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.

State Consumer Protection Board

NOTICE OF ADOPTION

Do Not Call Registry

I.D. No. CPR-38-03-00005-A
Filing No. 1362
Filing date: Dec. 2, 2003
Effective date: Dec. 17, 2003

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

Action taken: Repeal of Part 4602 and addition of new Part 4602 of Title 21 NYCRR.

Statutory authority: Executive Law, section 553(1)(d); General Business Law, section 399-z; and L. 2003, ch. 124.

Subject: Establishment, operation and maintenance of the New York do-not-call registry.

Purpose: To recognized and authorize use of the national do-not-call registry for enforcement purposes, and to authorize the transfer of telephone number data to the Federal Trade Commission for inclusion on its national registry.

Text or summary was published in the notice of proposed rule making, I.D. No. CPR-38-03-00005-P, Issue of September 24, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Lisa Renee Harris, Deputy General Counsel, Five Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-3011, e-mail: Lisa.Harris@consumer.state.ny.us

Assessment of Public Comment
The agency received no public comment.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Assessments and Graduation and Diploma Requirements

I.D. No. EDU-50-03-00002-EP
Filing No. 1356
Filing date: Dec. 1, 2003
Effective date: Dec. 1, 2003

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

Action taken: Amendment of section 100.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents in October 2003.

Under current regulations, the minimum passing score on five required Regents examinations rises from 55 to 65 for those students who entered grade 9 in the 2001-2002 school year and thereafter. The revised policy continues to allow a passing score of 55-64 on the five required Regents examinations as an option to meet local diploma requirements. The extension of this option will give students and schools more time to improve achievement while keeping the educational system moving forward toward the goal of higher achievement for all students. This provision will be in effect for all students currently in high school who entered grade 9 in the school years 2000-2001, 2001- 2002, 2002-2003, and 2003-2004, and for those current eighth grade students who will enter grade 9 in the 2004-2005 school year.

The proposed amendment will also extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-11 school year. Under this safety net, students with disabilities who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test.

The proposed amendment also makes technical changes to clarify the requirements, provide scheduling flexibility to the schools and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation. The mathematics requirements need revision and clarification because present language would not allow students who took

Course III after January 2003 to be eligible for a Regents Diploma with Advanced Designation. Course I phased out in January 2002, Course II phased out in January 2003, and Course III will phase out in January 2004.

The continuation of the visual arts and/or music, dance, or theatre alternatives provide students who enter grade 9 after 2001 course options which previous students have used to satisfy Regents Diploma requirements.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to ensure that students who are in their Senior year during in the 2003-2004 school year may timely graduate pursuant to revised diploma and graduation requirements, and to otherwise ensure that schools and school districts are able to make any necessary adjustments in students' class schedules to ensure their timely graduation pursuant to such requirements.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the February 2004 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: State assessments and graduation and diploma requirements.

Purpose: To revise requirements for obtaining a Regents high school diploma, a Regents diploma with advanced designation, and a local high school diploma.

Substance of emergency/proposed rule: The State Education Department proposes to amend section 100.5 of the Regulations of the Commissioner of Education as an emergency measure, effective December 1, 2003. The following is a summary of the provisions of the proposed rule.

Under current regulations, the minimum passing score on five required Regents examinations rises from 55 to 65 for those students who entered grade 9 in the 2001-2002 school year and thereafter. The proposed amendment will continue to allow a passing score of 55-64 on the five required Regents examinations as an option to meet local diploma requirements. This provision will be in effect for all students currently in high school who entered grade 9 in the school years 2000-2001, 2001-2002, 2002-2003, and 2003-2004, and for those current eighth grade students who will enter grade 9 in the 2004-2005 school year.

The proposed amendment will also extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-11 school year. Under this safety net, students with disabilities who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test.

The proposed amendment also makes technical changes to clarify requirements relating to mathematics and visual arts and/or music, dance, or theatre alternatives, provide scheduling flexibility to the schools, and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation.

Section 100.5(a)(3), as revised, prescribes that students first entering grade nine in the 2001-2002 school year, but prior to the 2005-2006 school year, may receive either a Regents or a local high school diploma if they earn at least 22 units of credits. Students first entering grade nine in 2005-2006 and thereafter will only have the option to receive a Regents diploma if they earn at least 22 units of credit.

