

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.

Delaware River Basin Commission

INFORMATION NOTICE DELAWARE RIVER BASIN COMMISSION NOTICE OF PROPOSED RULE MAKING AND PUBLIC HEARING

The Delaware River Basin Commission (“Commission” or “DRBC”) is a federal-state regional agency charged with managing the water resources of the Basin without regard for political boundaries. Its members are the governors of the four Basin states — Delaware, New Jersey, New York and Pennsylvania — and a Federal representative appointed by the President of the United States. The Commission is exempt from the requirements of the New York State Administrative Procedures Act. This notice is published by the Commission for informational purposes.

Proposed Rulemaking: Proposed Amendments to the Comprehensive Plan and Water Code Relating to the Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During a Basinwide Drought

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to Section 2.5.5 of the *Water Code* (21 NYCRR §§ 890.11 and 890.12), relating to the Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During a Basinwide Drought. The Commission proposes to amend and codify changes to the *Comprehensive Plan and Water Code* effected by Resolution No. 2002-33, approved in November 2002 by the Commission and the parties to the U.S. Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (1954)

(“Decree Parties”). The amendments are for purposes of clarification and accuracy and to better ensure that the benefits of the changes effected by Resolution No. 2002-33 are achieved without compromising habitat protection goals. Resolution No. 2002-33, which was not codified, in part amended the *Comprehensive Plan* and *Water Code* relating to the utilization of Lake Wallenpaupack during drought watch, drought warning and drought operations.

The proposed changes are as follows:

First, numbered paragraph 1 of Resolution No. 2002-33 provides that “any and all provisions pertaining to the operation of Lake Wallenpaupack during basinwide drought warning also apply to basinwide drought watch as temporarily defined by the Commission in Docket No. D-77-20 CP.” The proposed amendment adds the parenthetical “(Revision 7 and following)” at the end of this sentence to make clear that the most current applicable revision of Docket No. D-77-20 CP is intended to apply.

Second, the inclusion of the term “drought watch” in brackets following every mention of “drought warning” in the November 2002 amendments is proposed to be deleted, because the Commission makes clear in numbered Paragraph 1 of the Resolution that provisions in Section 2.5.5 of the *Water Code* pertaining to the operation of Lake Wallenpaupack during drought warning also are intended to apply to drought watch as defined by Docket No. D-77-20 CP (Revision 7 and following).

Third, throughout the language added by Resolution No. 2002-33, the terms “drought conditions” and “drought warning conditions” are replaced by “drought operations” and “drought warning operations,” respectively, to more accurately reflect the fact that the reservoir management activities described are triggered by a set of reservoir drought operating rules established by the Commission and the Decree Parties, rather than by hydrologic conditions.

Fourth, the November 2002 amendments inserted language at Section 2.5.5 of the *Water Code* stating that “[d]uring ‘drought’ and ‘drought warning’ operations . . . ,” the power companies shall release water only in accordance with Commission direction.” This statement is proposed to be changed to reflect the Commission’s intention that “[d]uring ‘drought’ and ‘drought warning’ operations as defined in Figure 1 of Section 2.5.3.A. of the *Water Code*, releases from Lake Wallenpaupack shall be made only in accordance with Commission direction.” In a related amendment, a new sentence is proposed to be added to Section 2.5.5 addressing operation of the Mongaup reservoir system by the Commission, which may take place only under more limited circumstances. The proposed provision reads, “After issuance of a Conservation Order by the Commission, power generation releases from the Mongaup reservoir system shall be made only in accordance with Commission direction.” This statement restores the rule governing drought operation of the Mongaup system reservoirs to the rule in effect before the November 2002 amendments.

Fifth, the Commission proposes to add a clause providing that when it directs releases from Lake Wallenpaupack during drought watch (including warning) and drought operations, it must give consideration to any flow and temperature targets established by the Commission and the Decree Parties in the upper Delaware River and in the West Branch Delaware, East Branch Delaware, and Neversink rivers for the protection of the cold water fisheries in these streams.

Dates: The **public hearing** will be held during the Commission’s regularly scheduled business meeting on January 19, 2005 at 1:30 P.M. Persons wishing to testify at the hearing are asked to register in advance with the Commission by phoning 609-883-9500, extension 224. Submission of written comments by January 14, 2005 would be appreciated, but written

comments will be accepted through the close of the public hearing on Wednesday, January 19, 2005.

Addresses: The **public hearing** will be held in the Goddard Room of the Commission's office building at 25 State Police Drive in West Trenton, New Jersey. **Written comments** should be addressed to the Commission Secretary as follows: by e-mail to paula.schmitt@drbc.state.nj.us; by fax to 609-883-9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Further Information, Contact: The full text of the proposed resolution, the text of Resolution No. 2002-33, and the text of the sections of the *Water Code* as amended by both Resolution No. 2002-33 and the proposed resolution, are posted on the Commission's web site, <http://www.drbc.net>. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203, with questions about the proposed action.

**INFORMATION NOTICE
DELAWARE RIVER BASIN COMMISSION
NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal-state regional agency charged with managing the water resources of the Basin without regard for political boundaries. Its members are the governors of the four Basin states — Delaware, New Jersey, New York and Pennsylvania — and a Federal representative appointed by the President of the United States. The Commission is exempt from the requirements of the New York State Administrative Procedures Act. This notice is published by the Commission for informational purposes.

Proposal to Amend the Administrative Procedure and Fee Schedule for the Renewal of Projects Under Section 3.8 and Article 10 of the Delaware River Basin Compact

Summary: The Commission will hold a **public hearing** to receive comments on a proposed amendment to the Commission's administrative procedure and fee schedule for the renewal of project approvals under Section 3.8 and Article 10 of the Delaware River Basin Compact.

The Commission's fee schedule for the review of projects under Section 3.8 and Article 10 of the Delaware River Basin Compact is set forth in Resolution No. 2003-14, duly adopted by the Commission on June 26, 2003. The proposed amendments to the schedule would add provisions (a) for the administrative continuance of dockets and permits (collectively, "approvals") pending Commission action on renewal applications that are timely submitted; and (b) imposition of a fee of \$1,000, in addition to the ordinary review fee, for the review of renewal applications not submitted in a timely fashion. In accordance with the proposed amendment, a docket holder or permittee whose approval has been administratively continued will not be subject to penalties for operating without a docket or permit during the period between expiration of the approval and Commission action on an application for renewal, provided that the docket holder or permittee will be responsible for violations of the terms and conditions of its approval to the same extent as if the approval had been renewed prior to its expiration.

In order to phase in the new program, the proposed rule sets forth one timeline for approvals that expire before October 1, 2005 and another for approvals that expire on or after October 1, 2005.

