RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Correctional Services

NOTICE OF ADOPTION

Employee Records

I.D. No. COR-15-05-00001-A
Filing No. 672
Filing date: June 16, 2005
Effective date: July 6, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of section 5.30(b) of Title 7 NYCRR.
Statutory authority: Correction Law, section 112; and Public Officer's Law, section 87
Subject: Employee records.
Purpose: To set the fee for copies of employee records.
Text or summary was published in the notice of proposed rule making, I.D. No. COR-15-05-00001-P, Issue of February 2, 2005.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951
Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Correspondence Program

I.D. No. COR-27-05-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: Amendment of sections 720.3(a)(1), 720.4(c) and 720.6(d)(2) of Title 7 NYCRR.
Statutory authority: Correction Law, section 112
Subject: Inmate Correspondence Program.
Purpose: To update provisions on the negative correspondence list, on receipt of printed or photocopied legal papers and on withdrawal of authorization for inmate to inmate correspondence.
Text of proposed rule: Paragraph (1) of subdivision (a) of section 720.3 is amended as follows:

(1) The negative correspondence and telephone list shall contain the name of any person or business that has indicated, in any manner, that further correspondence from the inmate is not desired. *If a request to be removed from an inmate's telephone or correspondence list is not received in writing, a confirmation letter shall to be sent to the person making the request.* If such a person indicates, at a later time, that further correspondence is not objectionable, the superintendent or his/her designee may, but need not, direct that the name of that person or business be removed from the negative correspondence and telephone list.

Subdivision (c) of section 720.4 is restructured and amended as follows:

(c) Printed or photocopied materials.

(1) When, in the course of inspection, printed or photocopied materials are found, the entire contents of such correspondence may be delayed through the correspondence unit for up to six days while the materials are subject to media review guidelines (see Part 712 of this Title).

(2) A limit of five pages of printed or photocopied materials (an individual newspaper clipping will be considered one page) may be received within a piece of regular correspondence *(except as provided below)*. In order to facilitate media review, pages or clippings must not be taped, glued, or pasted together or to other papers.

(3) Not to exceed once every four months, an inmate may make a written request to the superintendent to receive in excess of five pages of printed or photocopied legal papers specifically related to the inmate's current legal matter (e.g., legal brief or trial transcript relating to the inmate's active case) within a piece of regular correspondence. The inmate shall make the request in advance, specifically identifying the legal papers, including the approximate number of pages, and state why they cannot be obtained via the facility law library or privileged correspondence (e.g. from a court, attorney, or the New York State Law Library). If approved, the piece of correspondence must be received within thirty days thereafter. Upon timely receipt, it shall be processed in accordance with this section and shall not be deemed privileged correspondence.

Paragraph (2) of subdivision (d) of section 720.6 is amended as follows:

(2) Withdrawal of authorization. Authorization to correspond may be withdrawn by a superintendent in a particular case when it is demonstrated and documented that one or both inmates have violated facility or department rules and regulations, *that the reason for the original approval no longer applies or has been determined to have been erroneous or*

deceptive, that the safety, security or good order of a facility is jeopardized, or that the safety or well being of any individual is jeopardized. Documentation shall be placed in both inmates' files.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: ajannucci@docs.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority:

Section 112 of the Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibility to make rules and regulations for the government and discipline of correctional facilities.

Legislative Objective:

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to establish and publish rules and procedures to assist citizens not wanting to receive correspondence from an inmate, to allow for inmates to receive printed or photocopied legal papers within regular correspondence, and to withdraw authorizations permitting inmate to inmate correspondence when appropriate.

Needs and Benefits:

The amendment to section 720.3(a)(1) is intended to strengthen the Department's ability to prevent inmate communications with those who have indicated a desire to be protected from attempts to contact them by telephone or mail. The added confirmation letter provides documentation both to confirm a persons request, thereby screening out deceitful requests by third parties, and to respond to any subsequent challenge by the inmate.

The amendment to section 720.4(c) sets up a procedure whereby an inmate may receive more that the limit of five pages of printed or photocopied materials within a piece of correspondence if those materials can be identified as legal papers specifically related to a current legal matter. Although most legal materials are received from attorneys, courts, law libraries or the New York State Library through the privileged mail procedures set forth in Part 721 of this Title, there are occasions when legal materials may only be available through regular correspondence. The existing five page limit controls the influx of paper documents because searching them for contraband is a difficult and time-consuming task. This new exception should assist inmates in gathering necessary legal materials while the Department maintains necessary security controls.

The amendment to section 720.6(d)(2) merely clarifies the superintendent's obvious, but unwritten, authority to withdraw a previously granted approval for inmate-to-inmate correspondence if the reason for the original approval is no longer applicable or has been determined to have been erroneous or deceptive.

Costs:

a. To State government: None.

b. To local governments: None. The proposed amendment does not apply to local governments.

c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.

d. Costs to the regulating agency for implementation and continued administration of the rule:

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

b. Additions to existing reporting or application forms: None.

c. New or additional recordkeeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

There are no new mandates imposed upon local governments by this proposal. The proposed amendment does not apply to local governments.

Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

Alternatives:

At section 720.3(a)(1), the Department considered accepting only written requests from those not wanting to receive inmate correspondence but regarded that option as overly restrictive and unresponsive to those who may feel themselves victimized or harassed by inmate communications.

At section 720.4(c), the Department considered abolishing the limitation on the number of pages of legal material allowable in regular correspondence, but believed that this would place an undue burden on staff who must guard against introduction of contraband. Furthermore, such an alternative is regarded as unnecessary since most legal materials can be obtained through privileged correspondence in accordance with 7 NYCRR Part 721.

At section 720.6(d)(2), the Department considered making no change but regarded the addition as a clarification useful for defense of appropriate withdrawals of grants of permission for inmate-to-inmate correspondence.

Federal Standards:

There are no minimum standards of the Federal government for this of a similar subject area.

Compliance Schedule:

The Department of Correctional Services will achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely intends to assist citizens not wanting to receive correspondence from an inmate, to allow for inmates to receive printed or photocopied legal papers within regular correspondence, and to withdraw authorizations permitting inmate to inmate correspondence when appropriate.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal merely intends to assist citizens not wanting to receive correspondence from an inmate, to allow for inmates to receive printed or photocopied legal papers within regular correspondence, and to withdraw authorizations permitting inmate to inmate correspondence when appropriate.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely intends to assist citizens not wanting to receive correspondence from an inmate, to allow for inmates to receive printed or photocopied legal papers within regular correspondence, and to withdraw authorizations permitting inmate to inmate correspondence when appropriate.

Crime Victims Board

NOTICE OF ADOPTION

Direct Reimbursement of Forensic Sexual Assault Examination

I.D. No. CVB-11-05-00004-A
Filing No. 674
Filing date: June 17, 2005
Effective date: July 6, 2005

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

Action taken: Addition of section 525.12(h) to Title 9 NYCRR.

Statutory authority: Executive Law, sections 623(3) and 631(13)

Subject: Direct reimbursement of forensic sexual assault examination.

Purpose: To define the services covered by the forensic sexual assault examination fee and set forth procedures for obtaining the fee.

Text of final rule: A new section 525.12(h) is added as follows:

Section 525.12(h) Direct Reimbursement of Forensic Sexual Assault Examinations.

(1) Definitions:

(i) Licensed provider shall mean any New York State accredited hospital [physician licensed to practice medicine in the State of New York, accredited sexual assault examiner program or a registered physician's assistant, nurse practitioner or registered nurse certified by a Sexual Assault Forensic Examiner (SAFE) program approved by the Department of Health pursuant to the provision of the Sexual Assault Reform Act, Chapter 1 of the Laws of 2000.] *or licensed physician, nurse practitioner,*

registered nurse or physician assistant practicing within the State of New York whose performance of a sexual assault forensic examination is within the scope of practice of the discipline in which s/he holds a license or any other sexual assault examiner certified by the Department of Health to conduct a sexual assault forensic examination.

(ii) Sexual Assault shall mean any sexual offense defined in Article 130 of the New York State Penal Law.

(iii) Forensic Examination shall mean an examination conducted by a licensed provider as defined in Section 525.12(h)(1)(i) hereof for the purpose of collecting and preserving evidence to document a sexual assault, conducted in accordance with the New York State Department of Health's Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault or the Child and Adolescent Sexual Offense Protocol. Copies of these protocols may be obtained from the Department of Health at the following address:

The Bureau of Women's Health
NYS Department of Health
Room 1882, Tower Building
Empire State Plaza
Albany, New York 12237-0621
Phone: (518) 474-3664

(iv) Claim Form shall mean the New York State Crime Victims Board Medical Provider Forensic Rape Examination Claim Form. *In addition to being* included in the Sexual Offense Evidence Collection Kit [or], *this form is available from any office of the Crime Victims Board and is* available online at http://www.cvb.state.ny.us.

(v) Child victim shall mean a person less than eighteen years of age as defined in New York State Executive Law Article 22, Section 621(11).

(2) Notwithstanding any contrary provisions, whenever a licensed provider administers a forensic examination to a survivor of a sexual assault in accordance with the established protocol as defined in section 525.12(h)(1)(iii) hereof, such provider shall render such services without charge and shall bill the Board directly *for such services,* unless the sexual assault survivor assigns his or her private insurance benefits for the forensic examination, in which case the Board shall not be billed *for such services. Nothing in this section shall preclude a licensed provider from billing a sexual assault survivor for medical services unrelated to the forensic exam as set forth in Section 525.12(h)(5)(i),(ii),(iii)and (iv).*

(3) At the time of the initial visit, the provider shall:

(i) request assignment of any private health insurance benefits on a form prescribed by the Board,

(ii) advise a sexual assault survivor orally and in writing that he or she may decline to provide private health insurance information if he or she believes it would substantially interfere with his or her personal privacy or safety,

(iii) advise a sexual assault survivor that providing such information may provide additional resources to pay for services to other sexual assault victims, and

(iv) require that if he or she declines to provide such health insurance information, he or she shall indicate such decision on the form prescribed by the Board.

(4) Eligibility criteria:

(i) To establish eligibility, a licensed provider shall submit a completed Claim Form as defined in section 525.12(h)(1)(iv)[,] *and attach* an itemized bill indicating [, where applicable,] the relevant current procedural terminology (CPT) codes associated with each service provided [and, if a Sexual Offense Evidence Collection Kit is used, copies of the Patient Information form and Medical Record Sexual Assault form included in the Kit,] to the Board at the address below.

New York State Crime Victims Board
845 Central Avenue—South 3
Albany, NY 12206

(ii) Upon receipt of a completed Claim form[, and if applicable, the Patient Information form and Medical Record Sexual Assault form,] *with an itemized bill including CPT codes,* and acceptance by the Crime Victims Board, payment will be authorized directly to the licensed provider *through the appropriate billing facility as set forth in Section 525.12(h)(8).*

(5) The provider shall be reimbursed at the rate of $800[.00] for forensic examiner services, hospital or healthcare facility services directly related to the forensic exam, and related laboratory tests and pharmaceuticals *directly related to the exam*. The Board has determined that reimbursable expenses shall include at a minimum:

(i) Forensic examiner and hospital or healthcare facility services *directly* related to the exam, including integral forensic supplies.

(ii) Scope procedures *directly related to the forensic exam* including but not limited to anoscopy and colposcopy.

(iii) Laboratory testing directly related to the forensic examination, including drug screening, urinalysis, pregnancy screen, syphilis screening, [C]chlamydia culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C, [and] herpes culture *and any other STD testing directly related to the forensic examination.*

(iv) Pharmaceuticals directly related to the forensic examination including STD, pregnancy, initial HIV prophylaxis up to a three day supply and [H]*h*epatitis [P]*p*rophylaxis.

(v) Follow-up post exposure HIV prophylaxis *and follow-up HIV counseling, charges for inpatient services, and for services other than those included in Section 525.12(h)(5)(i),(ii),(iii) and (iv) are not included in this rate and* shall not be reimbursable under this part, but shall continue to be reimbursable under established Board procedure.