Section 100.5(a)(5), as revised, extends to September 2005 the option that schools may consider, for purposes of awarding a local diploma, a score of 55-64 as passing on the Regents Comprehensive Examination in English, the Regents examination in mathematics, the Regents examination in United States history and government, a Regents examination in science, and the Regents examination in global studies for students. For purposes of a Regents endorsed diploma, a score of 65 shall be considered passing. Subclause (3) of section 100.5(a)(5)(i)(a) under each subject has been deleted and subclause (4) has been renumbered to become subclause (3). The new subclause (3) extends the provision for students with disabilities that allows students who first enter grade nine prior to September 2010 and who fail a required Regents examination to meet local diploma requirements by passing the corresponding Regents Competency Test.

A new subparagraph (vii) is added to section 100.5(b)(7) to allow schools to issue a local diploma to students who first enter grade nine in or after September 2001 and prior to September 2005 that score 55-64 on any Regents examination required for graduation.

Section 100.5(b)(7)(iv)(c), as revised, clarifies the mathematics requirements to allow students who took Course III after January 2003 to be eligible for a Regents Diploma.

Section 100.5(b)(7)(v)(a), as revised, clarifies the mathematics requirements to allow students who took Course III after January 2003 to be eligible for a Regents Diploma with Advanced Designation.

Section 100.5(b)(7)(vi), as revised, extends the provision for students with disabilities that allows students who first enter grade nine prior to September 2010 and who fail a required Regents examination to meet local diploma requirements by passing the corresponding Regents Competency Test.

A new subparagraph (viii) is added to section 100.5(b)(7) to allow schools to issue a local diploma to students who first enter grade nine in or after September 2001, and prior to September 2005, that score 55-64 on any Regents examination required for graduation.

Section 100.5(d)(2), as revised, continues the course options in the visual arts and/or music, dance, or theatre alternatives for students who enter grade nine after 2001 that previous students have used to satisfy Regents diploma requirements.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 28, 2004.

Text of 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 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State education department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the State learning standards, State assessments and graduation and diploma requirements.

NEEDS AND BENEFITS:

The proposed amendment will revise the graduation and diploma requirements first adopted by the Board of Regents in July 1999 to help ensure that all students in the State's public schools have the skills, knowledge and understandings they need to succeed in the next century. The

proposed changes are necessary to implement revisions to policy adopted by the Board of Regents in October 2003. Under current regulations, the minimum passing score on five required Regents examinations rises from 55 to 65 for those students who entered grade 9 in the 2001- 2002 school year and thereafter. The revised policy continues to allow a passing score of 55-64 on the five required Regents examinations as an option to meet local diploma requirements. The extension of this option will give students and schools more time to improve achievement while keeping the educational system moving forward toward the goal of higher achievement for all students. This provision will be in effect for all students currently in high school who entered grade 9 in the school years 2000-2001, 2001-2002, 2002-2003, and 2003-2004, and for those current eighth grade students who will enter grade 9 in the 2004- 2005 school year.

Despite the significant increase in the number of students with disabilities taking Regents level courses and passing Regents examinations, there still is a significant gap between the performance of special education and general education students. Therefore, the proposed amendment will also extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-11 school year. Under this safety net, students with disabilities who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test.

The proposed amendment also makes technical changes to clarify the requirements relating to mathematics and visual arts and/or music, dance or theatre alternatives, provide scheduling flexibility to the schools, and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation. The mathematics requirements need revision and clarification because present language would not allow students who took Course III after January 2003 to be eligible for a Regents Diploma with Advanced Designation. Course I phased out in January 2002, Course II phased out in January 2003, and Course III will phase out in January 2004. The continuation of the visual arts and/or music, dance, or theatre alternatives provide students who enter grade 9 after 2001 with course options, such as participating in a school's major performing group or in an advanced out-of-school art or music activity, which previous students have used to satisfy Regents Diploma requirements.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment merely extends current Regents policy and enacts technical changes to correct certain citations and reinstate certain original language.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

The proposed amendment extends current requirements for meeting diploma and graduation requirements to give students and schools more time to improve achievement and enact technical changes to clarify existing requirements to ensure that all students have continued opportunities to complete requirements for a high school diploma and therefore does not impose any additional responsibility on local governments. School districts will determine whether they will provide the option for students to meet local diploma requirements by accepting a 55 passing score on the Regents examinations required for high school graduation.