Approvals expiring before October 1, 2005 are proposed to be administratively continued pending issuance of a docket renewal when the docket holder or permittee submits a complete application within 90 calendar days after receipt of a written notice from the Executive Director or by September 30, 2005, whichever is earlier. The Executive Director may extend the deadline for good cause shown in the event a substantially complete application, along with the full fee, is submitted by the deadline. The fee of \$1,000, payable in addition to the ordinary fee, is proposed to be charged for renewal applications submitted after September 30, 2005.

Approvals expiring after September 30, 2005 are proposed to be administratively continued pending issuance of a docket renewal when the docket holder or permittee submits a complete application at least 120 calendar days in advance of the expiration date. If the approval establishes a different application submission date, the docket or permit is controlling. Again, the Executive Director may extend the deadline for good cause shown, in the event a substantially complete application, along with the full fee, is submitted by the deadline. A fee of \$1,000 above the ordinary fee is proposed to be charged for renewal applications submitted fewer than 120 calendar days before the approval's expiration date.

The amendment provides for the Executive Director to implement procedures to furnish written notice to docket holders and permittees in

advance of their approval expiration dates, reminding them to file a timely renewal application. However, failure of the Executive Director to send such notice or lack of receipt of the notice by the docket holder or permittee will not relieve the docket holder or permittee of any obligation or condition or create any defense.

Dates: The **public hearing** will be held during the Commission's regularly scheduled business meeting on January 19, 2005 at 1:30 P.M. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Submission of **written comments** by January 14, 2005 is requested; however, written comments will be accepted through the close of the public hearing on Wednesday, January 19, 2005.

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Further Information, Contact: The full text of the proposed amendment is posted on the Commission's web site, <http://www.drbc.net>. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203, with questions about the proposed amendment or the amendment process.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sportfishing Regulations

I.D. No. ENV-42-04-00002-A

Filing No. 1401

Filing date: Dec. 14, 2004

Effective date: Dec. 29, 2004

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

Action taken: Amendment of sections 10.1, 10.2, 10.3, 10.5 and 10.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-0317, 11-0319, 11-1301, 11-1303 and 11-1316

Subject: Amendments to regulations governing sport fishing.

Purpose: To implement changes in fishing regulations that are necessary to maintain or improve the quality of New York's freshwater fisheries, and to correct or clarify existing fishing regulations.

Substance of final rule: The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing (6 NYCRR Part 10). The amendments contained in this proposed rulemaking were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. These amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments that the Department is proposing for 6 NYCRR Part 10:

1. General clarifications:

- (a) Designating "largemouth and smallmouth bass" as "black bass";
- (b) Replacing all instances of "no kill" with the more accurate description of "catch and release only";
- (c) Replacing all instances of "Ice fishing allowed" with "Ice fishing permitted";
- (d) Special regulations for trout in Wayne County: changing "All waters" to "All waters except the Great Lakes and tributaries";
- (e) Special regulation for the section of the Hudson River where black bass can be taken all year: adding the wording "from Thurman Bridge upstream";

(f) Black bass regulations for tributaries of the Chemung River (Steuben County): adding language to indicate that all tributaries are included;

(g) Changing regulations for yellow perch and sunfish in Jefferson County to read "All waters except Sandy Pond";

(h) Changing regulatory boundary for Oneida Lake and its tributaries to be east of the Route 81 bridge;

(i) Changing Oneida Lake tributary regulations in Oneida County so that the upstream endpoint for the Barge Canal section is Lock 22.

2. Adopt catch and release only regulations for trout on:

(a) West Branch Saint Regis River (St. Lawrence County) from Route 11B to Allens Falls Reservoir Dam;

(b) Batten Kill (Washington County) from the Vermont State line to the covered bridge at Eagleville;

(c) West Branch of the Ausable River (Essex County) from the Whiteface Ski Center downstream to the Route 86 bridge;

(d) Saranac River (Clinton County) from North Branch Saranac River upstream 1.4 miles to Stord Brook;

(e) Saranac River (Clinton County) from intersection of Sand pond Road and NYS Route 22B in Morrisonville upstream to Kent Falls Dam;

(f) Ischua Creek in the area of Franklinville in Cattaraugus County.

3. Remove the baitfish prohibition on:

(a) Weed Mines Pond, Town of Copake, (Columbia County);

(b) Colgate Lake, Town of Jewett, (Greene County).

4. Prohibit the use of baitfish on:

(a) Little Black Pond, Town of Santa Clara, and Benz Pond, Town of Waverly, (Franklin County);

(b) Bog Pond, Clear Pond, Loon Pond and Lost Pond, Town of Long Lake, (Hamilton County);

(c) Sterling Lake (Orange County).

5. General corrections to Part 10:

(a) Correcting the daily limit for lake trout on Schroon Lake and the Schroon River from the lake proper downstream to the Starbuckville dam from three fish per day to two fish per day;

(b) Correcting the minimum length for trout in all tidal streams in Suffolk County from two inches to 12";

(c) Correcting the typographical error for the Cohocton River (Stueben County), from "...Route 145" to "...Route 415";

(d) Correcting the method of taking in Spring Creek (Livingston and Monroe County) and Oatka Creek (Monroe County) during the April 1 to October 15 season by removing the unintended restriction of artificial lures only;

(e) Correcting the existing description for the no kill section of the West Branch of the Ausable River (Essex County), changing "... .22 miles downstream. . ." to "... .22 miles downstream. . .";

(f) Correcting minimum length for walleye Lake Ontario, the St. Lawrence River, Upper Niagara River and Lower Niagara River, changing from 15 inches to 18 inches;

(g) Correcting the ice fishing prohibition on Bigsby Pond and Copperas Pond (Essex County) by changing it to the intended tip-up prohibition.

6. Eliminate special regulations for:

(a) Crappie on Whitney Point Reservoir (Broome County) and Chautauqua Lake (Chautauqua County), and for trout on the Roeliff-Jansen Kill (Columbia County and Dutchess County) since the species are now regulated under statewide regulations;

(b) American shad on the West Branch Delaware River since general angling regulations apply during the time when fishing is not prohibited in this water;

(c) Chittenango Creek (Madison County) Route 20 downstream because the section duplicates that found in the special regulation from Route 20 north to Conrail railroad line;

(d) Eliminating the special regulation for Lake Mahopac (Putnam County);

(e) No kill brook trout fishing in Whey Pond (Franklin County) and changing the daily limit for all trout to three per day in combination;

(f) Black bass and northern pike in the Saranac River (Clinton County) downstream of Union Falls since said regulation now has little or no practical application.

7. Change the daily creel limit for trout from five trout per day to five trout per day, with no more than two longer than 12" to better distribute harvest opportunity for two year old hatchery brown trout and to emphasize the value of larger brown trout for all waters not covered under special regulations in Allegany, Cattaraugus, Chautauqua, Erie and Wyoming counties and for the following waters currently covered under special regulations:

(a) Rushford Lake, Allen Lake and the Genesee River (excluding the newly proposed catch and release section from the Route 19 bridge in Shongo downstream 2.5 miles) in Allegany County;

(b) Case Lake, Harwood Lake, and New Albion Lake in Cattaraugus County.

