commissioner to "investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health." PHL Section 206(1)(e) permits the commissioner to "obtain, collect and preserve such information relating to marriage, birth, mortality disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state."

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding potential complications of vaccinia as part of the reportable disease requirements.

Needs and Benefits:

Vaccinia virus is the immunizing agent used to vaccinate against smallpox. It has the potential for contact spread of vaccinia to nonimmune contacts. Vaccination is contraindicated in persons with deficient immune systems, eczema or certain other dermatitis. Vaccinia immune globulin is given to individuals developing certain adverse reactions; like the vaccine, vaccinia immune globulin can only be obtained from the CDC.

Adding vaccinia disease to the reportable disease list will permit the Department of Health to monitor for complications of smallpox vaccination efforts to both the person vaccinated as well as to the contacts of the person vaccinated. By enabling enhanced disease monitoring, there will be systemic active monitoring for complications, the complications will be known to both state and federal officials, and any requests to CDC for vaccinia immune globulin, needed to treat some of the vaccine's adverse reactions, can be made on a timely basis.

Smallpox vaccination of core hospital medical care teams and public health response teams began in February 2003. Expansion of this program to include voluntary vaccination of health care and public safety workers is under review. Monitoring of vaccination complications is critical to appropriately evaluate and plan for continuation and future vaccination programs. Improved estimates of the number of potential complications and analysis of effective intervention strategies will assist in appropriately responding to such complications. Timely disease reporting will allow vaccinia immune globulin, used to treat some of the vaccine's adverse reactions, to be obtained from CDC.

COSTS:

Costs to Regulated Parties:

Smallpox vaccination of core hospital medical care teams and public health response teams began in February 2003. As of June 5, 2003, 704 individuals have been vaccinated. On two occasions, suspect generalized vaccinia has been investigated and clinical specimens were obtained for

laboratory diagnosis. Generalized vaccinia was confirmed in one case. As previously mentioned, the expansion of the program is under review.

The costs of reporting this disease is expected to be modest as reporting processes already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting disease. The estimated cost of disease reporting by small hospitals is $150.00 annually. The cost for physicians is expected to be less.

Costs to Local and State Governments:

The additional cost of reporting vaccinia disease is expected to be minimal because the staff who will be involved in reporting the additional diseases at the local and state health departments are the same as those currently involved with reporting of other communicable diseases listed in 10 NYCRR Section 2.1. The additional cost to local or state governments associated with investigating vaccinia disease will largely depend on the extent of vaccinia in contacts of persons vaccinated. The number of cases of contact vaccinia is expected to be few. (See Costs to Regulated Parties).

Potential savings include reducing costs associated with morbidity, treatment and premature death.

Costs to the Department of Health:

The New York State Department of Health already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the Centers for Disease Control and Prevention. The addition of vaccinia disease should not lead to additional costs for data entry, particularly as the Department adopts systems for electronic submission of case reports. The Department will assist counties in the investigation of vaccinia disease, as it does in the investigation of other communicable diseases.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to regulated parties.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports from physicians in attendance on persons with or suspected of being affected with vaccinia disease, will be mandated to immediately forward such reports to the State Health Commissioner and to investigate the cases reported.

Duplication:

There is no duplication of this initiative in existing State or federal law.

Alternatives:

No other alternatives are available.

Reporting of diseases associated with vaccinia is of critical import to public health. There is an urgent need to conduct surveillance, identify human cases in a timely manner, and, in the case of contact vaccinia, reduce the potential for further exposure to contacts.

Federal Standards:

Currently there are no federal standards requiring the reporting of vaccinia disease.

Compliance Schedule:

Reporting of vaccinia disease will be mandated upon filing of a Notice of Emergency Adoption with the Secretary of State and made permanent by publication of a Notice of Adoption in the New York *State Register*.

***Regulatory Flexibility Analysis***

Effect on Small Business and Local Government:

It is expected that the proposed change will have modest impact on small business (hospitals, clinics, nursing homes, physicians, and clinical laboratories). There are approximately 6 hospitals, 15 nursing homes and 1,000 clinical laboratories that employ less than 100 people in New York State. There are 397 licensed clinics; information about how many operate as small businesses is not available. There are approximately 70,000 physicians in New York State but it is not known how many can be categorized as small businesses. This regulation will apply to all local health departments.

Compliance Requirements:

Hospitals, clinics, physicians, nursing homes, and clinical laboratories that are small businesses and local governments will utilize revised Department of Health reporting forms.

Professional Services:

No additional professional services will be required since providers should be able to utilize existing staff to report occurrences of vaccinia disease.

Compliance Costs:

No initial capital costs of compliance are anticipated. Annual compliance costs will depend upon the number of untoward events. As of June 5, 2003, 704 individuals have been vaccinated. On two occasions, suspect generalized vaccinia has been investigated and clinical specimens were obtained for laboratory diagnosis. Generalized vaccinia was confirmed in one case. The expansion of the program is currently under review. The reporting of vaccinia disease should have a negligible effect on the estimated cost of disease reporting by small hospitals which is at most $150.00 per year. The cost would be less for physicians and other small businesses.

Minimizing Adverse Impact:

There are no alternatives to the reporting requirement. Adverse impacts have been minimized since revised forms and reporting staff will be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as unnecessary and inconsistent with the purpose of the regulation.

Feasibility Assessment:

Small businesses and local governments will likely find it easy to report conditions due to the availability to them of electronic reporting and tabulation.

Small Business and Local Government Participation:

Local governments have been consulted in the process through ongoing communication on this issue with the New York State Association of County Health Officers (NYSACHO).

***Rural Area Flexibility Analysis***

Effect on Rural Areas:

The proposed rule will apply statewide. It is expected to have minimal impact on local health units, physicians, hospitals and laboratories that are located in rural areas.

Compliance Requirements:

Local health units, hospitals, clinics, physicians and clinical laboratories in rural areas will continue to utilize Department of Health reporting forms that will be revised to include vaccinia disease.

Professional Services:

No additional professional services will be required. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

Minimizing Adverse Impact:

There are no alternatives to the reporting requirements. Adverse impacts have been minimized since familiar forms and reporting staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-bb(2) were rejected as unnecessary and inconsistent with the purpose of the regulation.

Rural Area Input:

The New York State Association of County Health Officers, including representatives of small counties, have been informed about this change and the need for it.