School districts interested in offering the mathematics testing option of Mathematics A and Mathematics B or Course I, Course II, Course III or Mathematics A and Course III; credit for band, chorus, orchestra, dance group or theatre group; or credit for an advanced out-of-school art or music activity will implement course and testing requirements consistent with the State's learning standards. Teachers will maintain student records, provide required instruction and complete assessment procedures.

PAPERWORK:

The proposed amendment does not impose any additional reporting, forms or other paperwork requirements on schools or school districts.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that schools and school districts will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment will revise graduation and diploma requirements for students attending the public schools, consistent with policy adopted by the Board of Regents in October 2003. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

EFFECT OF RULE:

The proposed rule applies to each of the 708 public school districts in the State, and to charter schools that are authorized to issue local and Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 2 charter schools offering a full high school program, and 2 charter schools offering only 9th grade instruction.

COMPLIANCE REQUIREMENTS:

The proposed amendment imposes no additional compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understanding they will need to succeed. The proposed amendments will permit school districts to:

(1) determine whether they will provide the option for students currently in high school who entered grade 9 in 2000 through 2003 and current eighth graders who will enter grade 9 in 2004 to meet local diploma requirements by accepting a 55 passing score on the Regents examinations required for high school graduation;

(2) extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-2011 school year whereby such students who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test;

(3) provide options for the high school mathematics assessment requirement for the Regents Diploma and Regents Diploma with Advanced Designation; and

(4) offer students an opportunity to obtain the unit of credit in visual arts and/or music, dance or theatre required for a Regents diploma by participating in a school's major performing group or in an advanced out-of-school art or music activity.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on local governments. The proposed amendment merely extends current Regents policy and enacts technical changes to correct certain citations and reinstate certain original language.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or new technological requirements on school districts.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts. Where possible, the regulations have incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting the regulatory requirements.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in 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. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas and local diplomas. At present, there are no such charter schools located in rural areas.

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

The proposed amendment imposes no additional compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understanding they will need to succeed.

The proposed amendment will permit school districts to:

(1) determine whether they will provide the option for students currently in high school who entered grade 9 in 2000 through 2003 and current eighth graders who will enter grade 9 in 2004 to meet local diploma requirements by accepting a 55 passing score on the Regents examinations required for high school graduation;

(2) extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-2011 school year whereby such students who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test;

(3) provide options for the high school mathematics assessment requirement for the Regents Diploma and Regents Diploma with Advanced Designation; and

(4) offer students an opportunity to obtain the unit of credit in visual arts and/or music, dance or theater required for a Regents diploma by participating in a school's major performing group or in an advanced out-of-school art or music activity.

The proposed amendment does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. The proposed amendment merely extends current Regents policy and enacts technical changes to correct certain citations and reinstate certain original language.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents, and has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts and boards of cooperative educational services in rural areas. Where possible, the regulations have incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting the regulatory requirements. The Regents policy upon which the proposed amendment is based applies to all schools. Therefore, it was not possible to establish different compliance and reporting requirements entities in rural areas, or to exempt them from the provisions of the proposed amendment.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment revises graduation and diploma requirements consistent with policy adopted by the New York State Board of Regents. The assessments and graduation requirements will help ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or 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.

NOTICE OF WITHDRAWAL

State Assessments and Graduation and Diploma Requirements

I.D. No. EDU-38-03-00008-W

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

Action taken: Notice of proposed rule making, I.D. No. EDU-38-03-00008-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on September 24, 2003.

Subject: State assessments and graduation and diploma requirements.

Department of Health

NOTICE OF ADOPTION

Smallpox Vaccine

I.D. No. HLT-34-03-00005-A
Filing No. 1360
Filing date: Dec. 2, 2003
Effective date: Dec. 17, 2003

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

Action taken: Amendment of sections 21.1 and 2.2 of Title 10 NYCRR.