(6) The victim shall not be responsible for the payment of the cost of the forensic examination. The licensed provider must accept the reimbursement rate as payment in full *for those services included in Section 525.12(h)(5)(i),(ii),(iii) and (iv).* The licensed provider shall not submit any remaining balance *due for such services* after reimbursement by the Board to the victim or commence civil actions against the victim to recover any balance due *for such services*.

(7) The costs for multiple forensic examinations of the same victim will not be reimbursed. The cost of only one forensic sexual assault examination per victim per alleged sexual assault will be considered a reimbursable cost.

(8) [In the event there are multiple fees from separate service providers f] *F*or the forensic examination [or] *and* services directly related to the forensic examination, the Board will reimburse the facility in which the forensic examination was conducted and whose [licensed provider name and license number] *operator's certificate number or facility identification, if applicable,* appears on the Claim Form, *the* [a maximum aggregate] amount of $800[.00]. *The $800 shall* be *proportionately* allocated among the service providers *by the billing facility*. [The facility in which the examination is conducted shall be responsible for allocating reimbursable expenses among separate service providers.]

(9) Expenses must be related to a forensic examination performed within 96 hours following the incident. This reporting time [may] *shall* be waived for a child victim or *for any victim* if good cause has been shown.

(10) A claim for reimbursement of expenses associated with a forensic examination made pursuant to this section must be submitted within one year of the date of the examination to the Albany Office of the Crime Victims Board.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 525.12(h)(1)(i), (iv), (2), (4)(i), (ii), (5), (6), (8) and (9).

Text of rule and any required statements and analyses may be obtained from: David N. Green, Senior Attorney, Executive Department, Crime Victims Board, 845 Central Ave., Suite 107, Albany, NY 12206, (518) 457-8060, e-mail: davegreen@cvb.state.ny.us

Regulatory Impact Statement

No revised regulatory impact statement is necessary since there have been no substantive changes made to the proposed regulation.

Regulatory Flexibility Analysis

No revised regulatory flexibility analysis for small business and local governments is necessary since there have been no substantive changes made to the proposed regulation.

Rural Area Flexibility Analysis

No revised rural area flexibility analysis is necessary since there have been no substantive changes made to the proposed regulation.

Job Impact Statement

No revised job impact statement is necessary since there have been no substantive changes made to the proposed regulation. Changes made to the last published rule will have no effect on jobs and employment opportunities. Therefore, a revised job impact statement is not included.

Assessment of Public Comment

The Crime Victims Board received, during the comment period, 6 letters commenting on the proposed rulemaking. They are as follows:

The New York State Department of Health

Comment: The definition of licensed provider as contained in the proposed rulemaking is quite broad so that any licensed provider outside of an Article 28 facility, even in private practice, may seek reimbursement through CVB. As written, this would allow any private physician, despite

type and training, to be able to perform these exams regardless of supervision, training or the availability of evidence collection kits (New York State Sexual Offense Evidence Collection Kit or Drug Facilitated Sexual Assault Evidence Collection Kit). This will likely impact the quality of the exam and is of particular concern.

Response: The statute is written quite broadly, and the Board believed that it had to reflect that intent. However, the language in 525.12(h)(1)(i) has been modified to clarify that a forensic examination must be within the scope of practice of the discipline in which the physician is licensed.

Comment: The proposed language may also be interpreted to limit the eligibility of other health care practitioners including registered physician's assistants, nurse practitioners or registered nurses to only those certified by the Department [of Health] as Sexual Assault Forensic Examiners (SAFEs).

Response: The language in 525.12(h)(1)(i) has been modified to clarify that any other sexual assault examiner certified by the Department of Health to conduct a sexual assault forensic examination is eligible for reimbursement of covered services.

Comment: The Department certifies SAFEs—SAFE training programs do not certify SAFEs.

Response: The reference to SAFE certification has been deleted.

Comment: The regulations require that, at the time of the initial visit, the provider inform the survivor that if they provide access to their medical insurance, it may provide additional resources to pay for services for other sexual assault victims. We request that this requirement be deleted as it may add additional stress onto the victim.

Response: Section 631(13) of the Executive Law specifically requires that "[a] sexual assault survivor shall also be advised that providing such information may provide additional resources to pay for services to other sexual assault victims." Since the statute specifically requires this advisement, the Board does not have the authority to modify or delete it.

Comment: The language of 525.12(h)(5) is rather broad and may result in confusion in the field. Hospitals providing this service may be negatively impacted as the distinction between medical services vs. forensic service is unclear.

Response: The language in this section has been modified to clarify the distinction between inpatient and other unrelated medical services and services directly related to the forensic exam.

Comment: The inclusion of testing such as pregnancy testing, testing for sexually transmitted infections and pharmaceuticals go beyond the components of a forensic exam.

Response: Section 631.13 requires that services covered by the sexual assault forensic exam reimbursement fee must include "related laboratory tests and pharmaceuticals." The Board does not have the authority to modify or delete the requirement.

Comment: the proposed regulation defines provider without limitations to that provider performing this service in an Article 28 facility. If CVB decides to proceed in this manner, we highly recommend that CVB establish a process to monitor the vouchers submitted and the providers submitting these vouchers to ensure quality forensic exams are being conducted or the potential exists for a negative impact on victims of rape and sexual assault.

Response: Section 631(13) of the Executive Law effective April 1, 2005 by its terms applies to "any New York State accredited Hospital, accredited sexual assault examiner program, or licensed health care provider" furnishing services to any sexual assault survivor. The legislature clearly intended to expand the scope of this provision to apply to those services rendered by programs and providers outside of an Article 28 facility. To ensure that quality forensic exams are being conducted, the regulations require that the performance of a sexual assault forensic exam be within the scope of the discipline in which the provider holds a license or that the provider be certified by the Department of Health to conduct a forensic examination and that the examination be conducted in accordance with the protocols developed by the Department of Health.

Greater New York Hospital Association (GNYHA)

Comment: Sexual assault survivors may present to hospital emergency departments and may require services in addition to sexual assault forensic examination. For example, they may require suturing, care for broken limbs, and, in some cases, even inpatient services. GNYHA therefore requests that the regulation be revised to explicitly indicate that the $800 payment for forensic examination services does not cover other services, and that the usual CVB process would be utilized to obtain reimbursement for other services.

Response: The language of section 525.12(h)(2) has been modified to clarify that a provider will not be precluded from billing a sexual assault survivor for medical services unrelated to the forensic examination. The language of Section 525.12(h)(5)(v) has been modified to clarify that charges for follow-up post exposure HIV prophylaxis and follow-up HIV counseling, inpatient services and other medical services that are not included in Section 525.12(h)(5)(i-v) are not reimbursable under this part and will continue to be reimbursable under established Board procedures. The language in section 525.12(h) (6) has been modified to clarify that the reimbursement rate shall be accepted as payment in full for those services included in Section 525.12(h)(5)(i-v).

Safe Horizon of New York

Comment: The proposed regulations do not explicitly permit billing by the "facility". Billing apparently may be done only by a provider or licensed provider. While this is appropriate for a hospital it would appear to create a barrier to billing by an appropriate Child Advocacy Center (CAC) which while providing the services of a licensed provider, is not itself a licensed provider and does not have a license number.

Response: The language of Section 525.12(h)(8) has been modified to clarify that billing by an appropriate facility is permitted.

Lee Gross Anthone Child Advocacy Center

Comment: Forensic pediatric exams which are performed at Child Advocacy Centers by licensed medical providers should be eligible for reimbursement under the Forensic Payment Act.

Response: Forensic pediatric exams which are performed at Child Advocacy Centers by licensed medical providers are eligible for reimbursement under the Forensic Payment Act. Sections 525.12(h)(1) and (8) have been modified to clarify such eligibility.

Comment: The regulations should require that all forensic exams performed on a child less than 18 years of age qualify for reimbursement under the Act irrespective of whether the child has reported within 96 hours.

Response: the language of section 525.12(h) has been modified to clarify that the reporting time will be waived for a child victim.

New York State Association of Licensed Midwives

Comment: NYSALM takes issue with the exclusion of licensed midwives form the definition of licensed provider in the proposed regulation. The type of forensic examination contemplated by the statute and proposed regulations are well within the scope of practice of, and are currently being performed by, licensed midwives, it logically follows that the intent of the statute was to include midwives within the definition.

Response: According to the Department of Health, the vast majority of licensed midwives are Registered Nurses and as such are already included in the definition of licensed provider. In addition the definition has been modified to include any other sexual assault examiner certified by the Department of Health to conduct a sexual assault forensic examination.

The Reach Center of Columbia Green County, Inc.

Comment: Hospitals are unlikely to access the $800 rate because it does not cover their costs. It is more likely that hospitals will continue to bill patients insurance coverage.

Response: Pursuant to the terms of the Act, Hospitals may request assignment of any private health insurance benefits to which the sexual assault survivor is entitled. However, in those case where there is no entitlement to insurance or such information is withheld, the hospital may take advantage of the reimbursement rate.

Comment: If the hospital avails itself of the $800 fee, they will incur a financial loss and will be unlikely to allow Sexual Assault Nurse Examiners (SANE) to bill the facility for their services.

Response: Section 525.12(h)(8) has been modified to clarify that the billing facility must allocate the $800 reimbursement fee proportionately among service providers.

Comment: If the Reach Center bills CVB, the hospital will not be permitted to bill the victim's insurance creating a disincentive for hospitals to participate in the program.

Response: If the Reach Center arranges with the hospital to be the billing facility for purposes of the forensic payment act, then the Reach Center will be responsible for proportionately allocating the reimbursement rate among the serve provides including the hospital. In addition the hospital may continue to bill the victim's insurance for medical services unrelated to the forensic examination.

Comment: Should the Reach Center bill CVB directly under the program, it creates an ethical dilemma since our costs do not approach $800.

Response: The statute mandates an $800 payment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Recreational Harvest and Possession of Marine Fish Species

I.D. No. ENV-17-05-00004-A
Filing No. 679
Filing date: June 21, 2005
Effective date: July 6, 2005

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0340, 13-0340-b, 13-0340-e and 13-0340-f

Subject: Regulation of the recreational harvest and possession of marine fish species in New York's marine district.

Purpose: To control the recreational harvest and possession of marine fish species (striped bass, bluefish, summer flounder, scup and black sea bass) consistent with conservation requirements identified in regional FMPs and the needs of the recreational fishing industry.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ENV-17-05-00004-EP, Issue of April 27, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Byron Young, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0435, e-mail: bhyoung@gw.dec.state.ny.us

Assessment of Public Comment

A proposal to revise Part 40 of 6 NYCRR, New York's marine recreational finfish regulations, was published in the New York *State Register* on April 27, 2005. The Department received a total of 70 written comments concerning this proposed rulemaking. All comments are addressed in the summary below (organized by fish species).

Comments concerning striped bass:

The Department received fifty five written comments addressing striped bass.

Fifteen of the comments (14 individuals and 1 organization) directly opposed the proposed amendments to the recreational striped bass regulations, or could be reasonably construed as being in opposition. Of those, thirteen commenters directly stated that they were opposed to the increase in creel limit for striped bass. Specific reasons cited for opposing the proposed rule were: concern about the health of the striped bass stocks (3 comments); speculation that the proposed rule would lead to increased illegal fishing activities (1 comment); and suggestion that commercial fishing interests were driving the increased creel limit (2 comments).

Forty comments were received in support of the increase in the striped bass possession limit. Supporting comments were from the following sources: individuals (17); Party/Charter Captains or organizations representing Party/Charter boats (12); Bait and Tackle shop operators (5); recreational fishing organizations (4); recreational fishing publication (1); and one petition containing fifteen individuals' names.