***Job Impact Statement***

This regulation adds vaccinia disease to the list of diseases that health care providers must report to public health authorities using existing processes. The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

# Insurance Department

## EMERGENCY RULE MAKING

### Healthy NY Application Process

**I.D. No.** INS-34-03-00007-E
**Filing No.** 845
**Filing date:** Aug. 11, 2003
**Effective date:** Aug. 11, 2003

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

***Action taken:*** Amendment of sections 362-2.3 and 362-4.3 (Regulation 171) of Title 11 NYCRR.

***Statutory authority:*** Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326, and 4327

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

***Specific reasons underlying the finding of necessity:*** It is estimated that approximately three million New York citizens currently do not have health insurance coverage. The problem of the uninsured in New York has recently been exacerbated by recent events impacting the stability of the State's labor market and access to employer-based health insurance. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people meeting certain eligibility criteria. The program's target population of currently uninsured workers is difficult to reach without effective marketing and facilitated enrollment strategies. For this reason, it is necessary to develop a standardized application which must be accepted by all health maintenance organizations participating in the program. This standardized application can be widely disseminated for the purpose of reaching those in need of health insurance. With the introduction of a standardized process, channels of distribution for the Healthy New York application may include the Healthy New York website, the Healthy New York hotline, the Healthy New York consumer guide, chambers of commerce and facilitated enrollment strategies. The requirements for demonstrating income eligibility have also been modified in order to eliminate some complexity from the application process.

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

***Subject:*** Healthy NY standardized applications and clarification on household income requirements.

***Purpose:*** To simplify the Healthy NY application process.

***Text of emergency rule:*** Section 362-2.3 is hereby amended to read as follows:

§ 362-2.3 Enrollment.

(a) Applications for qualifying health insurance contracts shall be made directly to health maintenance organizations and participating insurers.

(b) Health maintenance organizations and participating insurers shall provide all necessary information and enrollment forms when requested by applicants.

(c) Health maintenance organizations and participating insurers shall collect the initial eligibility certifications required by section 4326(i) of the Insurance Law and necessary supporting documentation and shall be responsible for examination of such certifications and supporting documentation for verification that applicants meet applicable eligibility requirements. *Health maintenance organizations and participating insurers shall accept any standardized application form that may be prescribed by the superintendent.*

(d) Unless the superintendent suspends enrollment in the Healthy New York program pursuant to section 4327(k) of the Insurance Law or approves a request to suspend qualifying individual enrollment pursuant to subsection (h) of this section, all applicants meeting eligibility criteria shall be accepted and coverage must be issued on the first day of the month next succeeding the date a complete application has been submitted for all applications submitted on or prior to the 20th day of such month. For applications submitted after the 20th day of a month, coverage shall be issued no later than the first of the month next following. Dependent children up to at least age 19 and full-time students up to at least age 23 shall be considered eligible dependents under qualifying health insurance contracts.

(e) Health maintenance organizations and participating insurers shall provide applicants which have failed to demonstrate eligibility with a written notice of denial which clearly sets forth the basis for the denial.

(f) Health maintenance organizations and participating insurers must submit monthly enrollment reports which detail total enrollment in the Healthy New York program in the format specified by the superintendent. Such reports shall identify the health maintenance organization's or participating insurer's total enrollment in the Healthy New York program as of the first day of the following month and must be submitted to the superintendent no later than the fifteenth day of the following month.

(g) In the event that the enrollment in the small employer or individual Healthy New York program is suspended pursuant to section 4327(k) of the Insurance Law, participating insurers and health maintenance organizations shall:

(1) notify applicants that enrollment has been suspended; and

(2) maintain a waiting list to be filled in the order of receipt in the event that enrollment is reactivated.

(h) Commencing June 1, 2001, if monthly enrollment reports indicate that a given health maintenance organization or participating insurer's total enrollment under qualifying individual health insurance contracts exceeds 50% of that health maintenance organization's or participating insurer's total enrollment in the Healthy New York program, the health maintenance organization or participating insurer may submit a request to the superintendent to suspend the issuance of its qualifying individual health insurance contracts. If approved by the superintendent, the suspension shall take effect on the date specified by superintendent and shall be for the period specified by the superintendent. A participating insurer or health maintenance organization that has received approval to issue such a suspension shall:

(1) notify applicants that enrollment has been suspended;

(2) maintain a waiting list to be filled in the order of receipt in the event that enrollment is reactivated; and

(3) on a quarterly basis, submit reports detailing the claims experience of the Healthy New York product. Such reports shall segregate the claims experience of qualifying individuals from the claims experience of qualifying small employers and individual proprietors.

(i) An enrollment suspension pursuant to section 4327(k) of the Insurance Law or pursuant to subsection (h) of this section shall not preclude the addition of dependents or new employees to existing qualifying health insurance contracts. Additionally, an enrollment suspension shall not prevent the enrollment of persons exercising a statutory right of conversion to a qualifying individual insurance contract.

(j) Nothing herein is intended to preclude, diminish or in any way impair the involvement of chambers of commerce, trade associations and other similar entities in the Healthy New York Program in any manner otherwise permitted by law or regulation.

Section 362-4.3 is hereby amended to read as follows:

§ 362-4.3 Verification of net household income.

(a) To qualify for coverage under the Healthy New York program, individual proprietors and working uninsured individuals must satisfy the household income criteria set forth in Sections 4326(c)(1)(A)(ii) and 4326(c)(3)(A)(iii) of the Insurance Law. *For the purpose of determining household income eligibility, household members shall include the applicant, the applicant's legal spouse if residing in the household and any children eligible for coverage under the policy.* Income received by the applicant[, their] *and the applicant's* legal spouse [and any other family members] residing in the household shall be counted.

(b) Income shall include, but shall not be limited to, the following:

(1) monetary compensation for services including wages, salary, commissions, overtime compensation, fees or tips;

(2) net income from farm and non-farm self-employment;

(3) Social Security payments or benefits;

(4) dividends, interest on savings or bonds, regular income from estates or trusts, or net rental income;

(5) unemployment compensation;

(6) government, civilian employee or military retirement or pension or veteran's payments;

(7) private pension or annuity;

(8) alimony or child support payments received;

(9) regular contributions from persons not living in the household;

(10) net royalties; and

(11) such other income as determined by the superintendent.

(c) Income shall not include public assistance; SSI; foster care payments; capital gains; any assets drawn down as withdrawals from a bank; receipts from the sale of property; or payments for compensation for injury. Also excluded are non-cash benefits, such as employee fringe benefits, food or housing received in lieu of wages, and receipts from federal non-cash benefit programs.

