

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

NOTICE OF ADOPTION

National Institute of Standards and Technology Handbook 133

I.D. No. AAM-25-03-00001-A
Filing No. 1161
Filing date: Oct. 21, 2003
Effective date: Nov. 5, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of section 221.11 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: National Institute of Standards and Technology (NIST) Handbook 133.

Purpose: To incorporate by reference the 2003 edition.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-25-03-00001-P, Issue of June 25, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Ross Andersen, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-3146, e-mail: ross.andersen@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

National Institute of Standards and Technology Handbook 44

I.D. No. AAM-25-03-00002-A
Filing No. 1162
Filing date: Oct. 21, 2003
Effective date: Nov. 5, 2003

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

Action taken: Amendment of section 220.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: National Institute of Standards and Technology (NIST) Handbook 44.

Purpose: To incorporate by reference the 2003 edition.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-25-03-00002-P, Issue of June 25, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Ross Andersen, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-3146, e-mail: ross.andersen@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

State Consumer Protection Board

NOTICE OF ADOPTION

Enrollment on the No Telemarketing Sales Calls Statewide Registry

I.D. No. CPR-31-03-00006-A
Filing No. 1164
Filing date: Oct. 21, 2003
Effective date: Nov. 5, 2003

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

Action taken: Amendment of section 4602.2(g) of Title 21 NYCRR.

Statutory authority: Executive Law, section 553(1)(d); and General Business Law, section 399-z(5)

Subject: Enrollment on the no telemarketing sales calls statewide registry.

Purpose: To amend the rules regarding the length of time a consumer may remain on the registry and to amend the rules to allow consumers to take no action upon a notice of renewal and remain on the registry instead of requiring an affirmative opt-in.

Text or summary was published in the notice of proposed rule making, I.D. No. CPR-31-03-00006-P, Issue of August 6, 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

Chief of Staff and Chief Operating Officer

I.D. No. EDU-44-03-00006-EP

Filing No. 1163

Filing date: Oct. 21, 2003

Effective date: Oct. 25, 2003

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

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

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

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

Specific reasons underlying the finding of necessity: In order to ensure the successful attainment of the goals of the State Education Department's Strategic Plan, the Board of Regents and the Commissioner of Education have determined that a new position of Chief of Staff should be created, with responsibility for ensuring that the policies and positions of the Board of Regents and the Commissioner of Education are reflected in the Department's activities.

The proposed rule provides for the appointment of a chief of staff; specifies the duties of the chief of staff and the chief operating officer; and designates the chief of staff as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

The recommended action is being proposed as an emergency measure because such action is necessary for the preservation of the general welfare in order to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization so that the Chief of Staff and the Chief Operating Officer may assume the duties of their respective positions in a timely and efficient manner.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their January 12-13, 2004 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Chief of staff and chief operating officer.

Purpose: To provide for the appointment of a chief of staff; specify the duties of the chief of staff and the chief operating officer; and designate the chief of staff as the deputy commissioner of education as specified in Education Law, section 101, who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties of the commissioner.

Text of emergency/proposed rule: 1. Section 3.8 of the Rules of the Board of Regents is amended, effective October 25, 2003, as follows:

§ 3.8 *Chief of staff, chief operating officer, counsel and other personnel.*

(a) There shall be a *chief of staff*, a chief operating officer, a counsel to the Education Department and the University and such other personnel as may be appointed from time to time by the commissioner.

(b) *The chief of staff shall be the deputy commissioner of education as specified in section 101 of the Education Law and shall advise the commissioner on policy, coordinate action across the Department on policy issues, facilitate internal and external communications in support of policy, and perform special assignments as directed by the commissioner. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the chief of staff shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.*

(c) The chief operating officer [shall be the deputy commissioner of education as specified in section 101 of the Education Law and] shall advise the commissioner on the formulation and review of policy, budget planning and development, legislative program developments, and program planning and evaluation, shall supervise the administration of specific department programs as delegated by the commissioner, and shall perform special assignments as directed by the commissioner. [In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the chief operating officer shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.]

[(c)] (d) There shall be in the department, in addition to the divisions established by statute, such other divisions and such bureaus as shall be established by the commissioner with the approval of the Regents.

2. Section 3.9 of the Rules of the Board of Regents is amended, effective October 25, 2003, as follows:

§ 3.9 Appointments.

The commissioner shall appoint all officers and employees of the department, except the [chief operating officer] *chief of staff*. Appointments to the positions of *chief operating officer*, deputy commissioner, associate commissioner, assistant commissioner and director of the Office of Professional Discipline shall be made with approval of the Board of Regents.

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 January 18, 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: Kathy A. Ahearn, Counsel and Deputy Commissioner for Legal Affairs, Office of Counsel, Education Department, Education Bldg., Rm. 148, Albany, NY 12234, (518) 474-6400

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:

Section 101 of the Education Law designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

LEGISLATIVE OBJECTIVES:

The proposed rule carries out the legislative objectives of Education Law section 101 by creating the position of Chief of Staff and designating such officer as the deputy commissioner of education as specified in Education Law section 101: ". . . who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by this chapter."

NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the Department, by providing for the appointment of a chief of staff; specifying the duties of the chief of staff and the chief operating officer; and designating the

chief of staff as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

COSTS:

- (a) Costs to State: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementing and continued administration of the rule: None.

The proposed rule is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, relating to the appointment of a Chief of Staff and a Chief Operating Officer, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

The proposed rule does not impose any reporting or other paperwork requirements.

LOCAL GOVERNMENT MANDATES:

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

DUPLICATION:

The proposed rule relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed rule is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, relating to the appointment of a Chief of Staff and a Chief Operating Officer. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed rule, which relates solely to the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed rule relates to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

The proposed rule relates to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed rule relates to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on public and private sector interests in rural areas. Because it is evident from the nature of the rule that it does not affect such interests, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule relates to the internal organization of the State Education Department and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that no substantial impact will occur, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF EXPIRATION

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

Unprofessional Conduct in the Practice of Public Accountancy

I.D. No.	Proposed	Expiration Date
EDU-16-03-00028-P	April 23, 2003	October 20, 2003

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

**Purified Protein Derivative (PPD) Mantoux Tuberculin Skin Tests
I.D. No. EDU-44-03-00005-P**

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

Proposed action: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6503(3), 6506(9), 6507(2)(a), 6509(9), 6527(6), 6807(3), 6902(1), and 6909(4) and (5)

Subject: The execution by registered professional nurses of non-patient specific orders to administer purified protein derivative (PPD) mantoux tuberculin skin tests.

Purpose: To establish requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners.

Text of proposed rule: Section 64.7 of the Regulations of the Commissioner of Education is amended, effective February 4, 2004, as follows:

64.7 Immunizations [and], emergency treatment of *anaphylaxis*, and *purified protein derivative (PPD) mantoux tuberculin skin tests* pursuant to non-patient specific orders and protocols.