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

Subject: Communicable diseases, smallpox vaccine-adverse events.

Purpose: To monitor for complications associated with smallpox vaccinations and request, on a timely basis, vaccina immune globulin, used to read some adverse reactions, from the CDC.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-34-03-00005-P, Issue of August 27, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Newborn Screening

I.D. No. HLT-36-03-00008-A
Filing No. 1361
Filing date: Dec. 2, 2003
Effective date: Dec. 17, 2003

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

Action taken: Amendment of section 69-1.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

Subject: Newborn screening.

Purpose: To add three conditions to the current eight that comprise New York State's newborn screening panel.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-36-03-00008-P, Issue of September 10, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Insurance Department

EMERGENCY RULE MAKING

Individual and Group Accident and Health Insurance Reserves

I.D. No. INS-50-03-00003-E
Filing No. 1357
Filing date: Dec. 2, 2003
Effective date: Dec. 2, 2003

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

Action taken: Repeal of Part 94 and addition of new Part 94 (Regulation 56) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217 and 4517

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

Specific reasons underlying the finding of necessity: Regulation No. 56 was originally effective August 18, 1971 in its present form and has not been substantively amended since that time. In the intervening 31 years, the National Association of Insurance Commissioners has adopted new reserving tables for individual and group disability income insurance policies, popularly referred to as the Commissioner's Disability Tables ("CDT"). The current CDT was adopted in 1986 and is used widely across the country as the standard for holding serves for individual and group disability insurance policies. It reflects both modern morbidity and claims experience and the judgment of actuaries and regulators who are knowledgeable about the current state of the disability insurance market. However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, *e.g.*, 11 NYCRR Part 94.1(a)(4)(iii)(A)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the most recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to customers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standard will help to ensure that such insurers remain financially capable of paying claims as they come due. New York authorized insurers must filed quarterly financial statements based upon minimum reserve standards in effect on December 31, 2003. The filing date for the December 31, 2003 annual statement is March 1, 2004. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner. For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

Subject: Individual and group accident and health insurance reserves.

Purpose: To prescribe rules and regulations for valuation of minimum individual and group accident and health insurance reserves including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

Substance of emergency rule: Section 94.1 lists the main purposes of the regulation including implementation of sections 4217(d), 4517(d) and 4517(f) of the Insurance Law and prescribing rules for valuing certain accident and health benefits in the life insurance policies.

Section 94.2 is the applicability section. This section applies to both individual policies and group certificates. The regulation applies to all life insurers, fraternal benefit societies, and accredited reinsurers doing business in the State of New York. It applies to all statutory financial statements filed after its effective date.

Section 94.3 is the definitions section.

Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

Section 94.5 sets forth the general requirements and minimum standards for unearned premium reserves.

Section 94.6 sets forth the general requirements and minimum standards for contract reserves.

Section 94.7 concerns increases to, or credits against reserves carried, arising from reinsurance agreements.

Section 94.8 prescribes the methodology of adequately calculating the reserves for waiver of premium benefit on accident and health policies.

Section 94.9 provides that a company shall maintain adequate reserves for all individual and group accident and health insurance policies that reflect a sound value being placed on its liabilities under those policies.

Section 94.10 provides the specific standards for morbidity, interest and mortality.

Section 94.11 allows for a three-year period for grading into the higher reserves beginning with year-end 2003 for insurers for which higher reserves are required because of this Part.

Section 94.12 establishes the severability provision of the regulation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 29, 2004.

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

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the adoption of Regulation No. 56 (11 NYCRR 94) is derived from sections 201, 301, 1304, 1308, 4217, and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(d) provides that reserves for all individual and group accident and health policies shall reflect a sound value placed on the liabilities of such policies and permits the superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for these types of policies.