(d) Health maintenance organizations and participating insurers shall collect such documentation as is necessary and sufficient to initially, and annually thereafter, verify that the household income requirements of the Healthy New York program have been satisfied. Such documentation may include, but not be limited to one or more of the following:

(1) annual income tax returns and, if not prohibited by federal law for purposes of income verification, the social security account number;

(2) paycheck stubs;

(3) written documentation of income from all employers; or other documentation of income (earned or unearned) as determined by the superintendent to be acceptable, provided however, such documentation shall set forth the source of such income.

***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 November 9, 2003.

***Text of emergency rule and any required statements and analyses may be obtained from:*** Terri Marchon, Insurance Department, 25 Beaver St., New York, NY 10004-2319, (212) 480-5262, e-mail: tmarchon@ins.state.ny.us

***Regulatory Impact Statement***

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4327 creates two stop-loss funds from which health maintenance organizations and participating insurers may receive reimbursement for certain claims paid on behalf of members covered under qualifying health insurance contracts and authorizes the superintendent to prescribe regulations to implement the establishment of such funds.

2. Legislative objectives: A significant number of New York residents are currently uninsured. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. The Legislature enacted Chapter 1 of the Laws of 1999 to provide for the Healthy New York program, which was a new initiative designed to encourage small employers which do not currently provide health insurance coverage to their employees to offer such coverage and also designed to make coverage available to uninsured employees whose employers do not provide group health insurance coverage. As a result of a tremendous working relationship with the participating insurers, the New York State Insurance Department was able to obtain valuable input in reducing the complexity of the Healthy New York application process. Interested parties recommended that standard application forms be created, one for small employers and another for individuals/sole proprietors. Furthermore, health maintenance organizations sought clarification on who is considered a household member. By creating simplified and standardized Healthy New York applications to be accepted by all health maintenance organizations and participating insurers, the application process will be eased, facilitating the appropriate enrollment of eligible small employers and uninsured employed individuals. With simplified standard applications accepted by all participating providers, the applications will be readily available from a number of sources, reducing the timeframes involved in obtaining and completing an application. As a result, the eligibility and application procedures will be streamlined and will ease administrative processes for both enrollees and providers, encouraging more to purchase health insurance coverage. In addition, clarification on who is a household member eliminates confusion in determining household income, which is necessary in ascertaining eligibility for Healthy New York program.

3. Needs and benefits: The amendment to Part 362 of 11 NYCRR is necessary to clarify eligibility for the Healthy New York program and to simplify the application and administrative process for both enrollees and providers. Clarifying which persons are to be considered household members will eliminate the uncertainty involved in determining household income levels. The correct calculation of household income is crucial, as this is a major component in determining eligibility for Healthy New York. Simplified standardized application forms will streamline the eligibility and administrative process facilitating enrollment. These provisions should enhance the implementation and operation of the Healthy New York program while improving the efficiency that individuals and small employers will have to access comprehensive health insurance, as the standard application forms will be made available from many sources.

4. Costs: The enacting legislation for the Healthy New York program requires that health maintenance organizations and participating insurers have a system in place to accept applications. This amendment will require that they adjust their procedures in order to allow for the acceptance of a standardized application form. A common request from insurers participating in the Healthy New York program has been that a small employer standardized application form and an individual/sole proprietor standardized application form be created. We would expect that any costs associated with implementing the simplified application process would be minimal since health maintenance organizations and participating insurers are already required to accept applications for enrollment into Healthy New York. The standardized applications will be shorter and more easily understood by applicants. Since the standardized applications are shorter than those currently used in the marketplace, printing costs will be reduced. Similarly, small business and individuals wishing to participate in the Healthy New York program are currently obligated to complete an initial form certifying their eligibility for the program. This regulation will permit such applicants to satisfy this certification requirement by completing a simplified, standardized application form which will be more readily available. This amendment does not impose any additional costs upon small businesses and individuals applying to the program. There will be no costs to local governments associated with this amendment.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment will not impose any additional reporting requirements.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: Throughout, input was sought from interested parties including consumer groups; health plan associations; business groups; associations groups; local chambers of commerce and academics. The amendment is primarily designed to provide clarification of eligibility criteria by eliminating uncertainty in determining household income levels. The amendment also eases the application process by simplifying administrative processes for both enrollees and providers. The small employer and individual/sole proprietor standardized applications will streamline the eligibility and enrollment process facilitating the appropriate enrollment of eligible individuals and employees into the Healthy New York program, thus reducing the number of uninsureds in the state. A common request from insurers participating in the Healthy New York program has been that simplified, standardized application forms be created.

9. Federal standards: There are no known federal standards addressing the programs addressed in this amendment.

10. Compliance schedule: Upon dissemination of the standardized application forms by the New York State Insurance Department, health plans should be prepared to comply with the amendment immediately. As health maintenance organizations and participating insurers already have established application screening processes and procedures in place, compliance should be undemanding.

***Regulatory Flexibility Analysis***

1. Effect of rule: The Healthy New York program was designed to provide small employers, including individual proprietors, with an option to purchase comprehensive health insurance at a premium rate which will be favorably impacted by the availability of state funded stop loss relief. The program is available to qualifying small employers that do not currently offer group health insurance coverage if they have fifty or fewer eligible employees and if 30 percent of their eligible workforce earns annual wages of $30,000 or less. Individual proprietors must meet specified household income requirements. The amendment will affect qualifying small employers, including individual proprietors, by providing them with access to a standardized, streamlined application process for the Healthy New York program. The amendment will also simplify the income eligibility requirements of the Healthy New York program for the purpose

of further simplifying the application process. The amendment will not affect local governments. The proposed regulation will also affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. Compliance requirements: Qualifying small employers and individual proprietors wishing to participate in the Healthy New York program may utilize the standardized application for the purpose of certifying initial eligibility for the program. Supporting documentation of eligibility may be required, as appropriate.

3. Professional services: The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. Compliance costs: The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the program. Any costs associated with completing this form should be minimal since the information requested in support of an applicant's eligibility certification should be readily available to the small employer. This regulatory amendment designed to simplify the application process for small employers will not impose any additional costs. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it merely allows small businesses to utilize a simplified and standardized application form in order to demonstrate eligibility for the Healthy New York program.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by requiring health maintenance organizations and insurers, which are not small businesses within the definition of Section 102(8) of the State Administrative Procedure Act to accept a simplified standardized application to verify a small employer's eligibility for participation in the Healthy New York program.