- (a) . . .
- (b) . . .
- (c) *Purified protein derivative (PPD) mantoux tuberculin skin tests.*
 - (1) Pursuant to section 6909 (5) of the Education Law, a registered professional nurse shall be authorized to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner, provided the order and protocol meets the requirements of paragraph (2) of this subdivision.
 - (2) Order and Protocol.
 - (i) The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner, which authorizes a registered professional nurse to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test, in accordance with the requirements of paragraph (1) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who has received a purified protein derivative (PPD) mantoux tuberculin skin test and maintained as a record for the period of time prescribed in paragraph 29.2(a)(3) of this Title.
 - (ii) The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such order to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests outside of such employment or contract. The order shall contain but shall not be limited to the following information:
 - (a) identification of the purified protein derivative (PPD) mantoux tuberculin skin test;
 - (b) the period of time that the order is effective, including the beginning and ending dates;
 - (c) the name and license number of the registered professional nurse(s) authorized to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under contract to execute the order to administer the prescribed purified protein derivative (PPD) mantoux tuberculin skin test;
 - (d) in instances in which registered professional nurses are not individually named in the order, but are identified as employed or under

contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting registered professional nurses to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests only in the course of such employment or pursuant to such contract; and

(e) the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

(iii) The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:

(a) The registered professional nurse shall ensure that each potential recipient is assessed for untoward conditions that would preclude purified protein derivative (PPD) mantoux tuberculin skin testing and each recipient's record of the purified protein derivative (PPD) mantoux tuberculin skin test with manufacturer and lot number or a potential recipient's refusal to be tested shall be documented in accordance with paragraph 29.2(a)(3) of this Title.

(b) The registered professional nurse shall be responsible for having emergency anaphylaxis treatment agents, related syringes and needles available at the purified protein derivative (PPD) mantoux tuberculin skin testing site, except in an emergency as determined by the Commissioner of Health, a county commissioner of health, or a county public health director.

(c) When the recipient of the test is legally capable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the recipient is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. In the case of minors or other recipients incapable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the person legally responsible for the recipient of the test is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. Prior to the registered professional nurse executing the order to administer the test, the recipient of the test, or the person legally responsible for the recipient of the test in the case of minors or other recipients incapable of consenting to the test, shall be informed in writing about the potential side effects of and adverse reactions to the test, the appropriate course of action in the event of untoward or adverse reactions to the test, and the need for test evaluation within 48 to 72 hours after the test is administered.

(d) The registered professional nurse shall ensure that the recipient, or other person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting to the test, is provided with a signed certificate of purified protein derivative (PPD) mantoux tuberculin skin testing and results, with the recipient's name, date of the test, address where the test was administered, administering nurse, manufacturer and lot number and recommendations for future tests recorded thereon. With the consent of the recipient or a person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting, the registered professional nurse shall ensure that this information is communicated to the recipient's primary health care provider if one exists.

(e) Each registered professional nurse shall ensure that a record of all persons so tested including the recipient's name, date of the test, address where the test was administered, administering nurse, test results, manufacturer, lot number and recommendations for future tests is recorded and maintained in accordance with paragraph 29.2(a)(3) of this Title.

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: Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@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

1. STATUTORY AUTHORITY:

Section 207 of the Education law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to Education.

Subdivision (3) of section 6503 of the Education Law provides that a licensee is subject to procedures and penalties for professional misconduct.

Subdivision (9) of section 6506 of the Education Law authorizes the Board of Regents to establish by rule ethical practices for individuals licensed pursuant to Title VIII of the Education Law.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (9) of section 6509 of the Education Law defines professional misconduct as committing unprofessional conduct, as defined by the Board of Regents in its rules or the Commissioner of Education in regulations approved by the Regents.

Subdivision (6) of section 6527 of the Education Law authorizes a licensed physician to prescribe and order a non-patient specific regimen for execution by a registered professional nurse for administering purified protein derivative (PPD) tests, pursuant to regulations promulgated by the Commissioner of Education.

Subdivision (3) of section 6807 of the Education Law authorizes a licensed pharmacist to dispense drugs and devices to registered professional nurses, pursuant to a non-patient specific regimen prescribed or ordered by a licensed physician or certified nurse practitioner.

Subdivision (1) of section 6902 of the Education Law defines the practice of the profession of nursing as a registered professional nurse.

Subdivision (4) of section 6909 of the Education Law authorizes a certified nurse practitioner to prescribe and order a non-patient specific regimen for execution by a registered professional nurse for administering purified protein derivative (PPD) tests, pursuant to regulations promulgated by the Commissioner of Education.

Subdivision (5) of section 6909 of the Education Law authorizes a registered professional nurse to execute a non-patient specific regimen prescribed or ordered by a licensed physician or certified nurse practitioner, pursuant to regulations promulgated by the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes in that it establishes requirements that a registered professional nurses must meet to execute non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests, as directed by subdivision (5) of section 6909 of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests. The amendment establishes requirements for the orders and protocols. Subdivision (5) of section 6909 of the Education Law directs the Commissioner of Education to promulgate regulations concerning the execution by registered professional nurses of such non-patient specific regimens prescribed or ordered by a licensed physician or certified nurse practitioner.

The amendment is needed to protect the public health. Providing such testing through non-patient specific orders and protocols of licensed physicians and certified nurse practitioners allows for a more effective response to the public health need for tuberculin testing for many segments of the population of New York State. Further, the amendment establishes requirements for the orders and protocols designed to protect the public health. For example, among other requirements, the amendment requires recipients of the test, or the person legally responsible for the recipient of the test in the case of minors or other recipients incapable of consenting to the test, to be informed in writing about the potential side effects of and adverse reactions to the test, the appropriate course of action in the event of untoward or adverse reactions to the test, and the need for test evaluation within 48 to 72 hours after the test is administered. The amendment also includes recordkeeping requirements for the order and protocol and patient records relating to the test.

The proposed amendment will permit registered professional nurses to execute the non-patient specific order to administer such tests without being subject to charges of unprofessional conduct, provided that they adhere to the amendment's requirements. Section 29.14 of the Rules of the Board of Regents provides that unprofessional conduct in the practice of the profession of nursing includes failure to adhere to any requirement in

section 64.7 of the Regulations of the Commissioner of Education, which would include the new requirements.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government: None.