Comments concerning Summer Flounder:

The Department received two comments from individuals addressing summer flounder. One comment opposed the proposed amendment to the minimum size limit for summer flounder, calling for a lower size limit. The other comment, submitted by a recreational organization, supported the amendments and specifically supported the proposed possession limit.

Comments concerning Bluefish:

The Department received seventeen comments (16 individuals and 1 organization) addressing bluefish. Nine of the comments directly opposed the increase in the possession limit, and an additional three comments appeared to oppose the increase, but did not comment directly on point. Three Party/Charter boat captains commented in support of the increased possession limit. In addition, two petitions, containing a total of 83 names, supported the increased possession limit.

Comments concerning Scup:

The Department received three comments from individuals addressing scup. Two of the comments opposed the opening date of the season and suggested an earlier start date. One comment questioned favoring anglers who fish aboard for-hire vessels.

Comments concerning Black Sea Bass:

The Department received one comment from an individual addressing black sea bass. The commenter stated that New York's regulations were part of a coastwide management scheme, and that therefore no comment was necessary.

Department Response: As described in Environmental Conservation Law Section 11-0303-3 (striped bass); 13-0340 (bluefish); 13-0340-b (summer flounder); 13-0340-e (scup); and 13-0340-f (black sea bass), the Department is required to adopt regulations which are consistent with the compliance requirements of the interstate fishery management plans (FMPs)for striped bass, bluefish, summer flounder, scup and black sea bass. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), the Atlantic States Marine Fisheries Commission (ASMFC) determines if states have timely implemented provisions of FMPs. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state achieves compliance with the FMP.

New York can implement the provisions of an FMP, or provide for regulations that are more conservative than the FMP standards. In this case, the proposed regulations for summer flounder, striped bass and bluefish are more conservative than required by the FMPs for these species. New York could have implemented a 17.5 inch minimum size limit, with a 7 fish possession limit and an open season year round. However, based upon advice from the Marine Resources Advisory Council and discussions with industry, more conservative measures were proposed: 17.5 inch minimum size limit, a 5 fish possession limit and an open season from April 29 through October 31.

In the case of striped bass, the FMP allows states to implement a 2-fish possession limit at 28 inches total length. New York has held a more conservative one-fish possession limit for nearly a decade. Based upon growing public interest in the ability to harvest two striped bass consistent with the FMP and neighboring states, and with the support of the Marine Resources Advisory Council, the Department proposed to increase the limit to two fish, consistent with the FMP. However, the Department also proposed a more conservative measure than required by the FMP by establishing a slot size limit for one fish and a trophy size limit for the second fish.

The Bluefish FMP authorizes a fifteen fish possession limit for bluefish. Current New York regulations maintain a 10 fish limit. Based upon industry interest and advice from the Marine Resources Advisory Council, the Department proposed to increase the limit to 15 fish to be consistent with the FMP and neighboring states. Although not required by the FMP, the Department proposed to apply a minimum size limit to a portion of that possession limit in order to protect the juvenile component of the resource.

On April 27, 2005, the Department adopted emergency regulations in an effort to maintain compliance with the ASMFC 2005 requirements for summer flounder, scup and black sea bass and to address public input requesting amendments to the striped bass and bluefish recreational limits. The provisions of the emergency rule are identical to the provisions of the proposed rule. The ASMFC has approved the emergency regulations for each of these species as compliant with the requirements of the respective FMPs.

The Department's responses to the specific public comments are organized below by species.

Responses to comments addressing striped bass:

With respect to the comments that expressed concern about the rule's impact on health of striped bass stocks, the Department notes that: every other coastal state has a daily striped bass possession limit of 2 fish; the proposed rule is more conservative that the FMP requirements; and compliance with the FMP requirements by all states is expected to assure continued health of the resource.

With respect to the comment that suggested the proposed rule would lead to an increase in illegal fishing, the Department does not perceive how such an effect could result from adoption of the rule.

The suggestion that commercial interests are driving the proposed rulemaking is without merit. All comments received from interested parties, including individuals, organizations, local governments and busi-

nesses, are evaluated and considered by the Department in its decision making relative to rulemaking.

Responses to comments addressing summer flounder:

One comment opposed the minimum size limit of 17.5 inches and advocated for a lower minimum size limit. The Department cannot adopt a size limit less than 17.5 inches and remain in compliance with the FMP, unless an extremely low possession limit and a very short open season are adopted. Based upon advice from the industry and MRAC prior to proposing the rule, the Department believes the impacts of these alternatives on the fishery would be far more severe than the impacts of the proposed rule.

Responses to comments relative to bluefish:

The Department received numerous comments both in support and in opposition to the adoption of the proposed rule. The comments did not raise specific issues requiring response. However, the Department notes that the proposed rule is more conservative than the requirements of the FMP and as such is not expected to adversely affect the bluefish resource.

Responses to comments addressing scup:

Two persons requested an earlier opening date for the scup season. To comply with the FMP, the only alternative to the proposed rule was a May 1 to August 31 open season. Based on industry and MRAC advice, the Department determined this alternative would have a far greater adverse impact on the resource than the proposed July 1 to October 31 open season.

One person opposed the 60 fish possession limit on for-hire boats in September and October. This measure is consistent with the FMP and was very strongly supported by the for-hire industries in the four-state region of Massachusetts through New York prior to adoption of the rule. Failure to adopt this provision would cause significant adverse economic impacts to New York's for-hire scup boats.

Response to comments addressing black sea bass:

No response required.

The adoption of the proposed amendments to 6 NYCRR Part 40 will provide economic relief to portions of the recreational industry that suffered hardships due to strict regulations imposed during a period of stock rebuilding for these species. These regulations also authorize appropriate use for the listed species consistent with the status of the stocks and the ASMFC FMP requirements for each species. In the case of scup, the proposed rule is specifically necessary to achieve compliance with the FMP's requirements, and to avoid a non-compliance determination and imposition of a federal moratorium on scup fishing in New York. For this reason, the Department has determined that the proposed amendments to 6 NYCRR Part 40 for Striped Bass, Summer flounder, Bluefish, Scup and Black Sea Bass should be adopted.

Department of Health

NOTICE OF ADOPTION

Syracuse Watershed Rules and Regulations

I.D. No. HLT-48-04-00012-A
Filing No. 666
Filing date: June 15, 2005
Effective date: July 6, 2005

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

Action taken: Amendment of section 131.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 1100

Subject: Minor amendments to the Syracuse Watershed Rules and Regulations.

Purpose: To correct clerical and typographical errors.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-48-04-00012-P, Issue of December 1, 2004.

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

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

Assessment of Public Comment

No comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Health Provider Network Access and Reporting Requirements for Articles 28, 36 and 40 Facilities

I.D. No. HLT-27-05-00001-P

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

Proposed action: Amendment of sections 400.10, 763.11, 766.9 and 793.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800, 2803, 3612 and 4010

Subject: Health provider network access and reporting requirements for arts. 28, 36 and 40 facilities.

Purpose: To establish and maintain health provider network accounts with the Department of Health for the purpose of exchanging information with the Department of Health in a rapid and efficient manner in times of emergency or urgent matters.

Text of proposed rule: The table of contents for Part 400 is amended to read as follows:

PART 400
ALL FACILITIES—GENERAL REQUIREMENTS
(Statutory authority: Public Health Law, Sections 2800, 2803)

Sec. 400.1 Title and applicability

* * *

400.10 [RESERVED] *Health Provider Network Access and Reporting Requirements*

* * *

A new section 400.10 is added to read as follows:

Section 400.10 Health Provider Network Access and Reporting Requirements.

The operator of a facility shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each facility he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven day a week contacts for emergency communication and alerts must be designated by each facility in the HPN Communications Directory. A policy defining the facility's HPN coverage consistent with the facility's hours of operation, shall be created and reviewed by the facility no less than annually. Maintenance of each facility's HPN accounts shall consist of, at a minimum, the following:

(a) sufficient designation of the facility's HPN coordinator(s) to allow for HPN individual user application;

(b) designation by the facility operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(c) adherence to the requirements of the HPN user contract; and

(d) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (f) is added to Section 763.11 to read as follows:

(f) Health Provider Network Access and Reporting Requirements. The governing authority of an agency shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each agency it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each agency in the HPN Communications Directory. A policy defining the agency's HPN coverage consistent with the agency's hours of operation shall be created and reviewed by the agency no less than annually. Maintenance of each agency's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the facility's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority of an agency of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information

and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (o) is added to Section 766.9 to read as follows:

(o) Health Provider Network Access and Reporting Requirements. The governing authority or operator of an agency shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each agency that it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each agency in the HPN Communications Directory. A policy defining the agency's HPN coverage consistent with the agency's hours of operation shall be created and reviewed by the agency no less than annually. Maintenance of each agency's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the agency's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority or operator of an agency of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (n) is added to Section 793.1 to read as follows:

(n) Health Provider Network Access Reporting Requirements. The governing authority of a hospice shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each hospice it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each hospice in the HPN Communications Directory. A policy defining the hospice's HPN coverage consistent with the hospice's hours of operation shall be created and reviewed by the hospice no less than annually. Maintenance of each hospice's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the hospice's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority of the hospice of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 2800, 2803(2), 3612 and 4010(4) of the Public Health Law (PHL). PHL Article 28 (Hospitals), Section 2800 specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Article 36 (Home Care Services), Section 3612 authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, providers of long term home health care programs and providers of AIDS home care programs. PHL Article 40 (Hospice), Section 4010(4) authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospices.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 intends that there be a public commitment to the appropriate provision and expansion of services rendered to the residents of the State by certified home health agencies, to the maintenance of a consistently high level of services by all home care services agencies, to the central collection and public accessibility of information concerning all organized home care services, and to the adequate regulation and coordination of existing home care services. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for those afflicted by terminal illness. In recognition of the value of hospice and consistent with State policy to encourage the expansion of health care service options available to New York State residents, it is the intention of the Legislature that hospice be available to all who seek such care and that it become a permanent component of the State's health care system. Consistent with this legislative intent, these provisions seek to require Article 28, Article 36 and Article 40 healthcare providers to be enrolled and connected electronically to the Department's Health Provider Network (HPN).

The HPN is a secure web-based application that can be utilized by these facilities to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that these facilities receive from and submit to the Department information in a rapid efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information.

Needs and Benefits:

In 1996 the New York State Department of Health (NYSDOH) established the Health Information Network (HIN) for local health departments and the Health Provider Network (HPN) for all other health care partners. The Health Alert Network (HAN) is designed to post rapid alerts, updates and information regarding current threats, developments, advisories or references for all HIN/HPN users.

These systems are housed within the NYSDOH Commerce System, a secure web-based application that allows healthcare providers and local health departments to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In order to access this secure application, users must obtain and maintain HPN accounts. It enables electronic connectivity in real time to partners who have HPN accounts. Hospitals and long term care facilities currently submit information for purposes of reporting. For example, hospitals submit information to the New York Patient Occurrence Reporting and Tracking System (NYPORTS), financial reports and Health Emergency Response Data System Reports (HERDS) and information by their HPN accounts. Due to the specificity of those programs, and lack of any HPN activity by some facilities such as Diagnostic and Treatment Centers, the Department has encountered difficulty in reaching out in a rapid and efficient manner to multiple key contacts at health care facilities and agencies in times of emergencies or urgent matters.

In order to enhance overall emergency preparedness in New York State, it is imperative that all health care facilities and agencies be enrolled and connected electronically to this system with enough depth and scope to connect and respond on a 24 hour, 7 day a week basis.

Costs:

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

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required. The cost of a computer and internet access can vary depending on the sophistication of the equipment and the connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection

(dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Cost to State and Local Government:

None.

Cost to the Department of Health:

None.

Local Government Mandates:

None.

Paperwork:

There will be minimal paperwork required for enrolling in the HPN for each facility and each user.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

Emergency communications with many health care providers have been difficult as many times only phone, fax, and in some cases, e-mail is available. No other alternatives were identified that would enable rapid communication bidirectionally. Experience over the past 24 month period has shown poor voluntary response from most facilities to requests that they obtain HPN accounts.