7. Small business and local government participation: This Notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with the opportunity to participate in the rulemaking process.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals purchasing coverage on the direct payment market are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Health maintenance organizations are currently required to collect and examine Healthy New York program applications in order to verify that applicants for the Healthy New York program meet all applicable eligibility requirements. Insurers that voluntarily choose to participate in this market must do so under the same terms and conditions as health maintenance organizations. This amendment will require Health Maintenance Organizations and Participating Insurers to accept a simplified standardized application for the Healthy New York program. Health Maintenance Organizations and Participating Insurers will have to adjust their Healthy New York application screening processes and procedures to accommodate the introduction of this standardized form. Small businesses and individuals wishing to participate in the Healthy New York program will now be permitted to utilize the standardized form in order to meet the requirement imposed by the enacting legislation that they provide an initial certification as to their eligibility for the program. However, because these requirements apply to both rural and non-rural entities, this regulation does not impose any requirement that would be unique to rural areas.

3. Costs: The enacting legislation for the Healthy New York program requires that Health Maintenance Organizations and Participating Insurers have a system in place to accept applications. This amendment will require that they adjust their procedures in order to allow for the acceptance of a standardized application form. We would expect that any costs associated with implementing this simplified application process would be minimal, since the affected organizations are already required to process Healthy New York applications. Similarly, small business and individuals wishing to participate in the Healthy New York program are currently obligated to complete an initial form certifying their eligibility for the program. This amendment will permit such applicants to satisfy this certification requirement by completing a standardized application form. This amendment does not impose any additional costs upon small businesses and individuals applying to the program. Since these requirements apply to both rural and non-rural entities, the amendment does not impose any impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the impact of the amendment should ultimately be a favorable one, since it simplifies and shortens the application process.

5. Rural area participation: This Notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with the opportunity to participate in the rulemaking process.

***Job Impact Statement***

This amendment will not adversely impact jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers through the simplification of the Healthy New York application process and clarification of household income determinations.

## EMERGENCY RULE MAKING

### Physicians and Surgeons Professional Insurance Merit Rating Plans

**I.D. No.** INS-34-03-00008-E
**Filing No.** 847
**Filing date:** Aug. 12, 2003
**Effective date:** Aug. 12, 2003

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

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

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

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

***Specific reasons underlying the finding of necessity:***

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

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

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

***Subject:*** Physicians and surgeons professional insurance merit rating plans.

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

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

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

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

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

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

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

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

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

***This notice is intended*** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire November 9, 2003.

***Text of emergency rule and any required statements and analyses may be obtained from:*** Patricia Mann, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: pmann@ins.state.ny.us

***Regulatory Impact Statement***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

patient care which will reduce the frequency and severity of medical malpractice losses.

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

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

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

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

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

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

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

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

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

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

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

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

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

***Regulatory Flexibility Analysis***

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

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

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

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

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

***Rural Area Flexibility Analysis***

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

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

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

With respect to the proactive risk management course, insurers will have to provide the follow-up course on an annual basis rather than every other year which will entail making more frequent arrangements concerning location, notification and presentation of the course if it is offered in a

lecture format. They will also have to develop new procedures for the purposes of conducting audits and/or self-audits by insureds.

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

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

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

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

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

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

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

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

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

***Job Impact Statement***

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

## NOTICE OF ADOPTION

### Warning Statements on Claim Forms

**I.D. No.** INS-22-03-00011-A
**Filing No.** 848
**Filing date:** Aug. 12, 2003
**Effective date:** Nov. 1, 2003

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

***Action taken:*** Amendment of sections 86.1 and 86.4 (Regulation 95) of Title 11 NYCRR.

***Statutory authority:*** Insurance Law, sections 201, 301, 403(c)-(e), 409 and 4322, L. 1992, ch. 480, L. 1993, ch. 729; and L. 1998, ch. 2

***Subject:*** Warning statements on claim forms.

***Purpose:*** To delete obsolete language and name references and update the language in required warning statements regarding the commission of a fraudulent insurance act.

***Text or summary was published*** in the notice of proposed rule making, I.D. No. INS-22-03-00011-P, Issue of May 29, 2003.

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

***Text of rule and any required statements and analyses may be obtained from:*** Teresa Marchon,, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

***Assessment of Public Comment***

The agency received no public comment.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Excess Profits in Motor Vehicle Insurance

**I.D. No.** INS-34-03-00006-P

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

***Proposed action:*** This is a consensus rule making to amend section 166-1.0 (Regulation 105) of Title 11 NYCRR.

***Statutory authority:*** Insurance Law, sections 201, 301, 2323 and 2329; and L. 2003, ch. 85

***Subject:*** Treatment of excess profits in motor vehicle insurance.

***Purpose:*** To remove outdated references and implement an amendment to section 2329 of the Insurance Law made by L. 2003, ch. 85, section 5.

***Text of proposed rule:*** Section 166-1.0(a) of Subpart 166-1 of Part 166 is amended to read as follows:

(a) Section 2329 of the New York State Insurance Law, as amended [by part I of chapter 105 of the Laws of 2002], requires insurers to return to consumers any "excess profits" on automobile insurance written in New York State for the period [from January 1, 1974 through August 2, 2002] *specified in section 2329.*

***Text of proposed rule and any required statements and analyses may be obtained from:*** Terri Marchon, Insurance Department, Public Affairs, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

***Data, views or arguments may be submitted to:*** John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

***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 agency has determined that no person is likely to object to the rule as written since the only change being made is to remove outdated references and implement an amendment to Section 2329 of the Insurance Law made by Chapter 85 of the Laws of 2003.

***Job Impact Statement***

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely removes outdated references and implements an amendment to Section 2329 of the Insurance Law made by Chapter 85 of the Laws of 2003.