(c) Cost to private regulated parties: The amendment is likely to result in only nominal costs to entities that employ registered professional nurses to execute the non-patient specific orders to administer the purified protein derivative (PPD) mantoux tuberculin skin tests. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of testing to each recipient. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.25 per recipient. The other paperwork requirements relate to maintenance of patient records, which are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

(d) Cost to the regulatory agency. As stated above in "Costs to State Government", the proposed amendment does not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment requires registered professional nurses to maintain or ensure the maintenance of a copy of the non-patient specific order and protocol for the administering of purified protein derivative (PPD) mantoux tuberculin skin tests. The protocol requires that written information is provided to each recipient, or person legally responsible for a recipient legally incapable of consenting to testing, prior to administering the test, about potential side effects of and adverse reactions to the test, the appropriate course of action in the event of untoward or adverse reactions, and the need for test evaluation within 48 to 72 hours after the test is administered. It requires the registered professional nurse to ensure that each recipient or other person legally responsible for a recipient legally incapable of consenting to testing is provided with a signed certificate of purified protein derivative (PPD) mantoux tuberculin skin testing which contains prescribed information. With appropriate consent, the registered professional nurse must also ensure information about the test is communicated to the recipient's primary health care provider if one exists. The protocol also requires the registered professional nurse to ensure that prescribed information concerning persons tested is recorded and maintained.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment and none were considered because of the nature of the amendment, which implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards establishing requirements for registered professional nurses to administer purified protein derivative (PPD) mantoux tuberculin skin tests, pursuant to non-patient specific orders and protocols, the subject matter of the amendment.

10. COMPLIANCE SCHEDULE:

The proposed amendment implements and clarifies statutory requirements. Regulated parties must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment prescribes requirements that licensed registered professional nurses must meet to execute non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests. The amendment imposes requirements on individual registered professional nurses who choose to execute such orders. The measure will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to 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 amendment will apply to all registered professional nurses who wish to execute non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests. At present, there are about 168,000 registered professional nurses working in New York State. Of these, 13,000 live in a rural county of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS:

The proposed amendment establishes requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests. The amendment establishes requirements for the orders and protocols. It requires registered professional nurses to either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol. The protocol must require the registered professional nurse to ensure that each potential recipient is assessed for untoward conditions that would preclude purified protein derivative (PPD) mantoux tuberculin skin testing and each recipient's record of the test or refusal to be tested must be documented. The protocol must require the registered professional nurse to be responsible for having emergency anaphylaxis treatment agents, related syringes and needles available at the testing site, except in an emergency as determined by the Commissioner of Health, a county commissioner of health, or a county public health director. The protocol must require each recipient, or person legally responsible for a recipient legally incapable of consenting to testing, prior to execution of the order to administer the test, to be informed in writing about potential side effects of and adverse reactions to the test, the appropriate course of action in the event of untoward or adverse reactions, and the need for test evaluation within 48 to 72 hours after the time the test was administered. It requires the registered professional nurse to ensure that each recipient, or other person legally responsible for a recipient legally incapable of consenting to testing, to be provided with a signed certificate of purified protein derivative (PPD) mantoux tuberculin skin testing which contains prescribed information. With appropriate consent, the registered professional nurse must ensure that information about the test is communicated to the recipient's primary health care provider if one exists. The protocol also requires the registered professional nurse to ensure that prescribed information concerning persons tested is recorded and maintained.

The proposed amendment is not expected to cause regulated parties to have to hire additional professional services in order to comply.

3. COSTS:

The amendment is likely to result in only nominal costs to entities that employ registered professional nurses to execute the non-patient specific orders to administer the purified protein derivative (PPD) mantoux tuberculin skin tests, including those that are located in rural areas of the State. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of testing to each recipient. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.25 per recipient. The other paperwork requirements relate to maintenance of patient records, which are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

4. MINIMIZING ADVERSE EFFECT:

The proposed amendment, which implements statutory directives to establish requirements for registered professional nurses to execute non-patient specific orders to administer purified protein derivative (PPD) mantoux tuberculin skin tests, is expected to increase such testing for patients who live in rural areas. Registered professional nurses are expected to engage in outreach efforts to provide this service in rural communities, which are under-served in terms of having licensed physicians and certified nurse practitioners available to provide patient-specific orders for such tuberculin tests.

The State Education Department has determined that the requirements that registered professional nurses must follow to execute the non-patient specific orders to administer the tests should apply to all registered professional nurses regardless of their geographic location to ensure that the testing is done safely in all areas of the State.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of

professional nursing. Included in this group were the New York State Nurses Association, which has members who live or work in rural areas of New York State, and the New York State Department of Health. The Department of Health cooperated with the State Education Department by seeking input on the proposed amendment from local health departments, including those located in rural areas of the State. Comments from these entities were considered during the development of the amendment.

Job Impact Statement

Subdivision (5) of section 6909 of the Education Law authorizes registered professional nurses to execute non-patient specific orders of licensed physicians or certified nurse practitioners, pursuant to regulations promulgated by the Commissioner of Education. The proposed amendment carries out this legislative directive by establishing requirements that registered professional nurses must meet to execute orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests. The proposed amendment, following the statutory directive, expands the scope of practice for registered professional nurses, and is permissive in nature, applying to registered professional nurses who choose to execute non-patient specific orders to administer the tests. The amendment will have either no impact or a positive impact on the number of jobs and employment opportunities in the nursing field because it permits registered professional nurses to perform new job duties.

Because it is evident from the nature of the proposed amendment that it will have either no impact on the number of jobs or employment opportunities or only a positive impact, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Department of Health

EMERGENCY RULE MAKING

Payment for Psychiatric Social Work Services

I.D. No. HLT-44-03-00002-E

Filing No. 1159

Filing date: Oct. 17, 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 section 86-4.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201.1(v)

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

Specific reasons underlying the finding of necessity: The amendment to 10 NYCRR 86-4.9 will permit Medicaid billing for individual psychotherapy services provided by certified social workers in Article 28 Federally Qualified Health Centers (FQHCs). In conjunction with this change, DOH is also amending regulations to prohibit Article 28 clinics from billing for group visits and to prohibit such services from being provided by part-time clinics.

Based upon the Department's interpretation of Part 86-4.9(c), social work services have not been considered billable threshold visits in Article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New Federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by Federal law. Failure to comply with these mandates could lead to Federal sanctions and the loss of Federal dollars. Additionally, allowing Medicaid reimbursement for clinical social worker services is expected to increase access to needed mental health services.

Subject: Payment for psychiatric social work services in art. 28 federally qualified health centers.

Purpose: To permit psychotherapy by certified social workers a billable service under certain circumstances.

Text of emergency rule: Pursuant to the authority vested in the State Hospital Review and Planning Council, and subject to the approval of the Commissioner of Health by Section 2803(2)(a) of the Public Health Law, section 86-4.9 of Subpart 86-4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows to be effective the 1st day of the month after filing a Notice of Emergency Adoption with the Secretary of State:

86-4.9 Units of service. (a) The unit of service used to establish rates of payment shall be the threshold visit, except for dialysis, abortion, sterilization services and free-standing ambulatory surgery, for which rates of payment shall be established for each procedure. For methadone maintenance treatment services, the rate of payment shall be established on a fixed weekly basis per recipient.

(b) A threshold visit, including all part-time clinic visits, shall occur each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit. Only one threshold visit per patient per day shall be allowable for reimbursement purposes, except for transfusion services to hemophiliacs, in which case each transfusion visit shall constitute an allowable threshold visit.