Federal Requirements:

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

Compliance Schedule:

This regulation will take effect upon publication of a notice of its adoption in the New York *State Register*. A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a hospital pursuant to PHL Article 28, home care agency within PHL Article 36, or Hospice within PHL Article 40 will be required to comply. Small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule will include: 3 hospitals, 237 diagnostic and treatment centers, approximately 100 nursing homes, and approximately 200 home care services agencies. There are 52 certified hospices in New York State. Most of them would fit into the category of a small business, but definitive data concerning their small business status was not available.

Local governments are not affected by this rule.

Compliance Requirements:

In order to comply with these requirements, a facility must enroll in the NYSDOH HPN and be able to maintain the account as prescribed with sufficient depth and scope of staff. A computer and internet connectivity will be required.

Professional Services:

All facilities required to enroll in the HPN program must have trained staff to participate. No other professional staff are required.

Compliance Costs:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required to participate in the HPN program. The cost of a computer and internet access can vary depending on the sophistication of the equipment and the connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses to comply with the regulations. Regulated parties will not incur any costs to establish an HPN account. Existing staff will need training to participate. Such training and technical support will be provided free of charge by the Department. A computer and internet connectivity will be required.

Minimizing Adverse Impact:

A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Small Business and Local Government Participation:

Outreach to the affected parties, some of whom are small businesses, is being conducted. Organizations who represent the affected parties have been given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council. The public, including any affected party is invited to comment during the Codes and Regulations Committee meeting.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined as within Articles 28, 36, or 40 of the Public Health Law, nor will it impose any additional recordkeeping, reporting and other compliance requirements.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment activities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Health Provider Network Access and Reporting Requirements

I.D. No. HLT-27-05-00002-P

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

Proposed action: Amendment of sections 487.12(k), 488.12(m) and 490.12(k) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 460 and 461; and L. 1997, ch. 436

Subject: Health provider network access and reporting requirements.

Purpose: To require adult homes, enriched housing programs and residences for adults to establish and maintain health provider network accounts with the Department of Health for the purpose of exchanging information in a rapid, efficient manner in times of emergencies or urgent matters.

Text of proposed rule: A new subdivision (k) is added to Section 487.12 to read as follows:

(k) The operator of an adult home shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each adult home he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each home in the HPN Communications Directory. A policy defining the adult home's HPN coverage consistent with the home's hours of operation shall be created and reviewed by the adult home no less than annually. Maintenance of each adult home's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the home's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the adult home operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (m) is added to Section 488.12 is to read as follows:

(m) The operator of an enriched housing program shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each program he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each program in the HPN Communications Directory. A policy defining the enriched housing program's HPN coverage consistent with the enriched housing program's hours of operation shall be created and reviewed by the enriched housing program no less than annually. Maintenance of each enriched housing program's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the enriched housing program's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the enriched housing program operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (k) is added to Section 490.12 to read as follows:

(k) The operator of a residence for adults shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each residence he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each residence for adults in the HPN Communications Directory. A policy defining the residence for adults HPN coverage consistent with the residence for adults' hours of operation, shall be created and reviewed by the residence for adults no less than annually. Maintenance of each residence for adults HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the residence's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the residence for adults operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 460 and 461 of the Social Services Law (SSL) and Chapter 436 of the Laws of 1997. SSL Section 460 delegates the comprehensive responsibility for the development and administration of programs, standards and methods of operation of residential care programs to the Department of Social Services (DSS) directly or through social services districts, and with the cooperation of other state agencies to protect and assure the life, health, safety and comfort of individuals who must be cared for away from their own homes. SSL Section 461 requires DSS to promulgate regulations for adult care facilities subject to its inspection and supervision only after consultation with the board of social welfare, departments of health and mental hygiene and office for the aging. Section 122(c) of Chapter 436 of the Laws of 1997 provides that effective April 1, 1997, the functions, powers, duties and obligations of the former Department of Social Services concerning adult homes, enriched housing programs, residences for adults, and assisted living programs are transferred to the New York State Department of Health.

Legislative Objectives:

The legislative objective of SSL Residential Care Program provisions is to provide services of the highest quality, efficiently and properly utilized at a reasonable cost. It also intends to effectively protect and assure the life, health, safety and comfort of residents who must be cared for away from their own homes. Consistent with this legislative intent, these provisions seek to require adult home, enriched housing and residence for adults providers to be enrolled and connected electronically to the Department's Health Provider Network (HPN).

The HPN is a secure web-based application that can be utilized by these entities to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that these entities receive from and submit to the Department information in a rapid efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information.

Needs and Benefits:

In 1996 the New York State Department of Health (NYSDOH) established the Health Information Network (HIN) for local health departments and the Health Provider Network (HPN) for all other health care partners. The Health Alert Network (HAN) is designed to post rapid alerts, updates and information regarding current threats, developments, advisories or references for all HIN/HPN users.

These systems are housed within the NYSDOH Commerce System, a secure web-based application that allows healthcare providers and local health departments to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In order to access this secure application, users must obtain and maintain HPN accounts. It enables electronic connectivity in real time to partners who have HPN accounts. Hospitals and long term care facilities currently submit information for purposes of reporting. For example, hospitals submit information to the New York Patient Occurrence Reporting and Tracking System (NYPORTS), financial reports and Health Emergency Response Data System Reports (HERDS) and information by their HPN accounts. Due to the specificity of those programs, and lack of any HPN activity by some providers, the Department has encountered difficulty in reaching out in a rapid and efficient manner to multiple key contacts at health care facilities, agencies and residences in times of emergencies or urgent matters.

In order to enhance overall emergency preparedness in New York State, it is imperative that all health care facilities, agencies and residences be enrolled and connected electronically to this system with enough depth and scope to connect and respond on a 24 hour, 7 day a week basis.

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

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required. The cost of a computer and internet access can vary depending on the sophistication of the equipment and connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Cost to State and Local Government:

None.

Cost to the Department of Health:

None.

Local Government Mandates:

None.

Paperwork:

There will be minimal paperwork required for enrolling in the HPN for each facility and each user.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

Emergency communications with many health care providers have been difficult as many times only phone, fax, and in some cases, e-mail is available. No other alternatives were identified that would enable rapid communication bidirectionally. Experience over the past 24 month period has shown poor voluntary response from most facilities to requests that they obtain HPN accounts.

Federal Requirements:

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

Compliance Schedule:

This regulation will take effect upon publication of a notice of its adoption in the New York *State Register*. A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Regulatory Flexibility Analysis

Effect of Rule:

There are 514 existing adult care facilities (ACFs) in New York State. Of those, 384 have been identified as being certified for 100 or fewer beds and considered a small business.

Local governments are not affected by this rule.

Compliance Requirements:

In order to comply with these requirements, an ACF must enroll in the NYSDOH HPN and be able to maintain the account as prescribed with

sufficient depth and scope of staff. A computer and internet connectivity will be required.

Professional Services:

All facilities required to enroll in the HPN program must have trained staff to participate. No other professional staff is required.

Compliance Costs:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required to participate in the HPN program. The cost of a computer and internet access can vary depending on the sophistication of the equipment and connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses to comply with the regulations. Regulated parties will not incur any costs to establish an HPN account. Existing staff will need training to participate. Such training and technical support will be provided free of charge by the Department. A computer and internet connectivity will be required.

Minimizing Adverse Impact:

A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Small Business and Local Government Participation:

Outreach to the affected parties, some of whom are small businesses, is being conducted.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural adult care facilities, nor will it impose any additional recordkeeping, reporting and other compliance requirements.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment activities.

Insurance Department

EMERGENCY RULE MAKING

Rules Governing Valuation of Life Insurance Reserves

I.D. No. INS-27-05-00007-E
Filing No. 675
Filing date: June 21, 2005
Effective date: June 21, 2005

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

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517

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

Specific reasons underlying the finding of necessity: During 2004, the Department became aware that some insurers have designed certain life insurance products with the clear intent of circumventing the existing reserve standards. The Department is concerned with the solvency of those insurers who fail to set aside sufficient funds to pay claims as they pose a serious threat to consumers who rely on insurers to honor their commitment both now and in the future. In addition, insurers who have elected to circumvent the law place themselves at a competitive advantage over those insurers who follow the rules and establish the appropriate level of reserves. On a daily basis, those insurers who abide by the law suffer substantial losses in terms of market share, as they cannot effectively compete against insurers that do not set aside adequate reserves. Action must be taken now to end this practice of under reserving by insurers that have decided market share is more important then the safety and soundness of policyholder funds.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the June 30, 2005 quarterly statement is August 15, 2005. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this first amendment to Regulations No. 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: To prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates, with primary emphasis on valuation of non-level premium and/or non-level benefit, indeterminate premium, universal, variable, and credit life insurance policies in accordance with statutory reserve formulas.

Substance of emergency rule: Substance for the First Amendment to 11 NYCRR 98 (Regulation No. 147)

The First Amendment to Regulation No. 147 provides new mortality and reserve standards for credit life insurance policies. It also provides new reserve standards for certain other specified life insurance policies. The following is a summary of the amendments to Regulation No. 147:

Section 98.1(a) was amended to include credit life insurance policies and to mention clarification of principles.

Section 98.2(b) was amended to ensure consistency in applicability wording within the regulation.

Section 98.2(i) was amended to state that unless notification was previously provided to the superintendent to adopt lower reserves based on the requirements of this Part, insures may not adopt such lower reserves without the prior approval of the superintendent.

A new subdivision (j) was added to section 98.2 regarding the use of the minimum mortality standards defined in Part 100 of this Title.

A new subdivision (k) was added to section 98.2 regarding the applicability of this regulation to certain specified life insurance policies.

A new subdivision (l) was added to section 98.2 regarding the applicability of this regulation to credit life insurance.

Subdivision (d)(2) of section 98.4 was amended to change an incorrect reference.

The last sentence of section 98.4(s) was amended to change a reference from 1% to one percent, in order to be consistent with similar references in other sections of the regulation.

Section 98.4(u) was amended to reference the examples and reserve methodologies described in section 98.9 of this Part.

The third sentence of paragraph (2) of section 98.6(a) was amended to change an incorrect reference to the Contract Segmentation Method to the mortality and interest rates used in calculating basic unitary reserves.

Section 98.7(b)(1)(i) was amended to reference section 98.9 of this Part.

Section 98.7(b)(1)(ii) was amended to have the definition of secondary guarantee period extended to this whole Part rather than just paragraph (1) of section 98.7.

Section 98.7(b)(1)(iii) was amended to reference section 98.9 of this Part and provides clarification of an example supplied in this section.

Section 98.7(c) was amended to change the reference from age 100 to the age at the end of the applicable valuation mortality table, since the 2001 CSO Mortality Tables go out to ages greater than 100.

Section 98.8(b) was amended to reference section 98.9 of this Part.

A new section 98.9 was added for certain specified life insurance policies. This section provides examples of policy designs which constitute guarantees and describes the reserve methodologies to be used in valuing such policies.

A new section 98.10 was added for credit life insurance. This section provides minimum mortality standards and minimum reserve standards for such policies.

Section 98.9 was renumbered to section 98.11. This is the severability provision.

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 September 18, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the First Amendment of Regulation No. 147 (11 NYCRR 98) is derived from sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

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

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

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

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this paragraph.

Section 4217(c)(6)(D) permits the superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions for section 4217 to such policies and contracts, as the superintendent deems appropriate.

Section 4217(c)(9) requires that reserves for any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or which is of such a nature that the minimum reserves cannot be determined by the methods prescribed in sections 4217 and 4218, must be computed by a method consistent with the principles of sections 4217 and 4218 as determined by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract.