# Public Service Commission

## NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

| I.D. No. | Publication Date of Proposal |
|---|---|
| PSC-23-00-00029-W | June 7, 2000 |
| PSC-30-00-00007-W | July 26, 2000 |
| PSC-32-01-00009-W | August 8, 2001 |

| | |
|---|---|
| PSC-32-01-00010-W | August 8, 2001 |
| PSC-32-01-00011-W | August 8, 2001 |
| PSC-32-01-00012-W | August 8, 2001 |
| PSC-32-01-00013-W | August 8, 2001 |
| PSC-32-01-00014-W | August 8, 2001 |
| PSC-32-01-00015-W | August 8, 2001 |
| PSC-33-01-00010-W | August 15, 2001 |
| PSC-33-01-00011-W | August 15, 2001 |
| PSC-33-01-00012-W | August 15, 2001 |
| PSC-33-01-00013-W | August 15, 2001 |
| PSC-33-01-00014-W | August 15, 2001 |
| PSC-35-01-00009-W | August 29, 2001 |
| PSC-36-01-00002-W | September 5, 2001 |
| PSC-36-01-00011-W | September 5, 2001 |
| PSC-36-01-00012-W | September 5, 2001 |
| PSC-38-01-00004-W | September 19, 2001 |
| PSC-38-01-00005-W | September 19, 2001 |
| PSC-38-01-00006-W | September 19, 2001 |
| PSC-38-01-00007-W | September 19, 2001 |
| PSC-38-01-00008-W | September 19, 2001 |
| PSC-39-01-00028-W | September 26, 2001 |
| PSC-39-01-00029-W | September 26, 2001 |
| PSC-39-01-00030-W | September 26, 2001 |
| PSC-39-01-00031-W | September 26, 2001 |
| PSC-39-01-00032-W | September 26, 2001 |
| PSC-39-01-00033-W | September 26, 2001 |
| PSC-39-01-00034-W | September 26, 2001 |
| PSC-39-01-00035-W | September 26, 2001 |
| PSC-39-01-00036-W | September 26, 2001 |
| PSC-39-01-00037-W | September 26, 2001 |
| PSC-42-01-00008-W | October 17, 2001 |
| PSC-42-01-00009-W | October 17, 2001 |
| PSC-42-01-00010-W | October 17, 2001 |
| PSC-43-01-00003-W | October 24, 2001 |
| PSC-43-01-00004-W | October 24, 2001 |
| PSC-43-01-00005-W | October 24, 2001 |
| PSC-43-01-00006-W | October 24, 2001 |
| PSC-43-01-00007-W | October 24, 2001 |
| PSC-43-01-00008-W | October 24, 2001 |
| PSC-43-01-00009-W | October 24, 2001 |
| PSC-50-01-00009-W | December 12, 2001 |
| PSC-52-01-00008-W | December 26, 2001 |
| PSC-52-01-00009-W | December 26, 2001 |
| PSC-52-01-00010-W | December 26, 2001 |
| PSC-52-01-00011-W | December 26, 2001 |
| PSC-52-01-00012-W | December 26, 2001 |
| PSC-52-01-00013-W | December 26, 2001 |
| PSC-04-02-00009-W | January 23, 2002 |
| PSC-04-02-00010-W | January 23, 2002 |
| PSC-04-02-00011-W | January 23, 2002 |
| PSC-04-02-00013-W | January 23, 2002 |
| PSC-04-02-00014-W | January 23, 2002 |
| PSC-04-02-00015-W | January 23, 2002 |
| PSC-06-02-00007-W | February 6, 2002 |
| PSC-06-02-00008-W | February 6, 2002 |
| PSC-16-02-00011-W | April 17, 2002 |
| PSC-16-02-00012-W | April 17, 2002 |
| PSC-17-02-00003-W | April 24, 2002 |
| PSC-17-02-00004-W | April 24, 2002 |
| PSC-18-02-00016-W | May 1, 2002 |
| PSC-18-02-00017-W | May 1, 2002 |
| PSC-18-02-00018-W | May 1, 2002 |
| PSC-18-02-00019-W | May 1, 2002 |
| PSC-30-02-00007-W | July 24, 2002 |
| PSC-30-02-00008-W | July 24, 2002 |
| PSC-30-02-00009-W | July 24, 2002 |
| PSC-30-02-00010-W | July 24, 2002 |
| PSC-30-02-00012-W | July 24, 2002 |
| PSC-30-02-00013-W | July 24, 2002 |
| PSC-30-02-00014-W | July 24, 2002 |
| PSC-30-02-00015-W | July 24, 2002 |
| PSC-30-02-00016-W | July 24, 2002 |
| PSC-30-02-00017-W | July 24, 2002 |
| PSC-30-02-00018-W | July 24, 2002 |
| PSC-30-02-00019-W | July 24, 2002 |
| PSC-30-02-00020-W | July 24, 2002 |
| PSC-30-02-00022-W | July 24, 2002 |
| PSC-30-02-00023-W | July 24, 2002 |
| PSC-42-02-00006-W | October 16, 2002 |
| PSC-45-02-00008-W | November 6, 2002 |
| PSC-45-02-00009-W | November 6, 2002 |
| PSC-45-02-00010-W | November 6, 2002 |
| PSC-51-02-00005-W | December 18, 2002 |
| PSC-51-02-00006-W | December 18, 2002 |
| PSC-06-03-00012-W | February 12, 2003 |
| PSC-06-03-00014-W | February 12, 2003 |
| PSC-30-03-00006-W | July 30, 2003 |
| PSC-30-03-00007-W | July 30, 2003 |

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

**Hot-Cuts by Verizon New York Inc.**

**I.D. No.** PSC-34-03-00010-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 the terms on which Verizon New York Inc. offers hot-cuts pursuant to the Order instituting a proceeding issued Nov. 22, 2002.

***Statutory authority:*** Public Service Law, sections 92(2) and 94(2)

***Subject:*** Hot-cuts of Verizon New York Inc.

***Purpose:*** To determine the appropriate hot-cuts of Verizon New York Inc.

***Substance of proposed rule:*** The Commission is considering the terms on which Verizon New York Inc. offers hot-cuts pursuant to the Order Instituting a Proceeding, issued November 22, 2002.

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

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

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

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

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

(02-C-1425SA1)

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

**Mutual Aid and Restoration Consortium by the City of New York**

**I.D. No.** PSC-34-03-00011-P

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

***Proposed action:*** The commission is considering the petition by the City of New York, through its Department of Information Technology and Telecommunications, regarding mandatory participation by Metropolitan Area telecommunications carriers in the second Mutual Aid and Restoration Consortium ("MARC II").

***Statutory authority:*** Public Service Law, sections 5, 91, 92, 94 and 97

***Subject:*** Participation by New York City Metropolitan Area telecommunications carriers in the second Mutual Aid and Restoration Corsotium ("MARC II").

***Purpose:*** To require mandatory participation by New York City Metropolitan Area telecommunications carriers.

***Substance of proposed rule:*** By letter dated July 31, 2003, the City of New York, through its Department of Information Technology and Telecommunications, petitioned the Commission to require mandatory participation by New York City Metropolitan Area telecommunications carriers in the second Mutual Aid and Restoration Consortium ("MARC II"). The City states that the existing mutual aid restoration agreement ("MARC") was the basis for restoring essential municipal government communications in the immediate aftermath of the September 11, 2001 terrorist

attacks. The City states that its petition is intended to accomplish two goals: (1) update the eleven-year old MARC agreement to encompass current technologies and lessons learned from its implementation under crisis circumstances; and (2) ensure the very survival and the continued viability of a mutual aid and restoration capability in the City of New York.

