December 10, 2003
Vol. XXV
Issue 49

DEPARTMENT OF STATE
Division of Administrative Rules

NEW YORK STATE REGISTER

INSIDE THIS ISSUE:

- Mandatory Continuing Education Requirements for Chiropractors
- Underage Drinking on State Lands
- World Trade Center Memorial Scholarships
- Medical Assistance Payment for Outpatient Programs

State agencies must specify in each notice the last date on which they will accept public comment. Agencies always accept public comment for a minimum of 45 days following publication in the *Register* of a Notice of Proposed Rule Making, and for 30 days after publication of a Notice of Revised Rule Making. When a public hearing is required by statute, the hearing cannot be held until 45 days after publication of the notice; and comment must be accepted for at least five days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies accept comment through close of business on the next succeeding workday.

For notices published in this issue:

– the 45-day period expires on Saturday, January 24, 2004
– the 30-day period expires on Friday, January 9, 2004

NEW YORK STATE
GEORGE E. PATAKI
GOVERNOR

DEPARTMENT OF STATE
RANDY A. DANIELS
SECRETARY OF STATE

OFFICE OF COUNSEL
(518) 474-6740

DIVISION OF ADMINISTRATIVE RULES
Deborah Ritzko, Publications Manager

For production, scheduling and subscription information, call:
(518) 474-6785
E:Mail: adminrules@dos.state.ny.us

*The **New York State Register** (ISSN 0197 2472) is published weekly. Subscriptions are $80 per year for first class mailing and $40 per year for periodical mailing. The **New York State Register** is published by the New York State Department of State, Albany, NY 12231-0001. Periodical postage is paid at Albany, New York.*

POSTMASTER: Send address changes to the Department of State, Division of Administrative Rules, 41 State Street, Albany, NY 12231-0001.

printed on recycled paper

NEW YORK STATE
REGISTER

Be a part of the rule making process!

The public is encouraged to comment on any of the proposed rules appearing in this issue. Comments must be made in writing and must be submitted to the agency that is proposing the rule. Address your comments to the agency representative whose name and address are printed in the notice of rule making. No special form is required; a handwritten letter will do.

To be considered, comments must reach the agency before the proposed rule is adopted. The law provides for a minimum 45-day public comment period after publication in the *Register* of every Notice of Proposed Rule Making; and a 30-day public comment period for every Notice of Revised Rule Making. If a public hearing is required by statute, public comments are accepted for at least five days after the last such hearing. Agencies are also required to specify in each notice the last date on which they will accept public comment.

When a time frame calculation ends on a Saturday or Sunday, the agency accepts public comment through the following Monday; when calculation ends on a holiday, public comment will be accepted through the following workday. Agencies cannot take action to adopt until the day after public comments are due.

The Administrative Regulations Review Commission (ARRC) is charged with the task of reviewing newly proposed regulations to examine the issues of compliance with legislative intent, impact on the economy, and impact on affected parties. In addition to sending comments or recommendations to the agency, please do not hesitate to transmit your views to ARRC:

Administrative Regulations Review Commission
State Capitol
Albany, NY 12247

Telephone: (518) 455-5091 or 455-2731

Each paid subscription to the *New York State Register* includes one weekly issue for a full year and four "Quarterly Index" issues. The Quarterly is a cumulative list of actions that shows the status of every rule making action in progress or initiated within a calendar year.

The *Register* costs $80 a year for a subscription mailed first class and $40 for periodical (second) class. Prepayment is required. To order, send a check or money order payable to the NYS Department of State to the following address:

NYS Department of State
Attn: REGISTER
41 State Street
Albany, NY 12231-0001

Telephone: (518) 474-6785

REVIEW REQUIREMENTS FOR NEW AND REVISED REGULATIONS

Executive Order No. 20 established a system of executive branch review of proposed state agency regulations by the Governor's Office of Regulatory Reform (GORR). The following is a brief description of the review requirements imposed by Executive Order 20 for new and revised rules.

Prior to submitting a proposed or revised rule for publication in the *State Register,* an agency must submit it to GORR along with any required regulatory impact statement; regulatory flexibility analysis for small businesses; rural area flexibility analysis; any cost-benefit, risk assessment and job retention analysis; or the results of any negotiated rule making or policy dialogue.

GORR reviews agency material for compliance with the following criteria:

1. The rule:
   a) is clearly within the authority delegated by law;
   b) is consistent with and necessary to achieve a specific legislative purpose;
   c) is clearly written so that its meaning will be easily understood by those persons affected by it;
   d) does not unnecessarily duplicate or exceed existing federal or state statutes or rules;
   e) is consistent with existing state statutes and rules;
   f) consistent with state statutory requirements, will produce public benefits which will outweigh the costs, if any, imposed on affected parties;
   g) does not impose a mandate on local governments or school districts which is not fully funded, except as specifically required by state statute;
   h) prescribes methodologies or requirements that allow regulated parties flexibility and encourage innovation in meeting the legislative or administrative requirements and objectives underlying the rule;
   i) is based on credible assessments, using recognized standards, of the degree and nature of the risks which may be regulated, including a comparison with every-day risks familiar to the public;
   j) gives preference to the least costly, least burdensome regulatory and paperwork requirements needed to accomplish legislative and administrative objectives;
   k) is based upon the best scientific, technical and economic information that can reasonably and affordably be obtained; and
   l) if possible and practical, favors market-oriented solutions and performance standards over command-and-control regulation.
2. The agency has complied with SAPA §§202-a, 202-b and 202-bb, relating to regulatory impact statement, regulatory flexibility analysis for small businesses and rural area flexibility analysis.