Section 4240(d)(7) states that the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

For fraternal benefit societies, section 4517(b)(2) provides that reserves according to the commissioners reserve valuation method for life insurance certificates providing for a varying amount of benefits or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this subsection (b).

2. Legislative objectives:

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

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. After the adoption of the current version of Regulation No. 147 and the National Association of Insurance Commissioners (NAIC) Valuation of Life Insurance Policies model regulation (adopted in 1999), some companies developed life insurance products that resulted in reserves being held that were lower than the reserves defined in section 4217 of the Insurance Law and the current version of Regulation No. 147, even though these products had similar death benefit and premium guarantees. To clarify the intent of the NAIC model regulation, NAIC Actuarial Guideline 38 was developed in 2002. The Guideline stated that new policy designs which are created to simply exploit a perceived loophole must be reserved in a manner similar to more typical designs with similar guarantees. Section 98.4(u) of the current version of Regulation No. 147 also contains wording to address consistent reserving principles. In the past year the Department became aware that, in spite of such wording, some companies were creating new products to exploit a perceived loophole in the reserve methodologies described in Actuarial Guideline 38. The new reserve methodologies in this amendment address this problem. Not adopting this amendment could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

The regulation will also set standards for determining policy reserves for credit life insurance.

4. Costs:

Costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most companies would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with the modifications is estimated to be $50,000 - $100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

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

5. Local government mandates:

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

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

One significant alternative considered was to keep the current version of Regulation No. 147, in combination with the formulas in the current version of Actuarial Guideline 38, which would result in some companies holding reserves lower than those intended by section 4217 of the Insurance Law and Regulation No. 147. Over the course of several months, the Department discussed this matter as part of the NAIC Life and Health Actuarial Task Force forums and in several conference calls and meetings with impacted insurers. During this period, revised wording to NAIC Actuarial Guideline 38 was exposed. In response to the exposed wording, a group of impacted insurers submitted a letter stating that they believed the wording in NAIC Actuarial Guideline 38 should not be changed. The Department reviewed the insurers' concerns related to the exposed wording, but determined that such wording was needed because the Department believes the reserves that would be held by these insurers would be lower than those intended by section 4217 of the Insurance Law, Regulation No. 147, and NAIC Actuarial Guideline 38.

The wording in the NAIC's December 2004 draft exposure of revised Actuarial Guideline 38 is the basis for the wording in section 98.9(c)(7)(i) of this amendment to Regulation No. 147 and sets reserves at intended levels for policies issued on or after January 1, 2000 through December 31, 2005. The wording in a widely distributed September 2004 draft of revised Actuarial Guideline 38 is the basis for the wording in section 98.9(c)(7)(ii) of this amendment to Regulation No. 147, and applies to policies issued on or after January 1, 2006. This provision is intended to discourage new policy designs created to exploit any perceived loopholes found in the future.

Another alternative was to not include the methodology stated in Section 98.9(c)(8)(ii), which states the standards for certain universal life insurance policies issued on or after January 1, 2006, and instead rely on the methodology stated in section 98.9(c)(8)(i). This could result in companies being able to design policies that would result in reserves being held that are lower than those intended by section 4217 of the Insurance Law and Regulation No. 147.

Another alternative was to keep the current minimum standard for credit life insurance, but this would result in a mortality standard that is inconsistent with that stated in a recently adopted NAIC model regulation.

9. Federal standards:

There are no federal standards in this subject area.

10. Compliance schedule:

This regulation applies to financial statements filed on or after December 31, 2004. The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place in the course of attempting to develop a national standard through the National Association of Insurance Commissioners. Since this regulation has been adopted on an emergency basis since December 29, 2004, insurers have had ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

The amendment to this regulation establishes reserve requirements for certain types of life insurance, including universal life insurance with secondary guarantees, and for credit life insurance.

3. Costs:

Costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with these modifications is estimated to be $50,000 - $100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

5. Rural area participation:

The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place in the course of attempting to develop a national standard through the National Association of Insurance Commissioners. Insurers that may be impacted by this standard are aware of the issues and should have already formed an estimate of the impact. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 5, 2005 issue of the *State Register*.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting life insurance reserves for insurers. The regulation is unlikely to impact jobs and employment opportunities.

Categories and number affected:

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

Regions of adverse impact:

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

Minimizing adverse impact:

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

Self-employment opportunities:

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Standards for the Form, Content and Sale of Medicare Supplement Insurance

I.D. No. INS-27-05-00005-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 Part 52 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Federal Social Security Act (42 U.S.C. section 1395ss); and Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 4235, 4237 and art. 43

Subject: Minimum standards for the form, content and sale of Medicare supplement insurance.

Purpose: To adopt revised minimum standards for the form, content and sale of Medicare supplement insurance as a result of changes to the Federal minimum standards for Medicare supplement insurance enacted by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Public Law 108-173).

Substance of proposed rule: The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) included a number of changes to the standardized Medicare supplement insurance plans. The Act charged the NAIC, specifically the Senior Issues Task Force, with the task of updating the standards for Medicare supplement insurance. This was done through adoption of a revised Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act on September 8, 2004. The states are required to adopt the revised standards by September 8, 2005.

The revised standards include the addition of two new standardized plans K and L. These plans introduce a cost-sharing feature which distributes costs between the plan and the insured. The plans also have out-of-pocket expenditure maximums. These types of plans offer Medicare beneficiaries a new option to supplement their coverage. A full description of the plans and a new outline of coverage has been added detailing the benefits of each plan.

As a result of the introduction of the new Medicare Part D, the Medicare supplement insurance standards also required revision to remove reference to outpatient prescription drug coverage. Medicare Part D enrollees may not have any other type of prescription drug coverage. As of January 1, 2006, insureds enrolled in Plans H, I, or J (the prescription drug plans) and Part D, must either have the outpatient prescription drug coverage stripped from their Medicare supplement insurance plan or enroll in a different plan that does not include the drug coverage. However, if an insured is enrolled in plan H, I, or J and opts not to enroll in Part D, he/she may keep the Medicare supplement outpatient prescription drug coverage. Amendments to New York's regulations are proposed to include these changes.

The MMA also added changes to the Medicare benefit package. As a result, the Medicare supplement benefit plans must be restructured to accommodate these changes. For example, preventive testing was added to the Medicare benefit package. Therefore, the preventive care benefits in Medicare supplement insurance Plans E and J required modification.

As CMS has changed the name of the Medicare managed care plans from Medicare + Choice to "Medicare Advantage", all references to the plans must also be revised.

The above changes also necessitate changes to the requirements for Medicare supplement insurance application forms and disclosure notices.

The changes required by the MMA necessitate amendment of sections 52.11, 52.14, 52.22, and 52.63 of the regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Data, views or arguments may be submitted to: Julie B. Silverstein, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 786-7815, e-mail: jsilvers@ins.state.ny.us

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

Consensus Rule Making Determination

The enactment of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) required the mandatory standardization and federal certification of policies of Medicare supplement insurance. As a result of this Act, states are required to amend their laws and regulations to conform to the federal standards for Medicare supplement insurance. The revisions contained in this amendment make revisions and corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards. Previous amendments to this regulation, which were required to comply with other previous changes mandated by Federal law, were proposed and adopted without receipt of any public comment. Due to the noncontroversial nature of this amendment, no person is likely to object to the revisions proposed by this amendment.

Job Impact Statement

The proposed amendment to Regulation 62 will not adversely impact jobs or employment opportunities in New York. The amendment implements provisions of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). The amendment involves relatively minor revisions of some mandatory practices to be followed by insurers issuing Medicare supplement insurance policies to bring company practices into conformance with the aforementioned Federal statutes. Such revisions to company practices will not have any affect on jobs or employment opportunities.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Patient Visiting Rights

I.D. No. OMH-27-05-00003-P

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

Proposed action: Repeal of Part 21; amendment of section 527.2(c); and addition of section 527.10 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, art. 7, section 33.05

Subject: Patient visiting rights.

Purpose: To update regulations governing patients' rights to visitation and repeal obsolete regulations.

Text of proposed rule: 1. Part 21 of Title 14 NYCRR is repealed.

2. Subdivision (c) of Section 527.2 is amended to read as follows:

(c) Article 33 of the Mental Hygiene Law establishes statutory rights of mentally disabled persons. Section 33.02 of such law requires the commissioner to publish regulations informing patients of their rights under law. *Section 33.05 of such law requires the commissioner to establish guidelines to ensure that patients at facilities have full opportunity for conducting correspondence, have reasonable access to telephones, and have frequent and convenient opportunities to meet with visitors.*

3. A new Section 527.10 is added to this Part to read as follows:

§ 527.10 Visiting at facilities; communicating with others.

(a) Patients have a right to receive visitors at reasonable times, to have privacy when visited, to authorize those family members and other adults who will be given priority to visit, and to communicate freely with persons within or outside the facility, as set forth in Section 33.02 of the Mental Hygiene Law and this Part.

(b) Visiting rights at facilities.

(1) All facilities shall establish visiting policies which are designed to facilitate the exercise of the right to receive visitors. Such policies:

(i) must not be unduly onerous to patients;

(ii) must be administratively feasible; and

(iii) should be tailored in a manner to avoid interference with the regularly scheduled activities in which patients are engaged, so as to preserve the therapeutic environment of the facility, provided, however, that in individual cases where an accommodation can be made without compromising a patient's clinical care or that of other patients, facilities shall make reasonable efforts to do so.

(2) Each facility shall establish a space where visitors may meet with patients in comfortable surroundings with a reasonable degree of privacy.

(3) In exceptional instances, it may be necessary to restrict a patients visiting right. Such restriction can only be imposed in accordance with subdivision (d) of this section.

(c) Communicating freely with others outside the facility.

(1) Each treatment team shall assure that there is adequate access to stationery and reasonable access to telephones to ensure that patients may communicate freely with others outside the facility. Each patient is to be afforded the opportunity to purchase, at his or her own expense, stamps and letter writing material.

(2) There shall be no censorship or restriction of incoming or outgoing letters or packages, except for those patients whose condition, in the opinion of the treatment team, warrants some selectivity, or if there is a reasonable suspicion that the letter or package contains contraband. Any censorship or restriction can only be imposed in accordance with subdivision (d) of this section.

(3) With the exception of mail that is restricted in accordance with paragraph (4) of subdivision (d) of this section, incoming letters and packages should be delivered sealed and unopened to all patients, and all outgoing letters and packages shall be mailed in a like manner.

(4) Patients shall have full opportunity to communicate freely with clergy and with their legal representatives, and these communications shall not be restricted, in accordance with Mental Hygiene Law Section 33.05.

(d) Restriction of rights.

(1) A right set forth in this section may be restricted within the patient's treatment plan by a written order signed by a physician stating the clinical justification for the restriction. The order imposing the restriction and a notation detailing the clinical justification therefor and the specific period of time in which the restriction shall be in effect must be entered into the patient's record. In no event may any right set forth in this section be restricted or limited as a punishment or for the convenience of staff.

(2) Any restriction on a right identified in this section shall be the least restrictive method for protecting the interest or interests involved.

(3) The treatment team or its designee shall discuss any restrictions of a right set forth in this section and the reason for such decision with the patient, and his or her family (if the patient does not object), and/or other authorized representative of the patient, and shall advise such persons of the patient's right to appeal this decision to the director of the facility. A notation that such persons were advised of the restriction, and the patient's right to appeal the decision, must be entered in the patient's record.

(4) In cases where a restriction is placed on incoming and/or outgoing mail, or in cases where there is reason to believe certain packages or letters may contain contraband, such mail may be withheld from the patient during the time the restriction is in place, or may be opened by a member of the treatment team in the presence of the patient. In no case may a staff member other than a member of the treatment team open such packages or letters, unless there exists an overriding compelling safety or security concern. In such cases, the reason why a treatment team member did not open a package or document, and a description of how the matter was handled (e.g., in consultation with the United States Postal Service, or other appropriate security intervention) should be appropriately documented in accordance with facility procedure.