8. Amend the daily limit for trout on the waters below to 5 per day, with no more than 2 larger than 12 inches from April 1 through October 15 and keeping the stream open for fishing the remainder of the year under a catch and release artificial lures only regulation:

(a) Clear Creek, Lime Lake Outlet and McKinstry Creek (Cattaraugus County);

(b) Hosmer (Sardinia) Brook (Erie County);

(c) Clear Creek, and all of Wiscoy Creek except 0.5 miles upstream to 0.5 miles downstream of East Hillside Rd. Bridge (Wyoming County).

9. Adopt new special regulations that will allow for a year-round trout season, ice fishing permitted, with a daily creel limit of five trout per day, with no more than two longer than 12" for Red House Lake and Quaker Lake in Cattaraugus County.

10. Remove the Salmon River and Little Sandy Creek as exceptions from the 15 inch minimum size limit for trout and salmon in Lake Ontario tributaries and eliminate the Monroe County qualifier from Irondequoit Creek to allow a 9 inch minimum size limit for the entire creek.

11. Reduce the minimum length for crappie from 9 inches to 8 inches on Lake Champlain for consistency with regulations in effect for the State of Vermont.

12. Increase the minimum length of yellow perch to 8 inches in all Nassau County waters except Hempstead Lake.

13. Increase the minimum size from 15 inches to 18 inches and reducing the daily limit from 5 fish to 3 fish for walleye in Chautauqua Lake (Chautauqua County), Fern Lake (Clinton County), Harris Lake, (Essex County), Rainbow Lake (Franklin County), Lake Algonquin (Hamilton County), Butterfield Lake (Jefferson County), Burden Reservoir (Rensselaer County), and Horseshoe Lake (St. Lawrence County) to afford increased protection and maximize the restoration potential for the species.

14. Reduce the minimum length for walleye in Oneida Lake and its tributaries (Madison, Oneida, Onondaga and Oswego Counties) from 18 inches to 15 inches.

15. Extend the open season for muskellunge and tiger muskellunge on the St. Lawrence River, Lake Ontario and Lower Niagara River from November 30 to December 15 to expand trophy muskellunge angling opportunities.

16. Amend the closing date of the walleye season for the Lower Niagara River, from March 15 to December 31 to provide greater protection of spawning stock prior to the opening of the fishing season in May.

17. Amend regulations in the Lower Niagara River for Atlantic Salmon so that only one fish greater than or equal to 25 inches can be harvested.

18. Broaden the current one fish per day creel limit for rainbow trout and steelhead in Jefferson County to include all waters tributary to Lake Ontario (from the lower most bridge upstream to the first barrier impassible by fish).

19. Adopt special regulations for Sylvan Lake (Dutchess County) to establish a year-round trout season with no minimum size, a five fish per day limit and ice fishing is permitted.

20. Adopt special regulations for a year-round catch and release bass season in Artist Lake and Belmont Lake (Suffolk County) to protect and restore the quality of the bass populations.

21. Adopt a year-round catch and release only season for all species in Hempstead Lake (Nassau County) except black bass.

22. Amend the special regulation for lake trout in Piseco Lake (Hamilton County) by increasing the minimum size to 21 inches and decreasing the daily limit to two fish per day to increase the average size of lake trout being caught by anglers.

23. Adopt a special regulation for Round Lake (Town of Long Lake, Hamilton County) where brook trout will be regulated under a 12 inch minimum size limit, three fish per day daily limit, artificial lures only and the use or possession of baitfish is prohibited.

24. Institute a catch-and-release regulation for American shad in the: Susquehanna River (Tioga and Broome County), Tioughnioga River (Broome County), Chenango River (Chenango County) and Chemung River and tributaries (Chemung County).

25. Amend regulations for New York City Park waters so that all species will be regulated under a year round catch and release only season, and eliminating the special regulations for largemouth and smallmouth bass to all other waters in Bronx, Kings, NY, Queens and Richmond

Counties to provide greater fishing opportunity and consistency between the State and City regulations.

26. Amend the trophy section of the Saranac River (Clinton County) from Imperial Dam upstream to accommodate the newly proposed catch and release trout section from Morrisonville upstream to Kent Falls Dam.

27. Shorten the current catch and release only section on the Beaver Kill (Delaware County) to end at the Iron Bridge in Horton to accommodate the newly proposed regulation that prohibits fishing in the thermal refuge area.

28. Prohibit all fishing in the thermal refuge area of the Beaver Kill (Delaware County) from the Iron Bridge at Horton downstream to the first Rt. 17 overpass from July 1 through August 31 so aggregations of trout that concentrate in this section of stream during periods of high temperature can be protected.

29. Amend the special regulations for Floodwood Pond, Square Pond, and Rollins Pond (Franklin County) to permit ice fishing.

30. Add a special regulation that permits ice fishing on Beardsley Lake (Montgomery County).

31. Eliminate the misprint of an April 1 through October 15 trout season for Oneida Creek from Peterboro Road downstream to the NYS Thruway (Oneida County) and adding the same to the special regulations for Oriskany Creek (Oneida County) as originally intended.

32. Amend the special regulations for Skaneateles Creek (Onondaga County) to include landlocked salmon.

33. Remove Ramapo River (Rockland County) from the special regulation that excludes it from those rivers and streams where black bass are regulated under a ten inch minimum size limit.

34. Prohibit the use or possession of rainbow smelt in Lake George (Essex, Warren and Washington Counties) to help protect the population numbers of this forage species for lake trout and landlocked salmon.

35. Change the special regulations for chain pickerel on Delaware River border waters to include all species of pickerel.

36. Change the wording for the special prohibition on fishing in Dutch Hollow Brook in Cayuga County to include a prohibition on dipnetting during the walleye spawning period.

37. Amend the special regulation for muskellunge on Chautauqua Lake to also include tiger muskellunge.

38. Remove "Gaff hook and clubs prohibited" for Chautauqua Lake since statewide regulations already prohibit the use of gaffs for open water fishing.

39. Repeal the special regulations for the Finger Lakes as they are currently constructed with a new table format for increased readability.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 10.2(a)(2), 10.3(b)(7) and (12).

Text of rule and any required statements and analyses may be obtained from: Shaun Keeler, Bureau of Fisheries, Division of Fish, Wildlife and Marine Resources, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4753, (518) 402-8920, e-mail: sxkeeler@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement on fish species management activities of the Department of Environmental Conservation, Division of Fish and Wildlife, prepared in accordance with art. 8 of the Environmental Conservation Law, is on file with the department and available for review.