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the superintendent to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers licensed to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the current regulation, absent the emergency regulation, provides no guidance related to certain

coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

Additionally, the current regulation, absent the emergency regulation, requires higher reserves than necessary for certain individual accident and health insurance policies. This emergency regulation, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge $5,000 to $10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

The only significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this emergency regulation, which would result in different reserve requirements for those life insurers licensed in New York.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

The regulation applies to financial statements commencing with December 31, 2002, which must be filed by March 1, 2003. Where the requirements of this regulation produce reserves higher than those calculated at year-end 2001, insurers may hold reserves at such lower level prior to year-end 2003. Beginning with year-end 2003, the regulation allows a four year grade-in period for the holding of higher reserves. Insurers must be in full compliance with this Part by year-end 2006. This allows insurers subject to the regulation ample time to achieve full compliance, since this regulation has been adopted on an emergency basis since December 31, 2002.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurance companies licensed to do business 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. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The regulation establishes reserve requirements for individual and group accident and health policies and establishes standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge $5,000 to $10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with member companies of the Life Insurance Council of New York (LICONY). A copy of the draft was distributed to LICONY in November, 2002. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the June 2003 issue of the *State Register*.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting reserves for insurers. Most insurers will be able to reduce reserves and a few may need to increase reserves but this is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

EMERGENCY RULE MAKING

Comprehensive Motor Vehicle Insurance Reparations Act

I.D. No. INS-50-03-00006-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 repeal Appendix 13 and add a new Appendix 13 (Regulation 68-C) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and art. 51

Subject: Comprehensive Motor Vehicle Insurance Reparations Act.

Purpose: To conform the fraud warning statement contained in no-fault claim forms with the current statutory language as contained in Regulation 95; amend any incorrect references and typographical errors; and present the forms in a more easily readable format.

Substance of proposed rule: All prescribed No-Fault claim forms have been amended to conform the fraud warning statement with the text as revised in the fourth amendment to regulation 95 as currently written in Part 86 of this Title; the No-Fault denial of claim form has been amended to include additional Insurance Department locations to conform with the tenth amendment to regulation 64 as currently written in Part 216 of this Title; and to amend any incorrect references, addresses and typographical errors and to present the forms in a more easily readable format.

In addition, Form AR – Arbitration Request Form has been withdrawn from the Appendix. This has been done to conform with the first amendment to regulation 68-D, Part 65-4 which permits the designated organization to prescribe the arbitration request form's content while permitting the Superintendent to approve it before it is used. As such, the American Arbitration Association has developed its own arbitration request form that is used by the parties who file for No-Fault arbitration.

Text of proposed 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

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

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

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

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written since all prescribed No-Fault claim forms have been amended to conform the fraud warning statement with the text as revised in the fourth amendment to regulation 95 as currently written in Part 86 of this Title; the No-Fault denial of claim form has been amended to include additional Insurance Department locations to conform with the tenth amendment to regulation 64 as currently written in Part 216 of this Title; changes were made to amend any incorrect references, addresses and typographical errors; and the forms were amended to be presented in a more easily readable format.

In addition, Form AR – Arbitration Request Form has been withdrawn from the Appendix. This has been done to conform with the first amendment to regulation 68-D, Part 65-4, which permits the designated organization to prescribe the arbitration request form's content while permitting the Superintendent to approve it before it is used. As such, the American Arbitration Association has developed its own arbitration request form that is used by the parties who file for No-Fault arbitration.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely amends all prescribed No-Fault claim forms to conform the fraud warning statement with the text as revised in the fourth amendment to regulation 95 as currently written in Part 86 of this Title; amends the No-Fault denial of claim form to include additional Insurance Department locations to conform with the tenth amendment to regulation 64 as currently written in Part 216 of this Title; amends any incorrect references, addresses and typographical errors; and presents the forms in a more easily readable format.

In addition, Form AR – Arbitration Request Form has been withdrawn from the Appendix. This has been done to conform with the first amendment to regulation 68-D, Part 65-4 which permits the designated organization to prescribe the arbitration request form's content while permitting the Superintendent to approve it before it is used. As such, the American Arbitration Association has developed its own arbitration request form that is used by the parties who file for No-Fault arbitration.

Department of Law

NOTICE OF EXPIRATION

The following notice has expired and can not be reconsidered unless the Department of Law publishes a new notice of proposed rule making in the NYS *Register*.

Newly Constructed, Vacant or Non-Residential Condominiums

I.D. No.	Proposed	Expiration Date
LAW-22-03-00001-P	June 4, 2003	December 1, 2003

NOTICE OF EXPIRATION

The following notice has expired and can not be reconsidered unless the Department of Law publishes a new notice of proposed rule making in the NYS *Register*.