(e) Appeals. Each facility shall develop a process to be followed if a patient wishes to appeal a determination to restrict his/her rights in accordance with subdivision (d) of this section. This process may include a second level of review within the facility. Appeals shall be processed in a timely fashion and decisions shall be provided to patients in written form.

Text of proposed rule and any required statements and analyses may be obtained from: Julie Rodak, Director of Bureau of Policy, Regulation and Legislation, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: colejar@omh.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt

regulations that are necessary and proper to implement matters under his/her jurisdiction.

Section 33.05 of the Mental Hygiene Law requires the commissioner to establish guidelines to ensure that patients at facilities have full opportunity for conducting correspondence, have reasonable access to telephones, and have frequent and convenient opportunities to meet with visitors.

2. Legislative Objectives:

Article 7 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Furthermore, the Legislature intended, through passage of Mental Hygiene Law Section 33.05, the Commissioner of OMH, to establish guidelines to reflect the therapeutic nature that receiving visitors generally has for patients and to ensure that receiving visitors is part of the normalization process which permits patients to maintain ties with the rest of the community.

3. Needs and Benefits:

Regulations were enacted in the 1970's at 14 NYCRR Part 21 to establish standards for communications and visits, which were applicable to both the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities. Subsequently, the Department of Mental Hygiene was split into autonomous offices in 1978. Each office established its own statutory framework in the Mental Hygiene Law, and later legislation expanded upon the rights of patients and the communication needs of patients.

The Office of Mental Retardation and Developmental Disabilities updated its regulations in 14 NYCRR Part 633, which superseded Part 21 since applicable provisions regarding patient visiting rights and communication needs were moved into this section. Similarly, the Office of Mental Health promulgated regulations setting forth the right of patients to communicate freely with visitors, and establishing rules governing communication needs, in 14 NYCRR Part 527.

However, OMH did not clarify that the provisions of Part 527 partially superseded Part 21, which has resulted in some unnecessary duplication and confusion, particularly since a number of provisions in Part 21 are outdated. These amendments are designed to finally repeal Part 21, and to incorporate and update standards governing visiting rights of patients in facilities under the jurisdiction of OMH, so that they are fully contained in 14 NYCRR Part 527.

4. Costs:

(a) Cost to State Government:

These regulatory amendments will not result in any additional costs to State government.

(b) Cost to Local Government:

These regulatory amendments will not result in any additional costs to local government.

(c) Cost to Regulated Parties:

These regulatory amendments will not result in any additional costs to regulated parties.

5. Local Government Mandates:

These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork:

This rule will have no impact on any paperwork requirements of affected entities.

7. Duplication:

These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives:

The only alternative to the regulatory amendment which was considered was inaction. Inasmuch as the provisions of 14 NYCRR Part 21 are either outdated or duplicative of provisions found in Part 527, this alternative was necessarily rejected.

9. Federal Standards:

The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule:

The regulatory amendments are effective immediately.

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

A Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis are not being submitted with this notice because the amended rules will not impose any adverse economic impact on small businesses or rural areas, nor will they impose any new reporting, recordkeeping or other compliance requirements on small businesses or local governments, or on public or private entities in rural areas. The amendments to the rule are designed to simply move existing requirements from 14 NYCRR Part 21, which is being repealed, to 14 NYCRR Part 527. No new or additional requirements are being imposed on small businesses, local governments, or other public or private entities.

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the amendments that they will have no impact on jobs and employment opportunities. This amendment essentially consists of a relocation of existing regulatory requirements and as such has no impact on jobs and employment opportunities within the OMH system.

Department of Motor Vehicles

NOTICE OF ADOPTION

Conditional License Eligibility

I.D. No. MTV-17-05-00008-A
Filing No. 676
Filing date: June 21, 2005
Effective date: July 6, 2005

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

Action taken: Amendment of Part 134 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 1196(4) and (7)(a)

Subject: Conditional license eligibility.

Purpose: To conform conditional license requirements to comply with Zero Tolerance Law.

Text of final rule: Subdivision (a) of Part 134.1 is amended to read as follows:

(a) Intent. Article 21 of the Vehicle and Traffic Law as added by chapter 291 of the Laws of 1975, and recodified in Article 31 by chapter 47 of the Laws of 1988, provides for the establishment of an alcohol and drug rehabilitation program for the purpose of providing rehabilitation to drivers convicted of alcohol or drug-related driving offenses *or persons who have been adjudicated youthful offenders for alcohol or drug-related traffic offenses or persons found to have been operating a motor vehicle after having consumed alcohol in violation of section 1192-a of the Vehicle and Traffic Law* to alleviate the threat to the lives and well-being of the citizens of this State posed by alcohol and drug-related driving. Although this article provides for the issuance of conditional licenses to persons enrolled in such program, this provision is incidental to the primary purpose of the legislation, highway safety. This Part is intended to implement the legislative intent by establishing criteria for eligibility of persons for entrance into such programs, issuance and use of conditional licenses, procedures to be followed by the courts, the Department of Motor Vehicles and motorists in conjunction with such programs, as well as the curricula to be used in such programs and the qualifications of persons who will be conducting such programs.

Paragraphs (2), (3), (4) and (5) of subdivision (a) of Part 134.7 are amended to read as follows:

(2) The conviction, *adjudication or finding* upon which eligibility for a rehabilitation program is based involved a fatal accident.

(3) The person does not have a currently valid New York State driver's license. This paragraph shall not apply to a person whose New York State driver's license has expired, but is still renewable, nor to a person who would have a currently valid New York State driver's license except for the revocation or suspension which resulted from the conviction, *adjudication or finding* upon which his eligibility for the rehabilitation program is based, nor to a person who would have a currently valid New York State driver's license except for a suspension or revocation which resulted from a chemical test refusal arising out of the same incident as such conviction, *adjudication or finding of a violation of section 1192-a of the Vehicle and Traffic Law Section*.

(4) The person has been convicted of an offense arising from the same event which resulted in the current alcohol related conviction, *adjudication or finding* which conviction would, aside from the alcohol-related

conviction, *adjudication or finding,* result in mandatory revocation or suspension of the person's driver's license.

(5) The person has had two or more revocations and/or suspensions of his driver's license, other than the revocation or suspension upon which his eligibility for the rehabilitation program is based within the last three years. This subdivision shall not apply to suspensions which have been terminated by performance of an act by the person, nor to a suspension or revocation resulting from a chemical test refusal, if the person had been convicted of a violation of section 1192 of the Vehicle and Traffic Law *or found to be in violation of section 1192-a of such law* arising out of the same incident.

Subdivision (c) of Part 134.9 is amended to read as follows:

(c) A conditional license issued to a person convicted of, *or adjudicated a youthful offender for,* a violation of any subdivision [or] of section 1192 of the Vehicle and Traffic Law *or found to have violated section 1192-a of such law* shall not be valid for the operation of commercial motor vehicles as defined in section 501-a of such law or taxicabs as defined in section 148-a of such law.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 134.1(a).

Text of rule and any required statements and analyses may be obtained from: Michele L. 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

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

We are not revising any of the previously submitted impact statements because the revision to the rulemaking is nonsubstantive in nature and has no affect on such statements.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

ERRATUM

A notice of proposed rule making relating to Petition for Rehearing by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation published in the May 11, 2005 issue of the *State Register* under I.D. No. PSC-19-05-00014-P contained several erroneous captions describing various sections of this notice. The notice of proposed rule making also erroneously included information which would be found in a notice of adoption instead of information supplied by the Public Service Commission in its notice of proposed rule making. This incorrect information appears after the section of the published notice of proposed rule making erroneously labeled "Substance of Final Rule".

The Department of State apologizes for any inconvenience.

The corrected Notice of Proposed Rule Making Follows:

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation

I.D. No. PSC-19-05-00014-P

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

Proposed action: The commission is considering what actions it should take with respect to a petition for rehearing filed by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation on April 1, 2005 with respect to a petition for clarification filed by KeySpan Energy Services, Inc. on April 13, 2005, and with respect to a petition for rehearing and clarification filed by the Public Utility Law Project, Inc. (PULP) on April 25, 2005.

Statutory authority: Public Service Law, section sections 5, 22, 31, 65, 66 and 75

Subject: Terms of a three-year electric rate plan pertaining to Consolidated Edison Company of New York, Inc.'s (Con Edison) retail access program, the terms of Con Edison's market supply charge and monthly adjustment clause related to New York Independent System Operator rebills, and the bill impacts associated with demand management initiatives to be undertaken by Con Edison and the New York State Energy Research and Development Authority.

Purpose: To change and clarify some terms of the recently adopted three-year electric rate plan for Con Edison.

Substance of proposed rule: In an order issued March 24, 2005, the Public Service Commission adopted a three-year electric rate plan for Consolidated Edison Company of New York, Inc. (Con Edison). The rate plan included many terms, including several pertaining to an electric retail access program, to Con Edison's Market Supply Charge and Monthly Adjustment Clause, and to demand management initiatives.

The adopted retail access program provides, in part, that customers switching from full service to retail access service will receive a seven percent discount on the commodity portion of their bill for two months after which they could continue with retail access with no discount with the same or a different Energy Service Company (ESCO), or revert to full service. New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation seek rehearing concerning this program, alleging this part of the Commission's decision is based on errors of fact and law, could be harmful to customers that take retail access service after the discount period, may involve a violation of the Commission's Uniform Business Practices, and amounts to partial abdication of some of the Commission's statutory responsibilities. PULP, meanwhile, contends that the two-month discount amounts to unlawful price fixing and market division, results in unfair rate discrimination, is inconsistent with the filed rate doctrine, and is otherwise unjust and unreasonable.

The Commission is asked by KeySpan Energy Services, Inc., in a petition dated April 13, 2005, to clarify whether New York Independent System Operator rebills, to be recovered through Con Edison's electric Monthly Adjustment Clause in the future, will continue to exclude charges for energy, capacity, and ancillary services. According to this petitioner, rebills for energy, capacity, and ancillary services are more properly allocated to and recovered through Con Edison's Electric Market Supply Charge.

Finally, given the maximum amount of demand management costs that might be recovered under the new rate plan, PULP argues that Con Edison's Monthly Adjustment Clause tariff should be modified to require that customers be notified quarterly of the prospective recovery of the costs associated with the authorized demand management initiatives.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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-0572SA3)

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-07-05-00019-P	February 16, 2005
PSC-08-05-00004-P	February 23, 2005
PSC-11-05-00016-P	March 16, 2005
PSC-12-05-00010-P	March 23, 2005
PSC-12-05-00012-P	March 23, 2005

NOTICE OF ADOPTION

Street Light Billing Methods by Niagara Mohawk Power Corporation

I.D. No. PSC-02-03-00008-A
Filing date: June 15, 2005
Effective date: June 15, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 02-E-1645 approving an amendment to Niagara Mohawk Power Corporation's (Niagara Mohawk) schedule for electric service—P.S.C. No. 214.

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

Subject: Tariff filing.

Purpose: To approve the tariff filing designed to be more accurate in street lighting billings.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's tariff revisions to include the incorporation of language describing an intra-account netting procedure, the aggregation of street lighting districts and minor housekeeping changes.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-E-1645SA1)

NOTICE OF ADOPTION

Telephone Network Reliability

I.D. No. PSC-31-04-00019-A
Filing date: June 15, 2005
Effective date: June 15, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 03-C-0922 identifying the steps to be taken to achieve and maintain an optimum level of reliability in the State.

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

Subject: Telephone network reliability.

Purpose: To establish requirements.

Substance of final rule: The Commission adopted recommendations to further knowledge of an inter-carrier cooperation in the use of Telecommunications Service Priority processes and procedures designed to achieve and maintain an optimum level of telephone network reliability in the state.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-C-0922SA1)

NOTICE OF ADOPTION

Electric Transmission Right-of-Way Management Practices of Central Hudson Gas and Electric Corporation, *et al.*

I.D. No. PSC-48-04-00008-A
Filing date: June 20, 2005
Effective date: June 20, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 04-E-0822 accepting staff's recommendations, with modifications, regarding the right-of-way (ROW) management practices by electric corporations in New York.