(c) Offsite services, visits related to the provision of offsite services, visits for ordered ambulatory services, and patient visits solely for the purpose of the following services shall not constitute threshold visits: pharmacy, nutrition, medical social services *with the exception of clinical social services as defined in paragraph (g) of this section*, respiratory therapy, recreation therapy. Offsite services are medical services provided by a facility's clinic staff at locations other than those operated by and under the licensure of the facility.

(d) A procedure shall include the total service, including the initial visit, preparatory visits, the actual procedure and follow-up visits related to the procedure. All visits related to a procedure, regardless of number, shall be part of one procedure and shall not be reported as a threshold visit.

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

(f) Ordered ambulatory services may be covered and reimbursed on a fee-for-service basis in accordance with the State medical fee schedule. Ordered ambulatory services are specific services provided to nonregistered clinic patients at the facility, upon the order and referral of a physician, physician's assistant, dentist or podiatrist who is not employed by or under contract with the clinic, to test, diagnose or treat the patient. Ordered ambulatory services include laboratory services, diagnostic radiology services, pharmacy services, ultrasound services, rehabilitation therapy, diagnostic services and psychological evaluation services.

(g)(1) For purposes of this section, clinical social services are defined as,

(i) individual psychotherapy services provided in a Federally Qualified Health Center by a licensed clinical social worker on or after September 1, 2004, or before September 1, 2004 by a certified social worker with psychotherapy privileges on their New York State Education Department certification; or

(ii) individual psychotherapy services provided in a Federally Qualified Health Center by a licensed clinical social worker on or after September 1, 2004, or before September 1, 2004 by a certified social worker who is working in a clinic under qualifying supervision in pursuit of a psychotherapy privileges certification by the New York State Education Department.

(2) Clinical social services provided in a part time clinic shall be ineligible for reimbursement under this paragraph. Clinical social services shall not include group psychotherapy services or case management services.

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 January 14, 2004.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in sections 2803(2)(a) of the Public Health Law which authorize the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner.

Legislative Objective:

The legislative objective of this authority is to allow, in limited instances, social work visits to be a billable threshold service in Article 28 clinics. This amendment will allow psychotherapy by certified social workers (CSWs) as a billable visit under the following circumstances:

- Services are provided by a certified social worker with psychotherapy privileges (on their SED certification), or a CSW who is working in a clinic under qualifying supervision in pursuit of such certification.
- Payment will only be made for services that occur in Article 28 clinic base and extension clinics only. Billings by part-time clinics will not be allowed.
- Psychotherapy services only will be permitted, not case management and related services.
- Billings for group psychotherapy will not be permitted in Article 28 clinics.
- Payment will only be made for services that occur in Federally Qualified Health Centers (FQHCs).

Needs and Benefits:

For some time, the Department of Health (DOH) has interpreted existing regulation Part 86-4.9(c) as restricting threshold reimbursement for medical social work services in Article 28 outpatient and Diagnostic and Treatment Center (D&TC) clinics. Advocacy groups (e.g., United Cerebral Palsy (UCP), Community Health Care Association of New York (CHCANYS) have challenged this policy interpretation arguing that the prohibition only relates to the provision of social work services coincident to medical care, not to medical/behavioral health services provided by certified social workers.

In addition, DOH's policy interpretation has also been inconsistent with the billing practices of the Office of Alcoholism and Substance Abuse (OASAS), the Office of Mental Health (OMH), and the Office of Mental Retardation and Developmental Disabilities (OMRDD). It is clear that permitting certified social workers to be reimbursed for behavioral health services is the generally accepted practice model. Thus, this amendment will to some extent, provide consistency with billing practices of other state agencies in Article 31, 16 and 32 clinics. Furthermore, recent Federal changes related to Medicaid reimbursement for FQHCs mandate that psychotherapy services provided by a social worker be considered a billable service.

This approach will ensure access to social work services in the most underserved areas and increase consistency with the policies of other state agencies.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

Annually the estimated gross Medicaid cost for all CSW psychotherapy visits in FQHCs totals \$600,000, with a state share of \$150,000. This increase is anticipated to be partially offset by the savings associated with the elimination of clinic payments for group psychotherapy and the prohibition of CSW psychotherapy in part-time clinics.

Cost to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

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

Paperwork:

This amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for the services of certified social workers. The alternative to not permit payment for these psychotherapy services in FQHCs is not feasible since it could result in fiscal sanctions and/or litigation.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective on the 1st day of the month following publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis**Effect on Small Businesses and Local Governments:**

To the extent that there are FQHCs that fall into the category of small businesses, there will be reimbursement but their costs will be reduced.

Compliance Requirements:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action. The proposed regulation will allow threshold visits to be billed in Article 28 clinics by CSW's with a P or R designation on their State Education Department's (SED) Certification or by CSW's who are working in a supervised situation towards that certification, in a primary or extension (not part-time) clinic. Although some providers might experience problems hiring the higher level of supervision, the new prospective reimbursement system for FQHCs should ease the hiring of this staff.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

Opportunity for Small Business Participation:

Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size.

Rural Area Flexibility Analysis**Types and Estimated Number of Rural Areas:**

With the exception of part-time clinics, this rule will apply to all Article 28 primary and extension clinics (not part-time clinics) in New York. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance. However, part-time clinic providers that perform fraudulent billing may be investigated and subsequently realize reduced Medicaid reimbursement.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has met with provider advocacy groups and the National Association of Social Workers Association to discuss Medicaid reimbursement for social work services. These groups and Association represent social workers from across the State, including rural areas.

Job Impact Statement**Nature of Impact:**

It is anticipated that this rule will result in decreased Medicaid reimbursement to Article 28 part-time clinics that are currently providing CSW services, and primary and extension clinics that provide CSW services in group settings. This decreased revenue may have an adverse impact on jobs and employment opportunities in clinics.

Categories and Numbers Affected:

There are approximately 58 FQHCs, FQHC look-alikes, and rural health clinics.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic.

Minimizing Adverse Impact:

The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work

services, based upon the Center's reasonable costs for delivering covered services.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adult Day Health Care Regulations

I.D. No. HLT-44-03-00003-P

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

Proposed action: Repeal of Parts 425, 426 and 427; addition of Part 425 and amendment of Parts 711 and 713 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803(2), 2807(3) and 2808

Subject: Adult day health care regulations.

Purpose: To ensure that individuals receive adult day health care when appropriate and that providers are accountable for providing necessary and appropriate care.

Substance of proposed rule: The proposed regulations repeal Parts 425, 426 and 427 of 10 NYCRR and add a new Part 425, and amend incorrect citations in Parts 711 and 713 in Title 10 NYCRR in order to replace existing requirements in a more comprehensive framework that provides a systematic approach to care.

The definitions have been expanded to include additional salient terms that better explain the adult day health care program to registrants, providers and other interested parties. The definitions specify that each adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, but further allow a registrant's individual visit to be for fewer than five hours depending on the assessed needs of the registrant. Unless otherwise permitted by the Department, each approved session will consist of the majority of registrants in attendance for at least five hours. A section on application requirements is explicitly included for ease of reference, and is complemented by a section that identifies the process to be used in applying to make changes in a program, and specifies that a program operator may apply for approval to run a session where the majority of registrants are or will be attending for fewer than five hours.