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

Minor changes appear in subparagraphs 10.2(a)(2), 10.3(b)(7), 10.3(b)(12) of the rule as adopted when compared to the last published version of the proposed rule. The changes made to the previously published proposed rule: 1) clarify that portion of Eastern Lake Ontario and the St. Lawrence River that are exempt from daily limits for yellow perch and sunfish and correct the minimum size limit for walleye; 2) remove a separate line designating the walleye season for Findley Lake in Chautauqua County since Findley Lake is now listed with another water containing the same special regulation in the same county (IE Bear Lake); and 3) remove a separate line designating the trout season for Tri-County Pond in Cortland County since Tri-County Pond is now listed with other waters with the same special regulation in Cortland County (IE Goodale Lake, Little York, and Casterline Pond). These changes do not necessitate revision of the previously published Regulation Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Summary of Assessment of Public Comment

In accordance with the New York State Standard Administrative Procedures Act (SAPA), a summary of the assessment of public comment must be prepared whenever the assessment of public comment exceeds 2000

words. Below is a summary of the comment received and the Department's response.

Proposal: Shorten the walleye season in the Lower Niagara River.

Comment: There was both support for and opposition to the proposal. Comment was received stating the need for this measure and for protecting the breeding populations of large walleye which gather in the lower river during the winter months. Other comments indicated that additional study is needed to support the regulation. Several alternatives were suggested including catch and release, a one fish limit and a "slot" regulation.

Response: During the past few years walleye stocks in some areas have been experiencing serious population declines. An increase of adult walleye has been observed in localized areas, in late winter, and anglers are harvesting this spawning stock prior to egg deposition. At the current time, the Department believes that closing the winter season is the appropriate in order to ensure protection for the walleye population. The Lower Niagara River walleye population is a recently restored fishery, and the fish are extremely vulnerable to exploitation.

Proposal: Establish a 1 fish per day creel limit for rainbow trout and steelhead in all Lake Ontario tributaries.

Comment: Comment received for this proposal was largely supportive. Concern was expressed over resulting pressure on Lake Erie tributaries, culling of fish, reductions in stocking levels throughout the lake and tributaries, inadequate law enforcement and potential negative economic impacts. Some comment suggested further extending reductions in creel limit to additional species, as well to Lake Ontario.

Response: Steelhead runs have declined significantly in recent years in Lake Ontario tributaries. The change to 1 fish per day is intended to increase the length of time that the fish are available, thereby actually providing opportunity to more anglers, not fewer. In addition, steelhead have the best potential to reproduce naturally in many Lake Ontario tributaries. This proposal will allow more fish the opportunity to spawn. There has been strong support for the proposed one fish limit for steelhead. When DEC conducted public outreach for the Fish Community Objectives Project, there was strong sentiment for providing "special status" for steelhead and a one fish limit was the suggested method. Strong support has not been shown for the lake fishery, where they are not nearly as susceptible to harvest. Information contained in the 1996 New York State-wide Angler Survey indicates that the economic benefits generated from the Salmon River fishery was higher in post snagging years, as compared to the preceding years when snagging was allowed.

Proposal: Extend the open season for muskellunge on the St. Lawrence River, Lake Ontario and Lower Niagara River (from Nov. 30 to Dec. 15).

Comment: There was both support for and opposition to the proposal. Concern was expressed over putting additional pressure on the population in lower Niagara River. Comment was received requesting an earlier closure as well as inquiring as to why the Upper Niagara River was not included.

Response: Management of the Niagara River fisheries can best be served by partnering with Canada, and thereby providing for consistent management of the Niagara River. This was the intention for developing the joint NYSDEC/Ontario Ministry of Natural Resources Muskellunge Management Plan. Consistent regulations are very desirable for moving towards identifying and taking management actions to safeguard the population while providing angling opportunity. Active feeding in the fall occurs during the months of September thru November when water temperatures are favorable, not in December when temperatures are below optimal. Catch and release fishing is extremely popular with musky anglers, and cooler water temperatures improve release survival. There was strong opposition and little support for extending the musky season in the Upper Niagara River and Lake Erie.

Proposal: Prohibit all fishing in the Beaver Kill from the Iron Bridge at Horton downstream to the first Rt. 17 overpass from July 1 - Aug. 31, Delaware County.

Comment: Comment received for this proposal was largely supportive. Some comments opposed the measure because opportunity would be closed off at times when the water temperatures are not stressing fish.

Response: The Department recognizes that a drawback of this regulation is that fishing will be prohibited in years when elevated summer water temperatures are not a problem. While annual water flow and temperatures vary, in most years the fish in this major thermal refuge area on the lower Beaver Kill are vulnerable, warranting this level of protection. The closure is intended to protect the Horton Brook refuge, the largest and most important refuge in the Beaver Kill, as well as secondary refuges in the vicinity of Spooner Brook and the Acid Factory Wall.

Proposal: Establish catch and release only areas on the Saranac River, Batten Kill, West Branch St. Regis River, and Ishua Creek and expand the catch and release area on the West Branch Ausable.

Comment: Support was received for each of the proposals. Some opposition to several of the proposals was also expressed. Objection to adding more catch and release areas was cited in the correspondence received, and concern was expressed over limiting fishing opportunity to a select group of anglers.

Response: The existing catch and release section of the West Branch of the Ausable has been very popular, and DEC has received increasing numbers of requests for additional catch and release sections. With these additions, there is an abundance of stream and river fishing opportunity in the areas not designated as catch and release only. The catch and release regulations are accompanied with an artificial lures only requirement. The prohibition on natural bait will reduce the numbers of deeply hooked fish, that is, the fish most likely to suffer mortality when released. Angler use is expected to increase on these waters / sections. Opportunities to fish are increased by opening the season during the traditional closed trout season period (October 16-March 31).

Proposal: Ban use or possession of rainbow smelt on Lake George.

Comment: Support for the measure stated that the maintenance of a healthy smelt population was far more important to the welfare of the salmonid populations than the recreational harvest of smelt to individuals. Some of the comment received stated that this restriction is not needed and is not scientifically based.

Response: Smelt are a critical forage fish for the Lake George lake trout and landlocked salmon fishery, and smelt populations are known to fluctuate. These fluctuations can have adverse effects for the salmonid populations that depend on this forage base.

Proposal: Reduce the minimum length for walleye from 18 inches to 15 inches in Oneida Lake and its tributaries up to the first barrier.

Comment: Modest comment was received, both in support and in opposition. Some questioned the proposal indicating that no regulation changes are warranted at this time due to the health of the walleye population. Others voiced concern that this proposal could have negative effects on the walleye population in light of recent impacts by cormorants. A few comments were received suggesting alternative regulation approaches.

Response: The walleye population at Oneida Lake has sufficiently increased to sustain the increased harvest level which will occur under a 15 inch minimum size limit. However, the daily limit of 3 is being maintained to ensure that over-harvest of adult walleye does not occur. In recent years cormorant controls have been put in place, which are believed to have reduced cormorant predation on fish in Oneida Lake and are likely a contributing factor to the current health of the walleye population. Proposed alternative regulations would not provide sufficient protection to the walleye population.