If GORR concludes that any of the criteria is not met, it may require the agency to undertake additional analyses, including a cost-benefit analysis or risk assessment.

Once the information provided to GORR is complete, GORR recommends to the Secretary to the Governor, Counsel to the Governor, Director of State Operations and Director of the Division of the Budget whether the agency may submit the rule making for publication in the *State Register*.

After publication, GORR again reviews the rule for any new information or factors. If GORR concludes that any such new factors exist, the agency is notified of any deficiencies within 45 days of publication of the proposed rule (30 days of publication of a revised rule).

GORR reviews the agency response to determine whether it adequately addresses the deficiencies. If the response is adequate, the agency may proceed with the rule making. If the agency response is inadequate, GORR may notify the agency that it may not adopt the rule. This notification may then be confirmed or modified by the Governor's Senior Advisors.

Agencies should submit proposed and substantially revised rules, together with their required statements and analyses, in their entirety, to:

Amelia F. Stern, Counsel
Governor's Office of Regulatory Reform
P.O. Box 2107
Empire State Plaza, Bldg. 1
Albany, NY 12220-0107

Questions and comments may be directed to Counsel's Office at the above address or by telephone, to (518) 473-0620.

KEY: (P) Proposal; (RP) Revised Proposal; (RC) Revised Proposal/Continuation; (RXC) Revised Proposal/Extra Continuation; (E) Emergency; (EP) Emergency and Proposal; (A) Adoption; (AA) Amended Adoption; (C) Continuation; (W) Withdrawal

Rule Making Activities

Civil Service, Department of
1 / Jurisdictional classification (P)

Education Department
1 / Mandatory continuing education requirements for chiropractors (P)

Environmental Conservation, Department of
4 / Remedial action plans (P)
6 / Underage drinking on State lands (P)

Higher Education Services Corporation
6 / World Trade Center Memorial Scholarships (E)
7 / Prepayment methods of general and academic performance awards (E)

Insurance Department
10 / Viatical settlements (A)
10 / Address updates (A)
10 / Loss portfolio transfers (A)
11 / Accounting calculations for reinsurance transactions (A)

Mental Health, Office of
11 / Medical assistance payment for outpatient programs (E)
13 / Outpatient programs (A)

Motor Vehicles, Department of
13 / Dealer document fee (P)

Power Authority of the State of New York
14 / Rates for the sale of power and energy for the Village of Watkins Glen (P)

Public Service Commission
15 / Issuance of tax-exempt debt by KeySpan Generation, LLC (EA)
15 / Merchant function backout credit by The Brooklyn Union Gas Company (BUG) d/b/a KeySpan Energy Delivery New York (KeySpan) (EA)
15 / Schedule for gas service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (EA)
16 / Retail access phase 3 by Consolidates Edison Company of New York, Inc. (A)
16 / Uniform business practices (A)
16 / Calculation of franchise fees by Cablevision Systems Long Island Corp. (A)
16 / Calculation of franchise fees by Cablevision Systems Westchester Corp. (A)
17 / Manner of calculation of franchise fees by Cablevision Systems Westchester Corp. (A)
17 / Sale of standby service to customers with on-site generation by Niagara Mohawk Power Corporation (A)
17 / Competitive transition charges by Niagara Mohawk Power Corporation (A)
17 / Restructuring by Corning Natural Gas Company (A)
18 / Metering by Central Hudson Gas and Electric Corporation (A)
18 / Changes in ownership by KeySpan-Port Jefferson Energy Center, LLC and KeySpan Generation, LLC (A)
18 / Changes in ownership by KeySpan-Glenwood Energy Center, LLC and KeySpan Generation, LLC (A)
18 / Meter recovery charge by Consolidated Edison Company of New York, Inc. (A)

19 / Issuance of securities by NRG Energy, Inc. and NRG Northeast Generating, LLC (A)
19 / Interconnection of networks between Cellco Partnership d/b/a Verizon Wireless and Signatory Independent Local Exchange Carrier (P)
19 / Distributed antenna systems by Niagara Mohawk Power Corporation and National Grid Communications, Inc. (P)
19 / Recovery of certain costs related to Phase 5 of the retail access program by Consolidated Edison Company of New York, Inc. (P)
20 / Transmission and distribution of gas by the Northeast Gas Association (P)
20 / Request for accounting authorization by Corning Natural Gas Corporation (P)
20 / Transfer of certain cable system facilities by RCN Telecom Services, Inc. (P)
21 / Electronic filing of tariff schedule by Somers Chase Water Works Corporation (P)

Temporary and Disability Assistance, Office of
21 / Veterans' assistance benefits (A)

Hearings Scheduled for Proposed Rule Makings / 22
Action Pending Index / 23

Rule Review
Banking Department / 61

Securities Offerings
63 / State Notices
64 / Further State Notices

Advertisements for Bidders/Contractors
69 / Notice to Bidders

Miscellaneous Notices/Hearings
71 / Notice of Abandoned Property Received by the State Comptroller
71 / Notice of Public Hearings
72 / Public Notices