The proposed regulations provide for general requirements for operation, as well as specified minimum program and service components that must be available. At a minimum, services provided to each registrant must include nutrition services in the form of at least one meal and necessary supplemental nourishment, planned activities and ongoing assessment of each registrant's health status in order to provide coordinated care planning and case management. Additional services may be provided in accordance with the care plan. At least the following program components must be available: case management, interdisciplinary care planning, nursing services, nutrition, social services, assistance with activities of daily living, planned individualized therapeutic or recreational activities, pharmaceutical services, and referrals for dental services. Additionally, specialized services for registrants with AIDS or HIV and religious services and pastoral counseling may be provided.

The regulations contain requirements for the assessment of individuals for admission and for retention in the program, the development of an individualized care plan for each registrant, and prescribe that the provision of needed care be based on the interdisciplinary registrant assessment and individualized care plan.

A section of the regulations provides standards for programs designated as Acquired Immune Deficiency Syndrome (AIDS) adult day health care programs.

The regulations also include standards relating to general records and clinical records, and for confidentiality of records. Provisions are also included for a quality improvement process that provides for at least an annual review of the operator's program evaluation.

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

Section 2803(2) of the Public Health Law authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to effectuate the provisions of such laws, and to establish minimum standards for health care facilities as mentioned in section 2801 of the Public Health Law. This provision of the Public Health Law is the authority by which the Department repeals Parts 425, 426 and 427 and promulgates the new Part 425, and amends Parts 711 and 713.

Legislative Objectives

Section 2803(2) of the Public Health Law is intended to protect the health of residents of the State by establishing minimum standards for the operation of regulated health care providers, including hospitals and nursing homes, and to ensure the delivery of quality health care services. These regulations further the legislative objectives by repealing existing disparate sections of regulations and replacing them with comprehensive regulations that address all pertinent aspects of the adult day health care program. The new regulations clarify the definition of what constitutes an adult day health care program, delineate the services the operator must provide, and define admission criteria. These regulations will strengthen the integrity and structure of the program, and more clearly provide explicit operating standards and responsibilities for providers.

Needs and Benefits

Numerous meetings were held with representatives of adult day health care providers and provider associations during the development of the proposed rule through direct meetings. These meetings, plus the public comment period during the joint meetings of the Codes and Regulations and the Fiscal Policy Committees of the State Hospital Review and Planning Council, have provided the Department an opportunity to address their major concerns and change the proposed regulations accordingly.

It became apparent that revision of the current regulations is needed to ensure that registrants of adult day health care programs receive needed care which is based upon an interdisciplinary assessment and an individualized plan of care. This will ensure not only that the individuals receive the care that they need, but also that providers are accountable for a meaningful assessment of the individual's needs and are accountable and responsible for providing services in accordance with those needs. These concerns were incorporated into the proposed regulations concerning the minimum number of hours in a session, when a certified capacity may be exceeded, and the types of case management and other services to be provided. The additional clarity and specificity in the revised regulations will provide guidance to operators, so that service boundaries will be maintained and the integrity of the program assured.

Current regulations require compliance with pertinent provisions of the Life Safety Code of the National Fire Protection Association (NFPA 101-1997). The proposed regulations clarify the reference to the pertinent provisions of that Code.

COSTS:

Costs to Regulated Parties for the Implementation of and Continuing Compliance with these Regulations:

The new regulations recast existing requirements in a comprehensive framework that represents a more systematic approach to care, and in general represent what quality providers have been doing. Any additional costs to providers should be minimal. In the past, programs were required to employ RNs to provide nursing evaluations and nursing services. The Department will permit additional costs to be addressed through an appeal for those programs that are not at the statutory ceiling of 65% of the sponsoring nursing home's rate. The Department convened a work group including representatives of the industry that developed a system for reimbursement of transportation costs. The amendments to correct citations to the National Fire Protection Association Life Safety Code (NFPA 101-1997) will not result in additional costs to providers, including those that are government entities. In addition, these regulations provide enhanced flexibility to operators, especially those serving special populations, by allowing an operator on any given day to accommodate up to 10% more registrants than the program is otherwise approved for. The utilization rate of each session for a twelve-month period, however, may not exceed the approved registrant capacity of that session projected over an annual basis.

Costs to State and Local Governments:

The State and local shares of Medicaid expenditures for the adult day health care program are each 25%. The new program regulations revise the admission criteria for adult day health care programs. If individuals are

currently inappropriately receiving services in these programs, implementation of these regulations will modify that practice and increase the efficiency of this Medicaid-funded program.

Costs to the Department of Health:

There will be no additional costs to the Department of Health.

Local Government Mandates

This regulation imposes no program, service, duty or other responsibility upon any city, town, village, school, fire district or other special district except those operating adult day health care programs. They will be subject to the same standards as non-government operators. The regulations will provide counties with alternative placements to help maintain functionally impaired individuals in the community at a cost, excluding transportation, that is limited by existing regulations and relevant statute to not exceed 65% of the sponsoring facility's skilled nursing facility rate.

Paperwork

The proposed regulations impose minimal reporting requirements, forms or other paperwork. These requirements are needed to insure care rendered is necessary and is based on an interdisciplinary assessment and an individualized care plan.

Duplication

There is no duplication of federal or State requirements.

Alternative Approaches

Questions regarding the fiscal integrity of the adult day health care program necessitate the establishment of standards that protect the program against abuse, while still providing for necessary services for a dependent and at-risk population. One alternative that the Department considered was to include amendments to 10 NYCRR Part 86 governing reimbursement for adult day health care programs. As the result of discussions with regulated parties, the Department determined not to include amendments to 10 NYCRR Part 86, but rather to convene a work group including representatives of the industry to develop a system for reimbursement of transportation costs.

The proposed definition of "operating hours" for an adult day health care program includes a requirement that each approved adult day health care session must operate for a minimum of five hours duration, not including transportation. Concerns were raised by providers that some registrants are unable to attend a five hour session because of poor health, frailty or other factors. In order to accommodate these concerns, section 425.1(d)(2) was drafted to clarify that it is expected that each approved session will consist of the majority of registrants in attendance for at least five hours. The proposed regulations further provide at section 425.3(d) that an operator of an approved adult day health care program may seek Department approval to run a session where the majority of the registrants are or will be attending fewer than five hours. The Department had considered allowing a program to request a waiver from the five hour minimum for each registrant who would attend the adult day health care program for fewer than five hours, but determined that the additional paperwork involved in establishing such a waiver process was unnecessary in such cases and that Department approval would be required only if the majority of the registrants would be attending for fewer than five hours. New operators would request such approval at the time of application. Existing operators wishing to change the hours of program operation would be required to submit a written request to the Department, including the reason(s) why they seek to operate a program for fewer than five (5) hours per day, in order to receive written permission for such alternative hours.