Proposal: Modify the daily creel to "5 per day, with no more than 2 larger than 12 inches" for trout in DEC Region 9 waters.

Comment: Supporting comments referenced the need to take fishing pressure off the harvest of larger trout, particularly the 2 year old brown trout being stocked in many of these waters, and recognized the value of larger fish and the merit of spreading out the catch. Comments opposing these proposals objected to the creel limitation, and some objected to the inclusion of all trout species (as opposed to brown trout only). Recommendations for additional creel restrictions, such as slot limits and a maximum size limit, were also received.

Response: The intent is to limit the number of larger trout that can be taken from these waters, because of the high value of larger trout in all trout species (as opposed to brown trout only or stocked 2 year old brown trout). This proposal affords protection to trout over 12 inches and the breeding stock of many of these streams. With this regulation in place, requiring the release of all trout over 15 inches is not warranted, is not expected to significantly increase the overall quality of the fishery in these waters, and would deny anglers the opportunity to keep a trophy fish.

Proposal: Expand trout fishing opportunity to five DEC Region 9 streams by adding the October 16 to March 31 time period as open for fishing, but limited to catch and release fishing and artificial lures only.

Comment: The comment received was generally not specific to individual waters, but addressed to the waters collectively. There was both support and opposition to this measure. Some comments received supported "catch and release only" sections and endorsed the opportunity to fish some streams year round.

Response: The availability of fishing lake run streams year round should not preclude providing the same opportunity on inland streams. More opportunity can be offered to anglers with little or no impact on the

trout populations. The prohibition on natural bait will reduce the numbers of deeply hooked fish, that is, the fish most likely to suffer mortality when released.

Proposal: Increase the minimum size from state-wide regulations to 18 inches for walleye, with a 3 fish limit on 9 waters.

Comment: Comment was only received on two specific waters. Comment received on the Burden Lake proposal favored the proposal. Comment received on the Chautauqua Lake proposal was mixed. Several favor the measure, indicating that they have experienced a decline in Chautauqua Lake walleye fishing. Objection to the proposal cited other problems and suggested other actions that should be taken, rather than the proposed change.

Response: Fisheries surveys since 1996 indicate low recruitment of walleye in Chautauqua Lake, resulting in a declining abundance of legal (>15 inch) fish. Analysis of the Chautauqua Lake long-term data set indicates a positive correlation between spawning stock size and age 0 abundance. Both a reduced creel size and a higher size limit are needed to increase recruitment over the long term.

The Department has prepared a full assessment of public comment concerning this proposed rulemaking. The full assessment is available for review upon request.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-52-04-00001-E

Filing No. 1397

Filing date: Dec. 9, 2004

Effective date: Dec. 9, 2004

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

Action taken: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2, 362-5.3 and 362-5.5 (Regulation 171) of Title 11 NYCRR.

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

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

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program's commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After several years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

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

Subject: Healthy New York Program.

Purpose: To reduce cost, lessen complexity, and add a second benefit package.

Substance of emergency rule: The second amendment to regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection also provides that once enrolled in the program, any change in the selection of a benefit package may occur at the time of annual recertification or at anytime the premium rate changes. Notice of this option must be included with any notice of rate change.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions through January 31, 2005 as those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. De-minimus contributions shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund to include claims paid on behalf of a covered member in excess of \$5,000 and less than \$75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the." This corrects a technical error.

Subsection 362-5.3(e) is amended to change the loss ratio standard for Healthy New York contracts from small group to individual.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

Subsection 362-5.5(a) is amended to require that reports pertaining to stop loss reimbursement or loss ratio be certified by an officer of the company that such report is accurate and complete.

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 March 8, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5257, e-mail: emangan@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers

are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the premium rate changes. Any notice of rate change must include notice of this option to change benefit packages. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the recertification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. Through January 31, 2005, de-minimus contributions are those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. As these revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York. This amendment changes the loss ratio standard for Healthy New York contracts from small group to individual and requires that insurer's reports pertaining to stop loss reimbursement or loss ratio be certified.

4. Costs: The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

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

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees. This amendment requires that insurers certify all reports pertaining to stop loss reimbursement and loss ratio but does not require any additional reports.

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

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. Increase of the loss ratio standard for Healthy New York contracts

will increase the percentage of premium dollar that is received in claims by members. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. Federal standards: The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. Compliance schedule: This rulemaking will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. Compliance requirements: Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

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

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

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule-making process.

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also

requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. This amendment does require that a notice of rate change include a notice of the right to change benefit packages. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule-making process.

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Chemung County Motor Vehicle Use Tax

I.D. No. MTV-52-04-00002-P

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

Proposed action: This is a consensus rule making to amend section 29.12(p) of Title 15 NYCRR.

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

Subject: Chemung County motor vehicle use tax.

Purpose: To increase the tax.

Text of proposed rule: Subdivision (p) of section 29.12 is amended to read as follows:

(p) Chemung County. The Chemung County Legislature adopted Local Law Number 5 of 2002 on December 9, 2002, as amended by Local Law Number 2 on November 3, 2004 to establish a Chemung County Motor Vehicle Use Tax. The County Clerk of Chemung County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after July 1, 2003 and upon the renewal of registrations expiring on and after September 1, 2003. The Budget Director of Chemung County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Chemung County referred to in this Part. The tax due on passenger motor

vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs or less and \$10 per annum for such motor vehicles weighing in excess of 3500. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Chemung County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be [\$5.00] \$10.00 per annum. The increased fees provided for in Local Law Number 2 shall apply to original registrations made on or after March 1, 2005 and upon renewal of registrations expiring on and after May 1, 2005.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Consensus Rule Making Determination

In May of 2003, the Department of Motor Vehicles adopted an amendment to Part 29 requiring the collection of a Chemung County Motor Vehicle use tax. Motor Vehicles with farm plates were exempt from the tax.

The Department, upon the adoption of a local law by a county, is mandated to collect the motor vehicle use tax. Via Local Law Number 2 of 2004, Chemung County has chosen to increase the use tax, \$10 for passenger vehicles weighing more than 3,500 pounds and \$10 for trucks, buses and other commercial vehicles.

This is a consensus rulemaking because DMV is merely following the mandate imposed by Chemung County, i.e., DMV is required to collect this increased tax due to the enactment of Local Law No. 2 by the Chemung County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this rulemaking because it will have no adverse impact on job creation or development in the State.

Niagara Falls Water Board

NOTICE OF ADOPTION

Schedule of Rates, Fees and Charges

I.D. No. NFW-42-04-00003-A

Filing No. 1399

Filing date: Dec. 14, 2004

Effective date: Dec. 14, 2004

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

Action taken: Repeat of section 1950.20 and addition of new section 1950.20 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-j

Subject: Schedule of rates, fees and charges with respect to the board's regulation of water and wastewater treatment and distribution system in Niagara Falls, NY.