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

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

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

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

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

(03-C-1083SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Interconnection of Networks by Verizon New York Inc. and Covad Communications

**I.D. No.** PSC-34-03-00012-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Covad Communications for approval of an Interconnection Agreement executed on May 19, 2003.

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

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

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

***Substance of proposed rule:*** Verizon New York Inc. and Covad Communications have reached a negotiated agreement whereby Verizon New York Inc. and Covad Communications will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until September 19, 2004, or as extended.

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

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

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

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

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

(03-C-1085SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Interconnection of Networks by Verizon New York Inc. and Long Island Telephone Company

**I.D. No.** PSC-34-03-00013-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Long Island Telephone Company for approval of an Interconnection Agreement executed on June 20, 2003.

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

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

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

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

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

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

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

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

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

(03-C-1086SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Economic Development Plan by Rochester Gas and Electric Corporation

**I.D. No.** PSC-34-03-00014-P

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

***Proposed action:*** The Public Service Commission is considering a revised proposed Economic Development Plan filed by Rochester Gas and Electric Corporation (RG&E), pursuant to an order adopting recommended decision with modifications in Cases 02-E-0198 and 02-G-0199, (issued March 7, 2003).

***Statutory authority:*** Public Service Law, sections 5(1)(b), 64, 65(1), 65(2), 65(3), 65(5), 66(1), 66(4), 66(5), 66(10), 66(12), 71 and 72

***Subject:*** Economic Development Plan for commercial and industrial electric customers.

***Purpose:*** To approve the plan.

***Substance of proposed rule:*** The Public Service Commission is considering whether to adopt, reject or modify, in whole or in part, a proposed Economic Development Plan filed by Rochester Gas and Electric Corporation (RG&E), pursuant to an Order Adopting Recommended Decision with Modifications in Case 02-E-0198 and Case 02-G-0199, (issued March 7, 2003).

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

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

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

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

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

(02-E-0198SA4)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Request for Approval of Instrument Transformers by General Electric Company

**I.D. No.** PSC-34-03-00015-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by General Electric Company for the approval of the GE instrument transformer models: JKM-3C, JKM-4C, JKM-5C and PT-7.

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

***Subject:*** New types of electricity meters, transformers and auxiliary devices.

***Purpose:*** To approve use of the General Electric instrument transformers.

***Substance of proposed rule:*** The Commission will consider a request from General Electric Company for the approval and use of four Instrument Transformer Models JKM-3C, JKM-4C, JKM-5C and PT-7 in New York State. The GE JKM series are Current Transformers and the GE PT-7 is a voltage transformer; all are revenue grade indoor instrument transformers intended for use in commercial and industrial markets. The GE instrument transformers conform to the latest applicable standards for accuracy and performance as set forth in ANSI C12.11 and IEEE C57.13-1993 as well as 16 NYCRR Part 93.

General Electric has indicated that National Grid has submitted a letter of intent to use these instrument transformers on its electrical power system.

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

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

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

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

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

(03-E-1080SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Transfer of Assets by Corning Natural Gas

**I.D. No.** PSC-34-03-00016-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Corning Natural Gas Corporation (Corning) for approval of the transfer of approximately $80,000 of assets owned by Corning Natural Gas.

***Statutory authority:*** Public Service Law, sections 65, 66(12) and 70

***Subject:*** Corning's transfer of approximately $80,000 of assets.

***Purpose:*** To approve or reject the petition.

***Substance of proposed rule:*** The Public Service Commission is considering to approve or reject, in whole or in part, the Petition of Corning Natural Gas Corporation (Corning) for approval of the transfer of approximately $80,000 of assets owned by Corning Natural Gas.

Among the issues to be considered is the value of the assets being transferred, the extent to which ratepayers funded the assets, and the resulting impact on ratepayers from the transfer.

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

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

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

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

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

(03-G-1049SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Competitive Transition Charges by Niagara Mohawk Power Corporation

**I.D. No.** PSC-34-03-00017-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify a proposal filed by Niagara Mohawk Power Corporation to make a change in the rates, charges, rules and regulations contained in its tariff schedules, P.S.C. Nos. 207 and 214—Electricity to become effective January 1, 2004.

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

***Subject:*** Competitive transition charges.

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

***Substance of proposed rule:*** On August 1, 2003, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff revisions to Schedules P.S.C. Nos. 207 and 214 - Electricity to become effective January 1, 2004. Niagara Mohawk proposes to revise the competitive transition charges in retail delivery rates to reflect forecast market prices in electricity.

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

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

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

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

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

(01-M-0075SA18)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Pro-Ration of Consolidated Bills by Consolidated Edison Company, *et al.*

**I.D. No.** PSC-34-03-00018-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, petitions for rehearing and clarification of its June 20, 2003 order relating to implementation of L. 2002, ch. 686 and pro-ration of consolidated bills, and other related matters (June 20 order).

***Statutory authority:*** Public Service Law, sections 30-53, 65 and 66(12)

***Subject:*** Petitions for rehearing and clarification of June 20 order.

***Purpose:*** To approve or reject, petitions for rehearing and clarification of its June 20, 2003 order.

***Substance of proposed rule:*** The Public Service Commission (Commission) is considering whether to approve or reject, in whole or in part, petitions for rehearing and clarification of its June 20, 2003 Order relating to implementation of Chapter 686 of the Laws of 2002 and pro-ration of consolidated bills, filed by Consolidated Edison Company of New York, Inc., KeySpan Energy Delivery New York and Long Island, National Fuel Gas Distribution Corporation, Niagara Mohawk Power Corporation, New

York State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Energy Cooperative of New York, North American Energy, Inc., National Energy Marketers Association, Small Customer Marketer Coalition, Strategic Energy, LLC, and Total Gas & Electric, Inc.

Among the issues to be considered are the requirements for pro-rating partial payments of retail access customers pursuant to Chapter 686 of the Laws of 2002 and the Commission's general policy on pro-ration, the purchase of accounts receivables of Energy Services Companies (ESCO) by utilities, and the application of PSL Sections 30-53 to ESCOs or any entity that in any manner, sells or facilitates the sale, or furnishing of gas or electricity to residential customers.