Federal Standards

The rule does not exceed any minimal standards of the federal government for the same or similar subject areas.

Compliance Schedule

These regulations will be effective upon filing with the Secretary of State. Similar regulations were previously filed by the Department of Health on an emergency basis.

Contact Person:

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

Comments submitted to Department personnel other than the contact person may not be included in any assessment of public comment issued for this regulation.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments

For purposes of the Regulatory Flexibility Analysis, small businesses were considered to be nursing facilities with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from

the RHCF-4 cost reports, 180 nursing facilities were identified as employing fewer than 100 employees. Adult day health care programs are sponsored by nursing facilities. The regulations will apply to any adult day health care operator that may be considered a small business or that is a local government. There are twelve (12) adult day health care programs operated by local governments.

Compliance Requirements

The regulations clarify the reporting and recordkeeping requirements to the extent of specifying the information that must be contained in registrant and program assessment forms, but remove unnecessary yearly reviews, outside committee reviews of program and unnecessary agreements between operators and registrants. The correct citations in Parts 711 and 713 will allow new applicants to know what construction standards will apply should they pursue the development or investment in an adult day health care program.

Professional Services

For most programs, no additional professional services will be necessary to comply with the proposed rule. The Department will permit any additional costs to be addressed through an appeal for those programs that are not at the statutory ceiling of 65% of the sponsoring nursing facility's rate.

Compliance Costs

There will be no initial capital costs as a result of compliance with this rule. Adult day health care providers may incur nominal costs for providing additional information relative to registrant assessments and coordination of services.

Minimizing Adverse Impact

The Department of Health considered the approaches in section 202-b(1) of the State Administrative Procedure Act and found them inapplicable. Exemption of small businesses or local governments from the proposed rule would not serve the purposes of assuring quality and necessary services to all program registrants and protecting the program from inappropriate admission and fiscal abuse. All adult day health care programs must comply with these requirements.

Economic and Technical Feasibility Assessment

The proposed rule would impose no compliance requirements which would raise technological or feasibility issues.

Small Business and Local Government Input

Numerous meetings were held with representatives from the industry and their provider associations since the regulation was first filed as an emergency. These meetings, plus the public comment period during the joint meetings of the Codes and Regulations and the Fiscal Policy Committees of the State Hospital Review and Planning Council, have provided the Department an opportunity to address their major concerns and change the proposed regulations accordingly. Representatives of adult day health care providers and provider associations, including those that may be considered small businesses, were consulted during the development of the proposed rule through direct meetings.

Local governments and small businesses were originally given notice of this proposal by its inclusion, for purposes of emergency filing, on the agenda of the State Hospital Review and Planning Council for its February 3, 2000 meeting and subsequently in a joint meeting of the Codes and Regulations Committee and Fiscal Policy Committee of the State Hospital Review and Planning Council on March 23, 2000, and its inclusion on the agenda of the State Hospital Review and Planning Council for its April 6, 2000 meeting, as well as by its inclusion on the agenda of the May 18, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, and its inclusion on the agenda of the State Hospital Review and Planning Council for its June 1, 2000 meeting, its inclusion on the agenda of the September 21, 2000 meeting of the Codes and Regulations Committee of the State Hospital and Review Council and its subsequent inclusion on the agenda of the State Hospital and Review Council for its October 5, 2000 meeting, its inclusion on the agenda of the November 16, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 7, 2000 meeting, its inclusion on the agenda for the January 18, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 1, 2001 meeting, its inclusion on the agenda for the May 24, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its June 7, 2001 meeting, its inclusion on the agenda for the July 15, 2001 meeting of the Codes and Regulations Committee of

the State Hospital Review and Planning Council which was subsequently canceled with the decision being made to place renewal of the emergency filing on the agenda of the State Hospital Review and Planning Council of its August 2, 2001 meeting, and by its inclusion on the agenda for the November 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its December 6, 2001 meeting, its inclusion on the agenda for the January 24, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 7, 2002 meeting, its inclusion on the agenda of the May 23, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 6, 2002 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2002 meeting and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 5, 2002 meeting, its inclusion on the agenda of the January 23, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its February 6, 2003 meeting, its inclusion on the agenda of the May 22, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 5, 2003 meeting and its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2003 meeting. In addition, for purposes of filing on a permanent basis, these proposed regulations were presented for information only to the Codes and Regulations Committee of the State Hospital Review and Planning Council at its July 20, 2000 meeting, and were included on the agenda of the August 3, 2000 meeting of the State Hospital Review and Planning Council. These regulations provide enhanced flexibility, especially to operators of smaller programs, by allowing an operator on any given day to accommodate up to 10% more registrants than the program is otherwise approved for. The utilization rate of each session for a twelve-month period, however, may not exceed the approved registrant capacity of that session projected over an annual basis.

Rural Area Flexibility Analysis

Effect on Rural Areas

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Putnam	Washington
Franklin	Rensselaer	Wayne
Fulton	St. Lawrence	Wyoming
Genesee	Saratoga	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements

The proposed regulations do not impose any new reporting requirements, forms or other paperwork, although they do specify information that is required for reports and forms to be maintained by providers. The regulations clarify the reporting and recordkeeping requirements to the extent of specifying the information that must be contained in registrant and program assessment forms, but remove unnecessary yearly reviews and outside committee reviews of program and unnecessary agreements between operators and registrants. Correction of incorrect citations regarding building code matters will permit would-be operators to more easily

find out the applicable building standards and to respond to those standards.

Professional Services

For most programs, no additional professional services will be necessary to comply with the proposed rule. The Department will permit additional costs to be addressed through an appeal for those programs that are not at the statutory ceiling of 65% of the sponsoring nursing facility's rate.

Compliance Costs

There will be no initial capital costs as a result of compliance with this rule. Adult day health care providers may incur nominal costs for providing additional information relative to registrant assessments and coordination of services.

Minimizing Adverse Impact

In general, the regulations attempt to minimize the adverse economic impact on all providers, including those operating in rural areas. The Department of Health considered the approaches in section 202-bb(2) of the State Administrative Procedure Act and found them inapplicable. Exemption of rural providers from the proposed rule would not serve the purposes of provision of assuring quality and necessary services to all program registrants and protecting the program from inappropriate admission and fiscal abuse. All adult day health care programs must comply with these requirements. The remedying of incorrect citations in Parts 711 and 713 will allow all providers, including rural providers, to learn exactly what building standards are expected of them. In addition, the regulations provide enhanced flexibility to operators in rural areas, by allowing any operator on a given day to accommodate up to 10% more registrants than the program is otherwise approved for. The utilization rate of each session for a twelve-month period, however, may not exceed the approved registrant capacity of that session projected over an annual basis.