Purpose: To establish a schedule or rates, fees and charges for all persons and property that use the water, wastewater and stormwater facilities located in the City of Niagara Falls and nearby service area.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. NFW-42-04-00003-EP, Issue of October 20, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Charles C. Martorana, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 566-1512, e-mail: cmartorana@hiscockbarclay.com

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Certain Power and Energy

I.D. No. PAS-41-04-00006-A

Filing date: Jan. 1, 2005

Effective date: Jan. 1, 2005

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

Action taken: An increase in the rates for the sale of firm power to New York City government customers.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Substance of final rule:

**POWER AUTHORITY OF THE STATE OF NEW YORK
NEW YORK CITY GOVERNMENTAL CUSTOMERS
2005 CONVENTIONAL PRODUCTION RATES**

| Service Class | Demand Rates \$/kW-mo. | Base Energy Rates Cents/kWh* |
|---|------------------------|------------------------------|
| 62 General Small | ** | 8.346 |
| 64 Commercial & Industrial Redistribution | 11.38 | 4.296 |
| 65 Electric Traction Systems | 8.40 | 4.958 |
| 85s NYC Transit Authority Substation | 9.36 | 4.565 |
| 68/82 Multiple Dwellings Redistribution | 10.05 | 4.432 |
| 69 General Large | 8.30 | 4.642 |
| 80 NYC Streetlighting | 9.15 | 4.419 |
| 91/93/98 NYC Public Buildings | 8.48 | 4.912 |

* In addition to the base energy rates, there is a stabilized energy charge adjustment that varies annually and is applied on a monthly basis.

** Service class 62 does not have demand metering. Accordingly, the base energy rate reflects total demand as well as energy-related costs.

**POWER AUTHORITY OF THE STATE OF NEW YORK
NEW YORK CITY GOVERNMENTAL CUSTOMERS
2005 TIME-OF-DAY PRODUCTION RATES**

| Service Class | Demand Rates \$/kW-mo. | On-Peak Base Energy Rates Cents/kWh | Off-Peak Base Energy Rates Cents/kWh |
|---|------------------------|-------------------------------------|--------------------------------------|
| 64 Commercial & Industrial Redistribution | 9.35 | 6.195 | 3.426 |
| 68/82 Multiple Dwellings Redistribution | 9.02 | 6.404 | 3.507 |
| 69 General Large | 6.86 | 6.623 | 3.450 |
| 91/93/98 NYC Public Buildings | 6.95 | 7.112 | 3.477 |

Notes:

(1) The on-peak period for demand is weekdays from 8 AM to 6 PM, including holidays.

(2) The on-peak period for energy is weekdays from 8 AM to 10 PM, including holidays.

(3) The off-peak period for demand and energy is all other hours.

(4) Demand rates apply to peak demand occurring during the on-peak period.

(5) In addition to the indicated energy rates, the stabilized energy charge adjustment is applied on a monthly basis.

Final rule as compared with last published rule: The rates were lowered.

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: Angela.Graves@nypa.gov

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.

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-41-04-00007-A

Filing date: Jan. 1, 2005

Effective date: Jan. 1, 2005

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

Action taken: Increase the firm demand charges for the New York Power Authority's Blenheim-Gilboa Pumped Storage Project as set forth in Service Tariff No. 40 from \$2.30/kW per month to \$3.92/kW per month.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-41-04-00007-P, Issue of October 13, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: Angela.Graves@nypa.gov

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 Rao's City Views, LLC

I.D. No. PSC-52-04-00003-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition filed by Rao's City Views, LLC to submeter electricity at 453-55 E. 114th St. and 263 Pleasant Ave., New York, NY.

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

Subject: Submetering at 453-55 E. 114th St. and 263 Pleasant Ave., New York, NY.

Purpose: To approve the proposed submetering.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition

filed by Rao's City Views, LLC to submeter electricity at 453-55 East 114th Street and 263 Pleasant Avenue, 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. Brillong, 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.

(04-E-1545SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Natural Gas by Quaker Crossing, LLC

I.D. No. PSC-52-04-00004-P

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

Proposed action: The Public Service Commission is considering a petition filed by Quaker Crossing, LLC for permission to submeter gas to Kohl's Department Store, located in the City of Orchard Park, Erie County.

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

Subject: Submetering of natural gas service.

Purpose: To consider a proposal to submeter natural gas to a commercial customer.

Substance of proposed rule: Quaker Crossing, LLC has filed a petition for approval to extend submetering of natural gas service to Kohl's Department Store, located in the City of Orchard Park, Erie County, in the Service Territory of National Fuel Gas Distribution Corporation, filed in C 26998. The Commission may approve, reject, or modify, in whole or in part, the 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. Brillong, 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.

(04-G-1457SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

814 Enrollment Request and Response Standard by National Fuel Gas Distribution Corporation and Rochester Gas & Electric Corporation

I.D. No. PSC-52-04-00005-P

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

Proposed action: The Public Service Commission is considering modifications in the electronic data interchange (EDI) 814 enrollment request and response standard. National Fuel Gas Distribution Corporation (NFG) proposes to add two data segments to the enrollment standard to enable ESCOs to communicate information to budget bill plans and the assessment of late fees. In addition, Rochester Gas & Electric Corporation and NFG request modification in various segment and element notes in the enrollment standard and related standards documents to clarify the use of

specific segments by those utilities. If these changes were authorized, corresponding changes would be made in the 814 change standard.

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

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

Purpose: To revise the TS814 enrollment and change request and response standards.

Substance of proposed rule: In its Opinion and Order No. 01-03, issued and effective July 23, 2001, the Commission adopted various data exchange standards, compatible with Electronic Data Interchange (EDI) systems, necessary to enable customers to easily change their electric or gas commodity service provider. Following the initial publication of these EDI standards it has been necessary to modify one or more standards to recognize changes in regulatory policies. In conjunction with implementation of amendments to the Home Energy Fair Practices Act (HEFPA) existing data standards must be revised to provide for the exchange of additional information between utilities and ESCOs to facilitate compliance with revised HEFPA requirements.

In this instance, comments are requested on changes proposed by National Fuel Gas Distribution Corporation (NFG) to version 1.3 of the Enrollment and Change Request & Response standards. Enrollment transactions are used by Energy Service Companies (ESCOs) to request enrollment of a customer for electric or gas commodity service or by a utility to respond to enrollment requests. Change transactions are used to communicate changes on an account such as meter replacements, mailing address changes, etc.