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

Subject: Recommendations concerning the ROW management practices of certain electric corporations.

Purpose: To adopt rules.

Substance of final rule: The Commission adopted rules concerning the electric transmission right-of-way (ROW) management practices for Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-E-0822SA1)

NOTICE OF ADOPTION

Loan Agreement by Saratoga Water Services, Inc.

I.D. No. PSC-08-05-00011-A
Filing date: June 17, 2005
Effective date: June 17, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 05-W-0154 approving a petition by Saratoga Water Services Inc. (Saratoga Water) to enter into two loan agreements with The Adirondack Trust Company for a total amount of up to $1,080,000.

Statutory authority: Public Service Law, section 89(f)

Subject: Issues of stocks, bonds and other forms of indebtedness.

Purpose: To approve the request to enter into two loan agreements.

Substance of final rule: The Commission approved Saratoga Water Services, Inc.'s request to enter into two loan agreements with The Adirondack Trust Company for a total amount of up to $1,080,000, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-W-0154SA1)

NOTICE OF ADOPTION

Winter Bundled Sales Service Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-05-00015-A
Filing date: June 15, 2005
Effective date: June 15, 2005

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

Action taken: The commission, on June 15, 2005, adopted on order in Case 05-G-0234 approving the amendments to Consolidated Edison Company of New York, Inc.'s (Con Edison) schedule for gas service—P.S.C. No. 9

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

Subject: Tariff filing.

Purpose: To approve the tariff filing.

Substance of final rule: The Commission approved Consolidated Edison Company of New York, Inc.'s request to implement a new winter bundled sales service program for S. C. No. 20 marketers serving firm transportation customers.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-G-0234SA1)

NOTICE OF ADOPTION

Direct Load Control Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-05-00010-A
Filing date: June 17, 2005
Effective date: June 17, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 00-E-2054 approving a petition by Consolidated Edison Company of New York, Inc. (Con Edison) to continue and expand its residential Direct Load Control Program.

Statutory authority: Public Service Law, sections 2, 4, 5, 65 and 66

Subject: Direct Load Control Program.

Purpose: To continue and expand the program.

Substance of final rule: The Commission approved Consolidated Edison Company of New York, Inc.'s (Con Edison) request to continue and expand its residential direct load control (DLC) program and allowed Con Edison to continue to recover costs of the residential and small business DLC programs through the Monthly Adjustment Clause, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(00-E-2054SA32)

NOTICE OF ADOPTION

Non-Residential Service Application by Niagara Mohawk Power Corporation

I.D. No. PSC-14-05-00008-A
Filing date: June 15, 2005
Effective date: June 15, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 05-E-0337 approving an amendment to Niagara Mohawk Power Corporation's (Niagara Mohawk) schedule for electric service—P.S.C. No. 207.

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

Subject: Tariff filing.

Purpose: To approve the tariff filing.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's tariff revisions to modify its Non-Residential Service Application Form to make it less complicated for the customer and reduce the number of errors for the customer and the company.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-0337SA1)

NOTICE OF ADOPTION

Form of Application for Construction of Excess Distribution Facilities by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-17-05-00011-A
Filing date: June 15, 2005
Effective date: June 15, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 05-G-0412 approving an amendment to Consolidated Edison Company of New York, Inc.'s (Con Edison) schedule for gas service—P.S.C. No. 9.

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

Subject: Tariff filing.

Purpose: To approve the tariff filing.

Substance of final rule: The Commission approved Consolidated Edison Company of New York, Inc.'s request to revise its Form of Application for Construction of Excess Distribution Facilities to give customers the option to pay for the maintenance and taxes on excess distribution facilities in a lump sum payment rather than in an annual surcharge.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-G-0412SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Applications for Certificate of Public Convenience and Necessity

I.D. No. PSC-27-05-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, application process for a certificate of public convenience and necessity (CPCN).

Statutory authority: Public Service Law, sections 91(1) and 99(1)

Subject: Applications for certificate of public convenience and necessity (CPCN).

Purpose: To consider waivers of certain rules and to determine whether a tariff should be required to be submitted at the time of application.

Substance of proposed rule: Pursuant to Section 99(1) of the Public Service Law, telephone corporations planning to offer telephone services in New York State must obtain a certificate of public convenience and necessity from the New York Public Service Commission. Such certificates are deemed to be granted by the Commission ninety days after such corporation applies to the Commission for a certificate, unless the Commission, or its designee, determines within such ninety day period that the public interest requires the Commission's review and its written order.

The Commission is considering whether to waive certain rules contained in Part 21 of 16 NYCRR. In addition, the Commission is considering whether to make the submission of a completed tariff part of the application process.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-C-0730SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Direct Load Control Pilot Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-05-00009-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 (commission) is considering whether to approve or reject, in whole or in part, the petition of Consolidated Edison Company of New York, Inc. (Con Edison) seeking continuation and expansion of its Direct Load Control Pilot Program for small business customers, recovery of net program costs, including lost revenue recovery through its monthly adjustment clause, and other related items.

Statutory authority: Public Service Law, sections 2, 4, 5, 65 and 66

Subject: Direct Load Control Pilot Program for small business customers and associated cost recovery.

Purpose: To continue and expand the program.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to approve or reject, in whole or in part, the Petition of Consolidated Edison Company of New York, Inc. (Con Edison) seeking continuation and expansion of its Direct Load Control Pilot Program for small business customers, recovery of net program costs, including lost revenue recovery through its Monthly Adjustment Clauses, and other related items. Among the issues that the Commission may consider are the relationship of the Direct Load Control program to programs funded by the System Benefits Charge, the reasonableness of the costs of the program, and the appropriateness of recovery of those costs through the Monthly Adjustment Clause.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

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

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

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

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

(00-E-2054SA33)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recovery of Decommissioning and Shutdown-Related Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-05-00010-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, the petition of Consolidated Edison Company of New York, Inc. (Con Edison) for recovery through its monthly adjustment clause of decommissioning and shutdown-related costs associated with its Hudson Avenue Steam Electric Generating Unit 10/100, and other related items.

Statutory authority: Public Service Law, sections 2, 4, 5, 65 and 66

Subject: Con Edison's recovery of costs related to the decommissioning and shut-down of its Hudson Avenue Steam Electric Generating Unit 10/100.

Purpose: To consider the request.

Substance of proposed rule: The New York State Public Service Commission is considering whether to approve in whole or in part, or reject the petition of Consolidated Edison Company of New York, Inc. (Con Edison) for recovery through its Monthly Adjustment Clause, an estimated $835,000 of decommissioning and shutdown-related costs associated with removing its Hudson Avenue Steam Electric Generating Unit 10/100 from service. The company seeks recovery of actual costs on an as incurred basis. Among the issues to be considered by the Commission is whether the request is consistent with ratemaking previously authorized in Case 01-E-0147.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

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

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

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

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

(01-E-0147SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wind Generation by New York State Electric & Gas Corporation

I.D. No. PSC-27-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation to make various changes in the rates, charges,

rules and regulations contained in its schedules for electric service—P.S.C. Nos. 119 and 120 to become effective Sept. 30, 2005.

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

Subject: Wind generation—net metering.

Purpose: To establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law, section 66-l.

Substance of proposed rule: On June 13, 2005, New York State Electric and Gas Corporation (NYSEG) filed proposed tariff amendments to establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law Section 66-l. The proposed effective date of NYSEG's filing is September 30, 2005. The Commission may approve, reject or modify, in whole or in part, NYSEG's proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-E-0697SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wind Generation by Rochester Gas and Electric Corporation

I.D. No. PSC-27-05-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 19 to become effective Sept. 30, 2005.

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

Subject: Wind generation—net metering.

Purpose: To establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law, section 66-l.

Substance of proposed rule: On June 13, 2005, Rochester Gas & Electric Corporation (RG&E) filed proposed tariff amendments to establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law Section 66-1. The proposed effective date of RG&E's filing in September 30, 2005. The Commission may approve, reject or modify, in whole or in part, RG&E's proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-E-0698SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wind Generation by Central Hudson Gas & Electric Corporation

I.D. No. PSC-27-05-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 15 to become effective Sept. 30, 2005.

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

Subject: Wind generation—net metering.

Purpose: To establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law, section 66-l.

Substance of proposed rule: On June 13, 2005, Central Hudson Gas & Electric Corporation (Central Hudson) filed proposed tariff amendments to establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law Section 66-l. The proposed effective date of Central Hudson's filing is September 30, 2005. The Commission may approve, reject or modify, in whole or in part, Central Hudson's proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-E-0715SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wind Generation by Orange and Rockland Utilities, Inc.

I.D. No. PSC-27-05-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2 to become effective Sept. 30, 2005.

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

Subject: Wind generation—net metering.

Purpose: To establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Services Law, section 66-l.

Substance of proposed rule: On June 13, 2005, Orange and Rockland Utilities, Inc. (O&R) filed proposed tariff amendments to establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law Section 66-l. The proposed effective date of O&R's filing September 30, 2005. The Commission may approve, reject or modify, in whole or in part, O&R's proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.
(05-E-0716SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wind Generation by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-05-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9 to become effective Sept. 30, 2005.
Statutory authority: Public Service Law, section 66(12)
Subject: Wind generation—net metering.
Purpose: To establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law, section 66-l.
Substance of proposed rule: On June 13, 2005, Consolidated Edison Company of New York, Inc. (Con Edison) filed proposed tariff amendments to establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law Section 66-l. The proposed effective date of Con Edison's filing is September 30, 2005. The Commission may approve, reject or modify, in whole or in part, Con Edison's proposed tariff revisions.
Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660
Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.
(05-E-0717SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wind Generation by Niagara Mohawk Power Corporation

I.D. No. PSC-27-05-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207 to become effective Sept. 30, 2005.
Statutory authority: Public Service Law, section 66(12)
Subject: Wind generation—net metering.
Purpose: To establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law, section 66-l.
Substance of proposed rule: On June 13, 2005, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff amendments to establish standards for the net metering and interconnection of residential and farm wind electric generating equipment in compliance with Public Service Law Section 66-l. The proposed effective date of Niagara Mohawk's filing is September 30, 2005. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk's proposed tariff revisions.
Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660
Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.
(05-E-0718SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Ownership Interests by Energy Factors, Incorporated and Alliance Energy, New York, LLC

I.D. No. PSC-27-05-00017-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: The Public Service Commission is considering a petition from Energy Factors, Incorporated and Alliance Energy, New York, LLC requesting approval of the transfer of ownership interests in an approximately 84 MW electric and steam generating facility located in Ogdensburg, NY and an approximately 79 MW electric and steam generating facility located in Massena, NY. The commission may adopt, modify or reject, in whole or in part, the relief requested.
Statutory authority: Public Service Law, sections 70 and 83
Subject: Transfer of ownership interests in two electric and steam generating facilities.
Purpose: To approve the transfer.
Substance of proposed rule: The Public Service Commission is considering a petition from Energy Factors, Incorporated and Alliance Energy, New York, LLC requesting approval of the transfer of ownership interests in an approximately 84 MW electric and steam generating facility located in Ogdensburg, New York and an approximately 79 MW electric and steam generating facility located in Massena, New York. The Commission may adopt, modify or reject, in whole or in part, the relief requested.
Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660
Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.
(05-E-0746SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Reconciliation of Gas Costs by New York State Electric & Gas Corporation

I.D. No. PSC-27-05-00018-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: The Public Service Commission is considering issues associated with the annual reconciliation of gas costs for New York State Electric & Gas Corporation's (NYSEG's) gas business, in particular, the application of the gas cost incentive mechanism. The commission may accept, reject, or modify, in whole or in part, the manner in which the company calculates the incentive. The commission may also consider other related issues.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Calculation of incentives under the gas cost incentive mechanisms and other matters related to the annual reconciliations of gas costs filed during the company's current rate plan.