Opportunity for Rural Area Participation

Representatives of adult day health care providers and associations, including those that operate in rural areas, were consulted during the development of the proposed rule through direct meetings. In addition, the Department held numerous meetings with the regulated entities to hear their concerns. Those concerns and those heard at the public meeting of the Code and Fiscal Policy Committees of the State Hospital Review and Planning Council were addressed by changes in these regulations. Rural areas were originally given notice of this proposal by its inclusion, for purposes of emergency filing, on the agenda of the State Hospital Review and Planning Council for its February 3, 2000 meeting, and subsequently in a joint meeting of the Code and Fiscal Policy Committees of the State Hospital Review and Planning Council on March 23, 2000, and its inclusion in the agenda of the State Hospital Review and Planning Council for its April 6, 2000 meeting, a meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council on May 18, 2000, and its inclusion in the agenda of the State Hospital Review and Planning Council for its June 1, 2000 meeting, its inclusion on the agenda of the September 21, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and by its subsequent inclusion on the agenda for the October 5, 2000 meeting of the State Hospital Review Council, its inclusion on the agenda for the November 16, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and on the agenda of the State Hospital Review and Planning Council for its December 7, 2000 meeting, its inclusion on the agenda for the January 18, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 1, 2001 meeting, its inclusion on the agenda for the May 24, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its June 7, 2001 meeting, its inclusion on the agenda for the July 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council which was subsequently canceled with the decision being made to place renewal of the emergency filing on the agenda of the State Hospital Review and Planning Council of its August 2, 2001 meeting, and by its inclusion on the agenda for the November 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its December 6, 2001 meeting, its inclusion on the agenda for the January 24, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 7, 2002 meeting, its inclusion on the agenda of the May 23, 2002 meeting of the Codes and Regulations

Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 6, 2002 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2002 meeting and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 5, 2002 meeting, its inclusion on the agenda of the January 23, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its February 6, 2003 meeting, its inclusion on the agenda of the May 22, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 5, 2003 meeting and its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2003 meeting. In addition, for purposes of filing on a permanent basis, these proposed regulations were presented for information only to the Codes and Regulations Committee of the State Hospital Review and Planning Council at its July 20, 2000 meeting, and were included on the agenda of the August 3, 2000 meeting of the State Hospital Review and Planning Council.

Exemption of adult day health care providers in rural areas from the proposed rule would not serve the purposes of assuring quality and necessary services to all program registrants and protecting the program from fiscal abuse. An adult day health care program must comply with these requirements.

Job Impact Statement

A Job Impact Statement is not necessary because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. These regulations establish additional standards for operation of adult day health care programs and are not expected to result in reductions of staff providing necessary care.

Insurance Department

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

Minimum Standards for Producer-Controlled Insurers

I.D. No. INS-44-03-00004-P

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

Proposed action: This is a consensus rule making to repeal section 80-2.6 (Regulation 52-A) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Minimum standards for producer-controlled insurers.

Purpose: To repeal an obsolete rule.

Substance of proposed rule: The amendment repeals Section 80-2.6, a section containing obsolete provisions specifying actions that were required to be completed in 1991.

Text of proposed rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 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. The amendment merely repeals Section 80-2.6, which contains obsolete provisions specifying actions that were required to be completed in 1991.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely repeals a section containing obsolete provisions relating to actions that were required to be completed in 1991.

Department of Labor

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

Recordkeeping and Reporting of Occupational Injuries and Illnesses by Public Employers

I.D. No. LAB-44-03-00001-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 repeal section 801.12 of Title 12 NYCRR.

Statutory authority: Labor Law, section 270-a(9)

Subject: Recordkeeping and reporting of occupational injuries and illness by public employees.

Purpose: To repeal certain regulations.

Text of proposed rule: Section 801.12 Recording criteria for cases involving work-related musculoskeletal disorders. Repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Legal Assistant II, Department of Labor, Counsel's Office, Rm. 509, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380

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

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

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

Consensus Rule Making Determination

The proposed rulemaking is not expected to generate objection from any person because it repeals a Part 801.12 so that Title 12 NYCRR remains substantially identical to the regulations of the United States Department of Labor, Occupational Safety and Health Administration, 29 CFR 1904. 29 CFR 1904 was amended by Final Rule published in the *Federal Register* on June 30, 2003, #68:38601-38607.

Job Impact Statement

The proposed action does not affect jobs and employment opportunities but simply repeals Part 801.12, so New York State's regulations remain substantially identical to the regulations of the United States Department of Labor Occupational Safety and Health Administration, 29 CFR Part 1904.

Long Island Power Authority

NOTICE OF ADOPTION

Tariff for Electric Service

I.D. No. LPA-20-03-00010-A

Filing date: Oct. 15, 2003

Effective date: Oct. 15, 2003

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

Action taken: The Long Island Power Authority (authority) approved revisions to the authority's tariff for electric service.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Tariff for electric service.

Purpose: To adopt certain revisions for electric service.

Text or summary was published in the notice of proposed rule making, I.D. No. LPA-20-03-00010-P, Issue of May 21, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Roni Epstein, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700

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

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

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.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Glenn Gardens Associates, LP

I.D. No. PSC-44-03-00007-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 Glenn Gardens Associates, LP, to submeter electricity at 175 W. 87th St., Manhattan, NY.

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

Subject: Case 26998—submetering of electricity for new or renovated master metered residential rental units owned or operated by private or government entities.

Purpose: To permit electric submetering.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new or renovated master metered residential rental properties owned or operated by private or government entities. The Glenn Garden Associates, LP has submitted a proposal to master meter and submeter this residential rental complex only when the apartments become vacant and are renovated. The total building electric usage for this complex will be master metered and each unit will be individually submetered. The submetering plan sets forth proposals on electric rates, economic benefits, security, dispute resolution, grievance procedures and metering in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at 175 West 8th Street, New York, 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. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-E-1425SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Natural Gas by New York City Economic Development Corporation

I.D. No. PSC-44-03-00008-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 petition filed by New York City Economic Development Corporation, for permission to submeter gas service to commercial gas customers at the Fulton Fish Market, 800 Food Center Drive, Bronx, NY.

Statutory authority: Public Service Law, section 65(1), (2), (3), (4), (5), (8), (9), (10), (12) and (14)

Subject: Submetering of natural gas service to industrial and commercial customers.

Purpose: To submeter natural gas service.

Substance of proposed rule: The New York City Economic Development Corporation has filed a petition for approval to submeter natural gas service to their commercial customers located at the Fulton Fish Market, 800 Food Center Drive, Bronx, New York. The Commission may approve, reject, or modify, in whole or in part, this request.

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

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

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

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

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

(03-G-1157SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Retail Access Data between Jurisdictional Utilities

I.D. No. PSC-44-03-00009-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, staff recommendations regarding establishment of a standards change and version control process for handling requests for changes in New York EDI data standards previously approved by the commission.

Statutory authority: Public Service Law, section 5(2)

Subject: Exchange of retail access data between jurisdictional utilities and eligible ESCO/marketers.

Purpose: To modify established EDI data standards to ensure statewide uniformity, improve consistency, sustain a secure and reliable technical environment or to accommodate changes.