NFG proposed to add an AMT segment to the Enrollment standard to enable ESCOs to communicate the budget plan installment and budget plan beginning balance amounts when the bill option for the customer being enrolled is Utility Rate Ready consolidated billing and the customer will be on budget billing for the ESCOs charges. In addition, NFG requests that a REF segment be added to the Enrollment standard and corresponding data dictionary, to enable ESCOs to designate accounts for whom NFG should assess a late fee when billed charges are past due. Rochester Gas & Electric Corporation requests that various data segments in the Enrollment standard be updated to recognize that it no longer offers a Single Retailer model in its service territory. These changes would affect the following segments: REF*NR (Current Budget Bill Status), N1*8R (Customer) and related N3/N4 segments (Service Address) and the REF*PC segment (Bill Calculator).

If these changes in the Enrollment standard are approved, corresponding changes would be made in the 814 Change standard.

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, 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-0667SA48)

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

Exchange of Retail Access Data by National Fuel Gas Distribution Corporation

I.D. No. PSC-52-04-00006-P

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

Proposed action: The Public Service Commission is considering proposed changes in version 2.1 of the TS867 monthly usage transaction set standard. The standard would be revised to enable ESCOs to distinguish between 867 transaction containing consumption for a cycle period and transactions containing estimated consumption for a calendar month period. The definition of 'metered base load' would be corrected and an additional element would be added to the utility account number segment

to differentiate between energy consumption for the metered portion of an electric account versus unmetered consumption on the same account.

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

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

Purpose: To establish uniform statewide retail access EDI data standards and business practices governing the exchange of data necessary for implementation of consolidated billing.

Substance of proposed rule: In its Opinion and Order No. 01-03 the Commission directed the development of data standards for the EDI transactions necessary to support retail access billing and payment processing practices as documented in orders issued in Cases 99-M-0631 and 98-M-1343. On March 22, 2004 the Commission approved version 2.1 of the TS867 Monthly Usage Transaction Set Standard. This standard governs the structure and content of transactions used by utilities, or other meter data service providers, to report customer's consumption or usage information to an ESCO/Marketer.

National Fuel Gas Distribution Corporation (NFG) requests changes in the TS867 Monthly Usage standard to enable NFG to comply with the requirement to match each 867 Monthly Usage transaction for with the 810 Invoice transaction containing charges calculated based on the usage or consumption in the 867 transaction. NFG currently provides multiple 810 Invoice transactions to Single Retailer ESCOs and will make available to Utility Rate Ready ESCOs the 810 Calendar Month Estimate Invoice to facilitate settlement and balancing for each calendar month. The change in the 867 Monthly Usage transaction sought by NFG would allow the recipient of the transaction to distinguish between cycle usage transactions and estimated calendar month consumption transactions and ensure that each 810 Invoice transaction is matched to an 867 usage transaction. NFG proposes to add an 'ET' code to the BPT07 element in the BPT segment to differentiate between transactions containing usage for a cycle period and those containing estimated consumption for a calendar month. A minor change in the BIG segment in the TS810 Invoice - Single Retailer would also be necessary and explanatory text would be added to the Consolidated Billing Business Practices Document (for Utility Rate Ready), the 810 Invoice - Single Retailer, the Billing Business Processes - Single Retailer and the DD for the 867MU to effect this change.

In addition, NFG requests that the segment note for the MEA*B1 segment in the TS867MU be corrected to indicate that metered base load is associated with a meter and not an account.

Orange & Rockland Utilities, Inc. proposes to add a REF03 element to the REF*12 segment (Utility Account Number) to distinguish between consumption on the metered portion of an electric account and un-metered consumption on the same account. A corresponding change in the data dictionary for this standard would also be required.

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, 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-0667SA49)

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

814 Enrollment Request and Response Standard by National Fuel Gas Distribution Corporation and Rochester Gas & Electric Corporation

I.D. No. PSC-52-04-00007-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 modifications in the electronic data interchange (EDI) 814 drop request and response standard. National Fuel Gas Distribution Corporation (NFG) proposes to modify this standard to require that a gas pool Id segment be

present in all drop transactions initiated by the utility or ESCO in its service territory. Transactions that do not contain the Gas Pool Id segment would be rejected. Rochester Gas & Electric Corporation requests that certain text be deleted from some segments to reflect the fact that the single retailer model is not longer offered in its service territory.

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

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

Purpose: To revise the EDI transaction set standard for the 814 drop request and response.

Substance of proposed rule: In its Opinion and Order No. 01-03, issued and effective July 23, 2001, the Commission adopted various data exchange standards, compatible with Electronic Data Interchange (EDI) systems that were necessary to enable customers to easily change their electric or gas commodity service provider. Following the initial publication of these EDI standards it has been necessary to modify one or more standards to recognize changes in regulatory policies, technological improvements in data exchange systems or inefficiencies in the content or syntax of the initial standards.

In this instance, comments are requested on proposed revisions to Draft version 1.2 of the Drop Request & Response standard contained in Draft version 1.3. Drop transactions are used by Utilities and ESCOs to communicate the termination of electric or gas commodity service for an individual end use customer. Modifications contained in Draft version 1.2 are pending Commission approval and no further comments will be accepted on those revisions. National Fuel Gas Distribution Corporation (NFG) requests that a Gas Pool Id segment be added to the Drop standard. This segment would be required in all drop transactions transmitted in its service territory and may be included in transactions transmitted in other service territories at the option of the utility. If adopted, corresponding changes would be made to the Drop data dictionary.

Rochester Gas & Electric (RG&E) requests that certain text in the N1*8R (Customer) and corresponding N3/N4 segments (Service Address) as well as text in the N1*BT (Name for Mailing) and corresponding N3/N4 segments (Mailing Address) be deleted to reflect that fact that the Single Retailer model is no longer offered in its service territory.

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, 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-0667SA50)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Exchange of Retail Access Data by National Fuel Gas Distribution Corporation

I.D. No. PSC-52-04-00008-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 modifications in the electronic data interchange (EDI) 568 accounts receivable advisement standard such that ESCOs may use 568 transactions to communicate termination notice, deferred payment agreement, down payment and deferred payment installation amounts to the utility in conjunction with implementation of amendments to the Home Energy Fair Practices Act (HEFPA). In addition, National Fuel Gas Distribution Corporation (NFG) requests revisions in some segment notes to clarify use of those segments in its service territory.

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

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible ESCO/marketers.

Purpose: To revise the TS568 accounts receivables advisement standard to include transmission of additional data necessary for the efficient implementation of HEFPA amendments and pro-ration policies.

Substance of proposed rule: In its Opinion and Order No. 01-03, issued and effective July 23, 2001, the Commission adopted various data exchange standards, compatible with Electronic Data Interchange (EDI) systems, necessary to enable customers to easily change their electric or gas commodity service provider. Following the initial publication of these standards it has been necessary to modify one or more standards to recognize changes in regulatory policies. In conjunction with implementation of amendments to the Home Energy Fair Practices Act (HEFPA) and revised pro-ration policies the EDI standards must be revised to provide for the exchange of additional information between utilities and ESCOs to facilitate compliance with HEFPA and pro-ration policies.