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

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

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

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

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

(03-M-0117SA2)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Issuance of Securities by Key Span East Corporation d/b/a KeySpan Energy Delivery Long Island

**I.D. No.** PSC-34-03-00019-P

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

***Proposed action:*** The commission is considering a request by the KeySpan East Corporation d/b/a KeySpan Energy Delivery Long Island for multi-year authority to issue up to $335 million in securities.

***Statutory authority:*** Public Service Law, section 69

***Subject:*** Petition for multi-year authority to issue up to $335 million in securities.

***Purpose:*** To obtain authorization to issue securities.

***Substance of proposed rule:*** KeySpan East Corporation d/b/a KeySpan Energy Delivery Long Island submitted a petition pursuant to Public Service Law Section 69 seeking multi-year authorization to issue up to $335 million in securities.

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

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

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

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

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

(03-M-1056SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Issuance of Securities by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York

**I.D. No.** PSC-34-03-00020-P

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

***Proposed action:*** The commission is considering a request by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for multi-year authority to issue up to $350 million in securities.

***Statutory authority:*** Public Service Law, section 69

***Subject:*** Petition for multi-year authority to issue up to $350 million in securities.

***Purpose:*** To obtain authorization to issue securities.

***Substance of proposed rule:*** The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York submitted a petition pursuant to Public Service Law Section 69 seeking multi-year authorization to issue up to $350 million in securities.

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

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

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

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

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

(03-M-1057SA1)

# Racing and Wagering Board

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Submission of Veterinarian Treatment Records

**I.D. No.** RWB-34-03-00004-P

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

***Proposed action:*** Amendment of sections 4120.9 and 4043.9 and addition of sections 4120.10 and 4043.10 to Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 301 and 902

***Subject:*** Submission of veterinarian treatment records to the board, the content of those records and the time period in which those records must be submitted.

***Purpose:*** To require veterinarians and/or trainers to submit written records no later than 24 hours after treatment, or if it is within 24 hours of post time no later than one hour prior to post time; to amend the furosemide administration form, and to impose a new requirement for the filing of a written record of treatment by non-board licensed veterinarians.

***Text of proposed rule:*** [4012.4] *4043.9* Records of *board-licensed* veterinarian.

(a) Every licensed practicing veterinarian shall keep a written record of his practice concerning horses participating at pari-mutuel thoroughbred race meets in this State, whether performed at a licensed or franchised track or elsewhere, which shall disclose:

(1) the name of the horse treated;
(2) the nature of the horse's ailment;
(3) the type of treatment prescribed and performed for the horse; and
(4) the date and time of such treatment;
*(5) all treatment for any given day, i.e., a day sheet.*

(b) Every such veterinarian shall [produce such written records when requested by an official of the board. In addition he shall instruct the trainer of the necessity to submit the report required by section 4043.2(e) of this Title relating to joint aspiration] *complete and submit written records consistent with subdivision (a) no later than 24 hours after such treatment by a means or at a location prescribed by the board, provided, however, that records of treatments within 24 hours prior to the start of the race in which the horse is scheduled to participate must be filed no later than one hour prior to the scheduled post time for that race. Any such report is*

*confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the board, or to the trainer or owner of record at the time of treatment.*

(c) Before a licensed veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track, and if the horse has been entered he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these rules. If the horse has not been entered to race, but the administration is of a drug which is not permitted to be administered within 72 hours of a racing program, or longer, he shall so inform the trainer of that fact and of the time applicable. If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the board veterinarian or stewards at the pertinent track.

(d) The attending veterinarian shall complete and submit daily a form prescribed by the board which shall contain the name of each horse entered to race on that day and treated by him with furosemide. The form shall also contain the following information:

(1) [Name of the track] *Date;*

(2) [Name of the trainer] *Race number;*

(3) [Description of the horse] *Track;*

(4) [Tattoo number] *Name of horse;* [and]

(5) *Trainer; and*

*(6)* The dose, route and time of administration.

The form must be signed by the attending veterinarian and filed at a location designated by the board.

*4043.10 Records of treatment by non-board-licensed veterinarians.*

*In the event a horse participating at a pari-mutuel thoroughbred race meet is treated by a veterinarian who is not licensed by the board, a written record of such treatments consistent with subdivision (a) of Rule 4043.9 shall be filed by a means or at a location prescribed by the board no later than one hour before the horse is scheduled to race in New York State. Such records shall include all treatments for the period of ten (10) days before the race date, through the date of submission. It shall be the trainer's responsibility to file and/or assure the filing of such records. In the event of failure to file the required records, the horse may be disqualified and the trainer may be subject to disciplinary action, in the form of a suspension of license and/or fine.*

4120.9 Records of *board-licensed* veterinarian.

(a) Every licensed participating veterinarian shall keep a written record of his practice concerning horses participating at pari-mutuel harness race meets in this State, whether performed at a licensed harness track or elsewhere, which shall disclose:

(1) the name of the horse treated;

(2) the nature of the horse's ailment;

(3) the type of treatment prescribed and performed for the horse; and

(4) the date and time of such treatment; and

*(5) all treatment for any given day, i.e., a day sheet.*

(b) Every such veterinarian shall [produce such written records when requested by an official of the board. In addition he shall instruct the trainer of the necessity to submit the report required by section 4120.2(e) of this Title relating to joint aspiration] *complete and submit written records consistent with subdivision (a) no later than 24 hours after such treatment by a means or at a location prescribed by the board, provided, however, that records of treatments within 24 hours prior to the start of the race in which the horse is scheduled to participate must be filed no later than one hour prior to the scheduled post time for that race. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the judges or the board, or to the trainer or owner of record at the time of treatment.*

(c) Before a licensed veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track, and if the horse has been entered he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by this Part. If the horse has not been entered to race, but the administration is of a drug which is not permitted to be administered within 72 hours of a racing program, or longer, he shall so inform the trainer of that fact and of the time applicable. If however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the board veterinarian or judges at the pertinent track.

(d) The attending veterinarian shall complete and submit daily a form prescribed by the board which will contain each horse entered to race on that day and treated by him with furosemide. The form shall also contain the following information:

(1) [Name of track] *Date;*

(2) [Name of trainer] *Race number;*

(3) [Description of the horse] *Track;*

(4) [Tattoo number] *Name of horse;* [and]

(5) *Trainer; and*

*(6)* The dose, route and time of administration.

The form must be signed by the attending veterinarian and filed at a location designated by the board.