Substance of proposed rule: Recommendations of the NY EDI Collaborative for a refined Standards Change and Version Control Process were previously filed and noticed (SA8) in compliance with Commission directives set forth in Opinion 01-03, Opinion and Order Approving EDI Data Standards and Data Protocols and Modifying the New York Uniform Business Practices for EDI Implementation, issued and effective July 23, 2001. Using the documents originally filed by the Collaborative as a basis, Department of Public Service Staff has revised the procedures pertaining to the voting process and use of the Public Service Commission web site as a communication medium for change activity and has updated the filing to reflect a requirement for formal comment on, and Commission adoption of, proposed modifications.

Comments are now requested on the process as revised by Staff. The draft proposal consists of the following documents:

Draft Version 1.0 Standards Change and Version Control Process

- EDI Document Change Request (Attachment 1)
- EDI Document Change Request Log (Attachment 2)
- EDI Document Approved Change Listing (Attachment 3)

The Commission may approve or reject some or all of the recommendations contained in these documents.

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

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

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

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

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

(98-M-0667SA40)

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

Bill Formats

I.D. No. PSC-44-03-00010-P

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

Proposed action: The commission will consider whether to adopt a standardized bill format for jurisdictional utilities.

Statutory authority: Public Service Law, sections 66(12), 65 and 72

Subject: Bill formats.

Purpose: To propose a uniform bill format.

Substance of proposed rule: The Commission will consider whether to adopt standardized bill formats for the state's utilities. The Commission may adopt the formats as proposed, may modify and adopt them, may not adopt them, or may take other actions related to utility bills.

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

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

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

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

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

(00-M-0504SA5)

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

Wireless Attachments by Niagara Mohawk Power Corporation and Nextel Partners

I.D. No. PSC-44-03-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a joint petition of Niagara Mohawk Power Corporation (Niagara Mohawk) and Nextel Partners to attach wireless facilities to Niagara Mohawk's transmission facilities in the Town of West Seneca.

Statutory authority: Public Service Law, section 70

Subject: A joint petition of Niagara Mohawk Power Corporation and Nextel Partners for wireless attachments.

Purpose: To consider approval of wireless attachments.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a joint petition of Niagara Mohawk Power Corporation (Niagara Mohawk) and Nextel Partners to attach wireless facilities to Niagara Mohawk's transmission facilities in the Town of West Seneca.

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

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

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

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

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

(03-M-1459SA1)

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

Waivers of Filing Requirements by Rochester Gas & Electric Corporation

I.D. No. PSC-44-03-00012-P

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

Proposed action: Consideration of Rochester Gas & Electric Corporation's request for waivers of 16 NYCRR section 86.3(a)(1)(i) and (a)(2) in its application for a certificate of environmental compatibility and public need to construct approximately 32.3 miles of new or rebuilt 115 kV transmission lines and substation upgrades in Monroe County and a new 5.7 mile 115kV transmission line and new substation in Wayne County.

Statutory authority: Public Service Law, sections 4(1) and 122(1)

Subject: Filing requirements of article VII proceedings concerning the scale and coverage of required maps showing proposed rights-of-way, extent of clearing, and the relationship of the project to the applicant's overall electric system.

Purpose: To determine whether the appropriate filing requirements are met.

Substance of proposed rule: The Commission is considering a request from Rochester Gas & Electric Corporation (RG&E) for waivers of certain filing requirements of the Commission's rules. Specifically, RG&E seeks waivers of 16 NYCRR § 86.3(a)(1)(i) and 86.3(a)(2) regarding the scale and coverage of required maps. RG&E seeks a Certificate of Environmental Compatibility and Public Need for the construction of approximately 32.3 miles of new or rebuilt 115 kV transmission lines with substation upgrades in Monroe County (Towns of Greece, Henrietta, Brighton and Chili); and the City of Rochester, and a new 5.7 mile 115 kV transmission line and new substation in Wayne County (Towns of Macedon, Walworth and Ontario).

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

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

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

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

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

(03-T-1385SA1)

Department of State

NOTICE OF ADOPTION

Uniform Standards of Professional Appraisal Practice

I.D. No. DOS-16-03-00006-A

Filing No. 1158

Filing date: Oct. 16, 2003

Effective date: Nov. 5, 2003

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

Action taken: Amendment of section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Uniform Standards of Professional Appraisal Practice.

Purpose: To adopt the 2003 edition.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-16-03-00006-P, Issue of April 23, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Temporary Housing Assistance

I.D. No. TDA-19-03-00011-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-19-03-00011-P was published in the *State Register* on May 14, 2003.

Subject: Temporary housing assistance.

Purpose: To implement changes concerning the provision of temporary housing assistance and provide safeguards to individuals and families in receipt of such assistance.

Substance of rule: The proposed amendments implement changes concerning the provision of temporary housing assistance and provide safeguards to individuals and families in receipt of such assistance. Specifically, the proposed regulations provide that a person who has been removed from a temporary housing assistance unit may have the temporary housing assistance restored if he or she has demonstrated compliance with requirements concerning eligibility for temporary housing assistance and public assistance benefits. This provision will give sanctioned individuals a second chance to regain their housing units.

Further, the current regulations authorize the discontinuance of temporary housing assistance when an individual or family fails to pay a portion of such housing when directed to do so. The proposed regulations would provide that the discontinuance would continue until the failure to pay ceases or for 30 days, whichever is longer. This provision will encourage recipients of temporary housing assistance to be responsible for the cost of their housing.

In addition, the proposed regulations provide that under certain circumstances, when an adult caretaker causes a reduction in the family's public assistance benefits, the adult must leave the temporary housing assistance unit and if there is no other adult caretaker in the family who is residing in the unit, the children also must leave the unit. This provision would ensure that children are not left alone in a temporary housing assistance unit if all

their caretaker relatives have to leave the unit because of a sanction imposed on the relatives.

Finally, the proposed regulations delete a provision that requires a social services district to evaluate a person's or family's needs for protective services for adults, preventive services for children and protective services for children prior to denying or discontinuing temporary housing assistance and make an appropriate referral for such services where necessary. This provision has caused confusion and proven problematic for the districts to implement. Since the provisions of the Social Services Law cover the circumstances when referrals for such services should be made, this provision is not necessary.

Changes to rule: No substantive changes.

Expiration date: May 13, 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.

Thruway Authority

NOTICE OF ADOPTION

Transportation of Explosives

I.D. No. THR-26-03-00009-A

Filing No. 1160

Filing date: Oct. 16, 2003

Effective date: Nov. 5, 2003

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

Action taken: Amendment of section 102.1(a)(17) of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 354(5) and (15) and 361(1)(a); 49 USC, section 5112(a)(2)(A) and (B)

Subject: Transportation of explosives.

Purpose: To update the classification of explosives in the existing regulation to correspond with the new explosive classification contained in the Federal Regulations and delete other obsolete references.

Text or summary was published in the notice of proposed rule making, I.D. No. THR-26-03-00009-P, Issue of July 2, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Marcy Pavone, New York State Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-2867, e-mail: marcy_pavone@thruway.state.ny.us

Assessment of Public Comment

The agency received no public comment.