Conversion of Occupied Residential Property to Condominium Ownership

I.D. No.	Proposed	Expiration Date
LAW-22-03-00002-P	June 4, 2003	December 1, 2003

NOTICE OF EXPIRATION

The following notice has expired and can not be reconsidered unless the Department of Law publishes a new notice of proposed rule making in the NYS *Register*.

Newly Constructed and Vacant Cooperatives

I.D. No.	Proposed	Expiration Date
LAW-22-03-00003-P	June 4, 2003	December 1, 2003

NOTICE OF EXPIRATION

The following notice has expired and can not be reconsidered unless the Department of Law publishes a new notice of proposed rule making in the NYS *Register*.

Conversion of Occupied Residential Property to Cooperative Ownership

I.D. No.	Proposed	Expiration Date
LAW-22-03-00004-P	June 4, 2003	December 1, 2003

Department of Motor Vehicles

NOTICE OF ADOPTION

Clinton County Motor Vehicle Use Tax

I.D. No. MTV-40-03-00007-A
Filing No. 1359
Filing date: Dec. 2, 2003
Effective date: Dec. 17, 2003

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law section 1202(c)

Subject: Clinton County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-40-03-00007-P, Issue of Oct. 8, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Yates County Motor Vehicle Use Tax

I.D. No. MTV-40-03-00008-A
Filing No. 1358
Filing date: Dec. 2, 2003
Effective date: Dec. 17, 2003

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1020(c)

Subject: Yates County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-40-03-00008-P, Issue of October 8, 2003.

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

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

Assessment of Public Comment
The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Minor Gas Rate Increase by Fillmore Gas Company, Inc.

I.D. No. PSC-21-03-00019-A
Filing date: Nov. 26, 2003
Effective date: Nov. 26, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-G-0697, directing Fillmore Gas Company, Inc. (Fillmore) to cancel its tariff filing and file amendments to its gas tariff schedule designed to produce revenues.

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

Subject: Minor rate filing.

Purpose: To increase gas rates to compensate for operational expenses.

Substance of final rule: The Commission directed Fillmore Gas Company, Inc. to cancel tariff amendments on or before December 1, 2003, and to file amendments to its gas tariff schedule that will increase annual gas revenues by $188,203, or 18.3%, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-G-0697SA1)

NOTICE OF ADOPTION

Public Educational and Governmental Access Channels by Time Warner Cable

I.D. No. PSC-22-03-00024-A
Filing date: Dec. 2, 2003
Effective date: Dec. 2, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 98-V-1896 granting Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable a waiver of 9 NYCRR section 595.4(c)(11) pertaining to public, educational and governmental access channels.

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

Subject: Waiver of 9 NYCRR section 595.4(c)(11).

Purpose: To allow Time Warner Cable and the City of Ithaca flexibility to increase the commitment toward public, educational and governmental access channels.

Substance of final rule: The Commission approved Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable's (Time Warner) request for a waiver of 9 NYCRR, Sections 595.4(c)(11) to allow Time Warner and the City of Ithaca flexibility to increase its commitment toward public, educational and governmental access channels, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-V-1896SA2)

NOTICE OF ADOPTION

Natural Gas Transmission, Distribution and Gathering Line Facilities

I.D. No. PSC-29-03-00007-A
Filing date: Dec. 2, 2003
Effective date: Dec. 17, 2003

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

Action taken: Amendment of Parts 10 and 255 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 65(1) and 66(1)

Subject: Natural gas transmission, distribution and gathering line facilities.

Purpose: To bring the commission's pipeline safety regulations into compliance with recent amendments to the Federal regulations contained in 49 CFR part 192.

Substance of final rule: The Commission adopted the final rules amending 16 NYCRR Parts 10 and 255 to bring New York State's requirements into conformance with the current federal pipeline safety regulations contained in Title 49, Code of Federal Regulation, Part 192, transportation of natural and other gas by pipeline.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(02-G-0134SA1)

NOTICE OF ADOPTION

Restructuring of Corporate Debt by Dynegy Danskammer, LLC and Dynegy Roseton, LLC

I.D. No. PSC-36-03-00013-A
Filing date: Nov. 26, 2003
Effective date: Nov. 26, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1181, approving financial arrangements between Dynegy Danskammer, LLC (Dynegy) and Dynegy Roeston, LLC (Dynegy).