In this instance, comments are requested on changes suggested by National Fuel Gas Distribution Corporation (NFG) to version 1.0 TS568 Accounts Receivable Advisement standard. A/R Advisement transactions are used by Energy Service Companies (ESCOs) to report beginning receivables balances or adjustments to receivables to a customer account originated by an ESCO when the customer's bill option is Utility Rate Ready billing. NFG proposes to modify this standard by adding new codes to the N902 element to qualify the nature of an adjustment (CS code) such that termination notice amounts, as well as amounts associated with a deferred payment agreement negotiated between the customer and its ESCO, can be separately identified. This information is essential to ensure that customers' payments processed by the billing party are properly allocated between the billing party (utility) and the ESCO. If this structure is adopted by the Commission, corresponding changes must be noted in the Business Process Document for the 568 Accounts Receivable Advisement.

In addition, NFG proposes to modify the segment notes for the N9*VI and N9*AJ segments to indicate that these segments must be provided in its service territory or the transaction will be rejected.

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, 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-0667SA51)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Knolls Water Co., Inc.

I.D. No. PSC-52-04-00009-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, or modify, a petition filed by customers of Knolls Water Co., Inc. concerning Knolls Water Co., Inc.'s July 30, 2004 application for an increase in rates.

Statutory authority: Public Service Law, section 89-i

Subject: Water rates and charges.

Purpose: To investigate Knolls Water Co., Inc.'s July 30, 2004 application for an increase in revenues.

Substance of proposed rule: On December 1, 2004, customers of Knolls Water Co., Inc. (Knolls or the company), filed a petition requesting that the New York State Public Service Commission investigate the company's July 30, 2004 request for an increase in rates. The company currently provides water service to 79 customers and is located in the Town of Warwick, Orange County. The Commission may approve or reject, in whole or in part, or modify the customers' petition.

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. Brillig, 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. (04-W-1508SA1)

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

Water Rates and Charges by Edgewood Lakes, Inc.

I.D. No. PSC-52-04-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Edgewood Lakes, Inc. to make various charges in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 4—Water, to become effective June 1, 2005.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about \$5,130 or 61.1 percent.

Substance of proposed rule: On December 8, 2004, Edgewood Lakes, Inc. (Edgewood or the company) filed to become effective June 1, 2005, Leaf No. 12, Revision 1, to its electronic tariff schedule, P.S.C. No. 4—Water. Edgewood is requesting to increase its annual revenues by \$5,130 or 61.1%. The annual base rate bill will increase from \$420 to \$676.50. Edgewood currently provides flat rate service to 20 customers in an area known as Edgewood Lakes in the Town of Rockland, Sullivan County. The company does not provide fire protection service.

Edgewood's tariff, along with its proposed changes (Leaf No. 12, Revision 1) is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us)—located under the file room-Tariffs). The Commission may approve or reject, in whole or in part, or modify Edgewood's 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. Brillig, 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. (04-W-1556SA1)

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

Water Rates and Charges by Boniville Water Company, Inc.

I.D. No. PSC-52-04-00011-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, or modify, a petition filed by customers of Boniville Water Company, Inc. concerning Boniville Water Company, Inc.'s July 30, 2004 application for an increase in rates.

Statutory authority: Public Service Law, section 89-i

Subject: Water rates and charges.

Purpose: To investigate Boniville Water Company, Inc.'s July 30, 2004 application for an increase in revenues.

Substance of proposed rule: On December 9, 2004, customers of the Boniville Water Company, Inc. (Boniville or the company), filed a petition requesting that the New York State Public Service Commission investigate the company's July 30, 2004 request for an increase in rates. The company currently provides water service to 99 customers and is located in the Town of Carmel, Putnam County. The Commission may approve or reject, in whole or in part, or modify the customers' petition.

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. Brillig, 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. (04-W-1557SA1)

Department of State

NOTICE OF ADOPTION

Identification of Buildings Utilizing Truss Type Construction

I.D. No. DOS-34-04-00006-A

Filing No. 1398

Filing date: Dec. 14, 2004

Effective date: Dec. 29, 2004

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

Action taken: Addition of Part 1264 to Title 19 NYCRR.

Statutory authority: Executive Law, section 382-a

Subject: Identification of buildings utilizing truss type construction.

Purpose: To establish requirements for signs which identify the existence of truss construction in a building.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-34-04-00006-P, Issue of August 25, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Ray Andrews, Department of State, Division of Code Enforcement and Administration, 41 State St., Albany, NY 12231, (518) 474-4073

Assessment of Public Comment

The State Fire Prevention and Building Code Council received comment on behalf of two organizations, the Wood Truss Council of America and the Firemen's Association of the State of New York (FASNY). The comments submitted on behalf of the Wood Truss Council primarily address that organization's opposition to inclusion in the Uniform Fire Prevention and Building Code of any requirement to identify buildings containing truss construction similar to that provided by the proposed rule and Executive Law § 382-a. The Wood Truss Council disputes the appropriateness of the enactment of Executive Law § 382-a and its attendant requirement that commercial and industrial buildings that utilize truss construction be identified by a sign or symbol to notify persons conducting fire control or other emergency operations. However, the Wood Truss Council recognizes that the statute imposes such a requirement and further directs that a regulation be promulgated to carry into effect the provisions of the statute. Consequently, the Wood Truss Council supports this rule making, as written, as the best compromise to ill-conceived legislation. The Wood Truss Council, however, stands opposed to any subsequent attempts to include in the Uniform Fire Prevention and Building Code a requirement regarding the identification of truss construction similar to the provisions to be set forth in proposed 19 NYCRR Part 1264.

The letter submitted on behalf of the Firemen's Association of the State of New York states FASNY'S support for the rule making as written.

Although FASNY would prefer a regulation that more broadly addresses notification to emergency responders regarding conditions to be found upon arriving at a scene, the Association recognizes and acknowledges that Executive Law § 382-a, the statutory authority for the proposed regulation, is limited in its scope and any more expansive regulation would require additional statutory authority.

The comments received regarding the proposal to adopt a new 19 NYCRR Part 1264 all state support for the regulation as proposed. Consequently, no revisions of the proposed rule making are necessary prior to adoption.

State University of New York

NOTICE OF ADOPTION

Tuition and Fees Schedule

I.D. No. SUN-39-04-00012-A

Filing No. 1400

Filing date: Dec. 14, 2004

Effective date: Dec. 29, 2004

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

Action taken: Amendment of section 302.1(b)-(i) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: State University of New York tuition and fees schedule.

Purpose: To increase tuition for nonresident students enrolled in associates, bachelors and graduate degree programs and for resident and nonresident students in the professional programs of pharmacy, law, medicine, dentistry, physical therapy and optometry.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. SUN-39-04-00012-EP, Issue of September 29, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Brian Stenson, Vice Chancellor for Finance and Business, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5175, e-mail: brian.stenson@suny.edu

Assessment of Public Comment

The agency received no public comment.