*4120.10 Records of treatment by non-board-licensed veterinarians.*

*In the event a horse participating at a pari-mutuel harness race meet is treated by a veterinarian who is not licensed by the board, a written record of such treatments consistent with subdivision (a) of Rule 4120.9 shall be filed by a means or at a location prescribed by the board no later than one hour before the horse is scheduled to race in New York State. Such records shall include all treatments for the period of ten (10) days before the race date through the date of submission. It shall be the trainer's responsibility to file and/or assure the filing of such records. In the event of failure to file the required records, the horse may be disqualified and the trainer may be subject to disciplinary action, in the form of a suspension of license and/or fine.*

***Text of proposed rule and any required statements and analyses may be obtained from:*** Sheila H. Osterhout, Secretary to the Board, One Watervliet Ave. Ext., Albany, NY 12206-1668, (518) 453-8460, ext. 3300, e-mail: sosterhout@racing.state.ny.us

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

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

***Regulatory Impact Statement***

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law, § 101, § 301 and § 902. The Board has general jurisdiction over all pari-mutuel horse racing activities. The Board is authorized to promulgate rules necessary to prevent the administration of drugs or other improper acts to racehorses prior to a race. The legislature has directed that the Board promulgate any rules necessary to implement equine drug testing so that the public's confidence and high degree of integrity in racing is assured.

2. Legislative objectives: To enable the New York State Racing & Wagering Board to preserve the integrity of pari-mutuel racing.

3. Needs and benefits: The amendment to Title 9E NYCRR § 4120.9 and § 4043.9 and the addition of § 4120.10 and § 4043.10 will require the mandatory submission of veterinarian treatment records pertaining to race horses within 24 hours after treatment, or, within one hour of post time if it is within 24 hours of post time. Veterinarian records for horses treated by non New York State Racing and Wagering Board licensed veterinarians must be submitted prior to race time. Presently, the veterinarians are required to maintain these records and submit them upon the request of the Board. The existing rule does not work well with enforcement of the board's substantive equine drug rules. The records maintained are often submitted late, are inadequate in detail and are sometimes the subject of question concerning when they were created. The submission of contemporaneous type records will facilitate the prompt and proper investigations concerning the use of equine drugs on racehorses. Comparison of these records to reported drug testing findings and the details of the training and veterinarian care will be valuable in proving and disproving facts and circumstances concerning treatment. The submission of records of treatment by non New York State Racing and Wagering Board licensed veterinarians will serve the above objectives. Currently, there is no practicable way to obtain these records because the veterinarians are not licensed by the Board. This requirement will make all relevant treatment records available without imposing the requirement only for treatment by Board licensed veterinarians. The proposed rule also amends the content to be included on records pertaining to furosemide administration. This proposed change would substitute the name of the horse for the description and tattoo number of the horse. The race number would be added as a requirement. The purpose of these changes with respect to furosemide is to facilitate a reasonable assurance of identity of the horse in conjunction with the race number. The race number is significant in relation the permissible time for furosemide administration prior to the start of the race.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The only costs are those minimal costs associated with keeping duplicate copies (if desired) and of filing the document at the racetrack or by other means. It is estimated that the photocopying costs shall not exceed .10 cents per page based upon the premise veterinarians have photocopying equipment or computers with printers.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: See (d) below.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. There will be no cost to the agency, because the agency is continuously evaluating information regarding medications administered to harness and thoroughbred race horses as part of its regulatory function. The regulated individuals already comply with specific requirements. The requirement of submitting records that veterinarians are already required to keep will impose minimal extra cost since the submission will be to the Board's offices at the track the veterinarian and/or trainer is racing at. The provision requiring trainers to file out of state veterinarian treatment records pertaining to their horses will impose minimal extra cost upon them since those records are in their possession already.

5. Local government mandates: None. See above.

6. Paperwork: Veterinarian records pertaining to treatment of race horse that are submitted upon the request of the board will have to be submitted within 24 hours of treatment or one hour of post time if within one day of the race and will serve to facilitate the prompt and accurate investigations of illicit use of equine drugs on racehorses. Trainers will also be required to submit records of veterinarians not licensed by the board who treat off track making all relevant treatment records available. The records are as important for treatment conducted of the premises of licensed tracks.

7. Duplication: None.

8. Alternatives:

A) No action would leave the existing rule intact. This alternative is unacceptable because the absence of contemporaneously and/or timely filed records hampers the speed and accuracy of board investigations concerning equine drug use.

B) The alternative of requiring same day submission of treatment of records was rejected as to large a regulatory burden.

C) The alternative of requiring the submission of records of treatment by Board licensed veterinarians only was rejected because, first, the records are as significant for treatments off track, as for treatments on track and second, it would appear unfair to require the records only from board licensed veterinarians.

9. Federal standards: None.

10. Compliance schedule: Once adopted, the rule can be implemented immediately.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely enables the Board to prescribe the submission, maintenance and content of veterinarian treatment records of race horses participating in pari-mutuel harness and/or thoroughbred races. Consequently, the rule neither affects small business, local governments, jobs nor rural areas. The rule proposal allows the Board to have records veterinarians are now required to keep, submitted on a routine basis, whether the veterinarian is licensed in New York or not. Requiring the submission of veterinarian treatment records and changing the information required with respect to the furosemide administration does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the Board has been previously been monitoring, and regulating the record keeping requirements imposed upon veterinarians.

# Office of Temporary and Disability Assistance

## NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

**Fee for Lost or Stolen Identification Cards**

**I.D. No.** TDA-11-03-00007-C

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

***The notice of proposed rule making,*** I.D. No. TDA-11-03-00007-P was published in the *State Register* on March 19, 2003.

***Subject:*** Fee for lost or stolen identification cards.

***Purpose:*** To establish procedures for the imposition of a fee for the replacement of lost or destroyed identification cards.

***Substance of rule:*** The proposed amendments establish the terms and conditions that allow social services districts to charge public assistance recipients and food stamp recipients a $3.00 fee for replacing lost or destroyed identification cards after such cards have been replaced once free of charge.

***Changes to rule:*** The proposed amendments, as originally published in the *State Register*, have been revised to: (i) eliminate the ability of a social services district to charge a replacement fee if the card was stolen or its security features compromised; (ii) permit recipients to request a fair hearing if they are charged a replacement fee; (iii) prohibit a social services district from charging a replacement fee that exceeds $3.00; and (iv) limit the imposition of the fee to cards lost or destroyed within an 18 month period.

***Expiration date:*** March 18, 2004.

***Text of proposed rule and changes, if any, may be obtained from:*** Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

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