Statutory authority: Public Service Law, section 69

Subject: Restructuring of corporate debt and the collateral pledge of securities.

Purpose: To enable Dynegy to operate more effectively in competitive wholesale electric markets.

Substance of final rule: The Commission authorized Dynegy Danskammer, LLC and Dynegy Roseton, LLC to participate in a credit facility of up to $1.66 billion and to participate in the issuance of second priority senior secured notes of up to $1.45 billion, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-1181SA1)

NOTICE OF ADOPTION

Customer Service Quality Mechanism by New York State Electric & Gas Corporation

I.D. No. PSC-36-03-00014-A
Filing date: Dec. 1, 2003
Effective date: Dec. 1, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 01-G-1668, modifying the provisions of New York State Electric & Gas Corporation's (NYSEG) customer service quality mechanism for its gas business.

Statutory authority: Public Service Law, sections 5(1)(b), 43, 65(1) and 66

Subject: NYSEG's gas rate plan.

Purpose: To establish appropriate baseline and target levels.

Substance of final rule: The Commission modified the provisions of New York State Electric & Gas Corporation's Gas Rate Plan to remove references to specific time frames for changing the company's complaint rate target levels, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(01-G-1668SA4)

NOTICE OF ADOPTION

Mini Rate Increase by Village of Philadelphia

I.D. No. PSC-39-03-00014-A
Filing date: Nov. 26, 2003
Effective date: Nov. 26, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted and order in Case 03-E-1283, approving, with conditions, revisions to Village of Philadelphia's tariff schedule P.S.C. No.—Electricity.

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

Subject: Minor rate filing by Village of Philadelphia.

Purpose: To increase revenues to cover operational expenses.

Substance of final rule: The Commission approved a tariff filing by Village of Philadelphia (Philadelphia) to increase its annual electric revenues by $45,125 or 8.3% provided that Philadelphia files further revisions, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-1283SA1)

NOTICE OF ADOPTION

Economic Development Plan by New York State Electric & Gas Corporation

I.D. No. PSC-40-03-00009-A
Filing date: Nov. 26, 2003
Effective date: Nov. 26, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 01-E-0359 approving revisions to New York State Electric and Gas Corporation's (NYSEG) eligibility criteria for spending on infrastructure improvements.

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

Subject: Revisions to the economic development plan.

Purpose: To promote economic development growth.

Substance of final rule: The commission modified New York State Electric & Gas Corporation's prior Economic Development Orders dated May 9, 2003 and October 9, 2002 to revise its eligibility criteria for spending on infrastructure improvements to attract new customers, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(01-E-0359SA13)

NOTICE OF CONTINUATION
NO HEARING(S) SCHEDULED

Electric Meter Testing and Reporting Requirements

I.D. No. PSC-29-03-00006-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. PSC-29-03-00006-P was published in the *State Register* on July 23, 2003.

Subject: Electric meter testing and reporting requirements.

Purpose: To streamline requirements for electric metering testing and require non-utility meter service providers to comply with the rule.

Substance of rule: The Commission will consider revisions to its regulations which require electric utilities to test meters and meter apparatus, conduct complaint tests and maintain testing facilities in order to ensure the accuracy of meters. The revisions will require compliance by non-utility meter service providers. The revisions are designed to foster competitive metering.

Changes to rule: No substantive changes.

Expiration date: July 22, 2004.

Text of proposed rule and changes, if any, may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Day Ahead Demand Response Program by Niagara Mohawk Power Corporation

I.D. No. PSC-50-03-00004-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 Niagara Mohawk Power Corporation to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 207—Electricity, to become effective Feb. 23, 2004.

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

Subject: Day Ahead Demand Response Program via load curtailment.

Purpose: To amend the tariff language contained in form L11.

Substance of proposed rule: Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed revisions to P.S.C. No. 207—Electricity to become effective February 23, 2004. Niagara Mohawk proposes to amend language contained in Form "L11"—Day Ahead Demand Response Program Via Load Curtailment to include recently approved revisions by the New York Independent System Operator and approved by the Federal Energy Regulatory Commission.

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-1669SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Ownership Interest by Sithe/Independence Power Partners, L.P. and Oswego Cogen Company, LLC

I.D. No. PSC-50-03-00005-P

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

Proposed action: The Public Service Commission is considering a petition from Sithe/Independence Power Partners, L.P. and Oswego Cogen Company, LLC requesting approval of the transfer of ownership interests in Sithe/Independence Power Partners, L.P.

Statutory authority: Public Service Law, sections 70 and 83

Subject: Transfer of ownership interests.

Purpose: To transfer ownership interests.

Substance of proposed rule: The Public Service Commission is considering a petition from Sithe/Independence Power Partners, L.P. and Oswego Cogen Company, LLC requesting approval of the transfer of ownership interests in Sithe/Independence Power Partners, L.P. The Commission may grant, reject or modify, in whole or in part, the relief requested.

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-1675SA1)

Racing and Wagering Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Discretion by the Stewards when Determining Whether to Disqualify

I.D. No. RWB-50-03-00001-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 4035.2(b) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 212

Subject: Authority for the exercise of discretion by the stewards when determining whether to disqualify.

Purpose: To take away the "automatic nature" of the disqualification under the current rule and vest the stewards with the discretion and ability to use their experience to consider whether the foul altered the finish and whether a DQ is merited.

Text of proposed rule: 4035.2 Foul riding penalized.

(a) When clear, a horse may be taken to any part of the course provided that crossing or weaving in front of contenders may constitute interference or intimidation for which the offender may be disciplined.

(b) [A horse crossing another so as actually to impede him is disqualified, unless the impeded horse was partly in fault or the crossing was wholly caused by the fault of some other horse or jockey.]

(b) A horse crossing another may be disqualified, if in the judgment of the stewards, it interferes with, impedes or intimidates another horse, or the foul altered the finish of the race, regardless of whether the foul was accidental, willful, or the result of careless riding. The stewards may also take into consideration mitigating factors, such as whether the impeded horse was partly at fault or the crossing was wholly caused by the fault of some other horse or jockey.

Text of proposed rule and any required statements and analyses may be obtained from: Sheila H. Osterhout, 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: The Board is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law § 101 and § 212 which states: ". . . Such stewards shall exercise such powers and perform such duties at each race meeting as may be presented by the rules of the State Racing and Wagering Board." The Board has general jurisdiction over all pari-mutuel activities and is responsible for the promulgation of rules necessary to implement requirements regarding the disqualification of racehorses for crossing over into another during a race. The stewards are the judges who view the races live and should have the discretion to disqualify or not given the circumstances.

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 N.Y.C.R.R. § 4035.2(b) will give the stewards clear discretion when considering whether or not to disqualify a horse that crosses into another. Presently there is some confusion as to whether the stewards must disqualify even when the outcome of the race might not be affected. Examples would include instances where the horse may have crossed in order to avoid a more serious circumstance or where the incident clearly had no impact on the outcome of the race. This change was requested by the operator of three of the four racetracks and is supported by the stewards at those tracks. These stewards believe that the improved language will provide a firm basis for the exercise of their judgement in a particular situation. In the view of some, the existing rule mandates disqualification even if the crossing or interference did not affect the outcome of the race. This situation occurs periodically and the wagering public and the industry participants, including owners, believe that mandatory disqualification results in an unfair and inappropriate impact.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no additional costs.

(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 has a state steward viewing the races live already who is trained to make the evaluation necessary.

5. Local government mandates: None. See above.

6. Paperwork: None. See above.

7. Duplication: None.

8. Alternatives: One alternative is to retain the existing language. This is rejected because there appears to be confusion as to whether or not the existing rule mandates disqualification. In order to eliminate confusion and potential litigation as well as inconsistent determinations it was determined to amend this rule.

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 stewards who judge and view live thoroughbred races as they are run to have more discretion to consider mitigating circumstances when a horse crosses another in a race. This amendment 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 thoroughbred races as they are run through the appointed stewards.