Purpose: To consider the manner in which the gas cost incentive mechanism has been applied and other aspects of the company's annual reconciliations of gas costs filed during the term of its current rate plan.

Substance of proposed rule: The Public Service Commission (Commission) is considering issues associated with the annual reconciliations of gas costs filed by New York State Electric & Gas Corporation (NYSEG) during the term of its current rate plan. In particular, the Commission is considering the manner in which incentives under the gas cost incentive mechanism are calculated. The Commission may accept, reject or modify, in whole or in part, the methodology employed by NYSEG in applying the gas cost incentive mechanism, and it may also consider other aspects of the filings.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

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

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

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

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

(01-G-1668SA7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of Provisions of the Public Officers Law

I.D. No. PSC-27-05-00019-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 5.8(e) and Part 6 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4(1) and 20(1); and Public Officers Law, sections 87(1)(b) and 94(2)

Subject: Implementation of provisions of the Public Officers Law.

Purpose: To bring the regulatory provisions into conformance with the Public Officers Law as amended, repeal obsolete provisions and make technical corrections to addresses and other regulatory provisions.

Substance of proposed rule (Full text is posted at the following State website: http://www.dps.state.ny.us): The proposed rule will bring 16 NYCRR Section 5.8(e) and Part 6 into conformance with Article 6 of the Public Officers Law as recently amended, repeal obsolete provisions and make technical corrections to addresses and other regulatory provisions. Section 5.8(e) concerns discovery in administrative proceedings. Subpart 6-1 implements the provisions of the Freedom of Information Law and also relates to access to allegedly confidential information in administrative proceedings. Subpart 6-2 implements the provisions of the Personal Privacy Protection Law.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

Consensus Rule Making Determination

This amendment is being proposed as a Consensus Rule because no objection to the rule as written is expected. The proposed changes will bring Commission regulations into conformance with Article 6 of the Public Officers Law (as recently amended), repeal obsolete regulatory provisions and make technical changes to 16 NYCRR Section 5.8(e) and various provisions of 16 NYCRR Subparts 6-1 and 6-2.

Job Impact Statement

The agency has determined that the rule will not have an adverse impact on jobs or employment opportunities in the State.

(05-M-0603SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Complaint by Home Depot U.S.A., Inc. and Linens 'n Things Against Independent Water Works, Inc.

I.D. No. PSC-27-05-00020-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, the complaint of Home Depot U.S.A., Inc. and Linens 'n Things against Independent Water Works, Inc., requesting an 80 percent reduction in the rates charged by Independent Water Works, Inc., the implementation of temporary rates and a refund of overcharges.

Statutory authority: Public Service Law, sections 89-c(4), 89-j and 114

Subject: Water rates and charges.

Purpose: To consider the complaint.

Substance of proposed rule: On June 13, 2005, Home Depot U.S.A., Inc. and Linens 'n Things (complainants), commercial customers of Independent Water Works, Inc. (Independent), filed a petition requesting that the New York State Public Service Commission reduce, by 80%, the rates charged by Independent. The complainants also requested the implementation of temporary rates and a refund of overcharges. Independent currently provides water service to 15 commercial customers and is located in the Town of Southeast, Putnam County. The Commission may approve or reject, in whole or in part, or modify the complainants' petition.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-W-0707SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Water Plant Assets by the Town of North Greenbush, Rensselaer County

I.D. No. PSC-27-05-00021-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 the Town of North Greenbush, Rensselaer County, to acquire the water plant assets of High Meadows Water Company, Inc.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water plant assets.

Purpose: To consider the transfer of the water plant assets of High Meadows Water Company, Inc. to the Town of North Greenbush, Rensselaer County.

Substance of proposed rule: On June 15, 2005, the Town of North Greenbush, Rensselaer County (Town), filed a petition and contract for purchase and sale of the High Meadows Water Company, Inc. (High Meadows) for approval of the transfer of the water plant assets of High Meadows to the Town. High Meadows currently provides water service to approximately 79 customers located in the Town of North Greenbush, Rensselaer County. The Commission may approve or reject, in whole or in part, or modify the petition.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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.

(05-W-0722SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Minimum Dosage Level of Furosemide (Lasix/Salix) in Race Horses

I.D. No. RWB-27-05-00004-E
Filing No. 673
Filing date: June 16, 2005
Effective date: June 16, 2005

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

Action taken: Amendment of sections 4043.2 and 4120.2 of Title 9 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Required to conform regulations pertaining to the minimum permissible dosage of furosemide (Lasix/Salix) to national model rules, and to respond to concerns for the welfare of certain race horses who experience negative side effects from the current mandated dosage of five cubic centimeters, but not on the proposed dosage of three cubic centimeters. Since furosemide is a relatively potent diuretic, the low-end dose may be necessary in some horses to prevent dehydration and electrolyte imbalances.

Subject: Minimum dosage level of furosemide (Lasix/Salix) in race horses.

Purpose: To lower the minimum dosage level of furosemide (Lasix/Salix) in race horses from five cubic centimeters to three cubic centimeters in order to promote and protect the health of certain race horses who experience improved medical outcomes from the lower dosage.

Text of emergency rule: To amend paragraph (6) of subdivision (b) of Section 4043.2 to read as follows:

Administration of furosemide. For the purposes of this rule, furosemide shall be administered only in the following manner: A single intravenous (IV) injection of no less that *150* [250] milligrams *(3cc)* [(5cc)] and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or corporation during the time period from 4 to 4½ hours before the scheduled post time of the race in which the horse is to compete.

To amend paragraph (6) of subdivision (b) of Section 4120.2 to read as follows:

Administration of furosemide. For the purposes of this rule, furosemide shall be administered only in the following manner: A single intravenous (IV) injection of no less that *150* [250] milligrams *(3cc)* [(5cc)] and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or corporation during the time period from 4 to 4½ hours before the scheduled post time of the race in which the horse is to compete.

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 September 13, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Robert A. Feuerstein, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206, (518) 453-8460, e-mail: rfeuerstein@racing.state.ny

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel and Breeding Law, sections 101 and 902, authorizes the New York State Racing and Wagering Board ("Board") to prescribe and promulgate regulations to specify the use and testing of drugs and substances in thoroughbred and harness race horses. Racing, Pari-Mutuel and Breeding Law sections 301 and 401 directs the Board to prescribe rules and regulations for the administration of drugs to harness horses and quarterhorses, respectively for the purpose of affecting the speed of such horses.

2. Legislative objectives: To enable the Board to assure the public's confidence and preserve the high degree of integrity of racing at pari-mutuel betting tracks by regulating the use of drugs and medications in race horses so that the horses are fit and healthy, but not running on substances that have the potential to affect the outcome of a given race.

3. Needs and benefits: This rule is necessary to ensure the safe and reliable administration of furosemide (also known as Lasix or Salix) to horses involved in pari-mutuel races. This rule will benefit the public by ensuring that in the event furosemide is administered to a race horse, it is done so in a prudent and uniform fashion, which can be verified through post-race medication testing. Sections 4043.2 and 4120.2 of 9E NYCRR restricts the use of drugs, medications and other substances in race horses, and regulates the administration of furosemide to such horses. Furosemide is a permissible race day medication in New York and is used to prevent exercise induced pulmonary hemorrhaging (EIPH), a condition that involves respiratory tract bleeding. Furosemide is a diuretic that increases the excretion of sodium, chloride, potassium and water. Excessive diuresis and sweating due to excess dosage may contribute to dehydration, electrolyte depletion, and reduced blood volume, especially with a light horse exercising in a humid environment. Sections 4043.2 and 4120.2 were adopted in 1982, and since that time, racing jurisdictions across the country have developed and promoted model rules related to the use and control of medications in racing in order to foster uniformity across state jurisdictional lines. Regarding the administration of furosemide, New York was involved in the promulgation of the model rules currently advanced by the Association of Racing Commissioners International (ARCI), the North American Pari-Mutuel Regulators Association (NAPRA), and the National Thoroughbred Racing Association's Racing Medication and Testing Consortium (RMTC), which set a minimum dosage of the drug at 150 mg (3 cubic centimeters) and a maximum dosage of 500 mg (10 cubic centimeters).

There are three reasons for establishing the minimum furosemide dosage limit at 3 cubic centimeters. First, there needs to be more flexibility in dosage than currently allowed under the 5 cubic centimeters minimum rule due to the fact that horses can have varied reactions to the administration of furosemide. Furosemide is a relatively potent diuretic and a low-end dose may be necessary in some horses to prevent dehydration and electrolyte imbalances. Second, the 3 cubic centimeters minimum is an amount that is still detectable in post-race samples. Such post-race samples are necessary to ensure that trainers have administered furosemide, thereby preventing a trainer or veterinarian from misrepresenting that the drug was administered to the horse and running without furosemide in an attempt to influence race performance. Performance can be potentially affected when "Lasix" horses lose significant amounts of water weight before a race caused by the diuretic effect of the drug. Third, the Racing Medication and Testing Consortium (RMTC) based in Lexington, Kentucky has determined that performance cannot be manipulated by altering the dosage in between the 3 cubic centimeters minimum and the 10 cubic centimeters maximum from one race to the next. The RMTC is a national organization made up of 25 horse racing stakeholder groups in the racing industry and can be contacted through their Internet webpage at www.rmtcnet.com. Cornell University's Equine Drug Testing Program's research was used to assist the RMTC in its research findings on furosemide.

Furthermore, since this rule was adopted, the veterinary community has recognized that certain horses are adversely affected under the current mandated minimum dosage of 5 cubic centimeters. Qualitative and quantitative response differences are due to inherited characteristics of the racehorses. It has been reported from on-track experience that biological varia-

tion shows some horses are at the higher end of the normal response distribution curve, and appear to be predisposed to a relative overdose if given 5 cubic centimeters. Clinical signs of an exaggerated response include muscle pain or cramps, gastrointestinal disturbances, hypotension, and arrhythmias. Equine veterinarians and the scientific community have stated that medical therapy should always be individualized according to patient response to gain efficacy, and prescribed at the minimal dose needed to maintain that response.

4. Costs:

(i) There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regards to allowable dosage of a medication.

(ii) There are no costs imposed upon the Racing and Wagering Board, the state or local government. The rule will be implemented using the Board's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(iii) The Board has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely makes a quantitative modification to a medication rule.

(iv) Since the Board has determined that based upon the nature and subject of the amendment, the rule will not impose any new costs, the Board did not conduct an analysis of costs.

5. Paperwork: No new paperwork will be required. This rule will be implemented utilizing existing regulations and procedures.

6. Local government mandates: The supervision and regulation of pari-mutuel racing activities are the sole responsibility of the New York State Racing and Wagering Board, and do not involve local governments. Therefore, this rule will not impose any local government mandates.

7. Duplication: Since the New York State Racing and Wagering Board is exclusively responsible for the regulation of pari-mutuel racing activities in New York State, there are no other relevant rules or other legal requirements of the state or federal governments regarding the administration of furosemide to race horses.

8. Alternative approaches: The Board has considered alternative minimum dosages currently adopted in other racing jurisdictions. The ARCI, the NAPRA and the RMTC, all of which are nationally recognized racing organizations, also considered alternative minimum dosages. The consensus among these groups supports a uniform dosage range between 3 cubic centimeters minimum and 10 cubic centimeters maximum. This range has been advocated by New York throughout the uniform model rule making process nationally. Currently, there is no equivalent to furosemide in its use as a prophylaxis to EIPH in racehorses.

9. Federal standards: There are no federal standards applicable to the subject area of state-regulated pari-mutuel racing activities.

10. Compliance schedule: This rule will become effective upon filing with the New York State Department of State as an emergency rule making.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely changes the required minimum dose of furosemide (Salix) for those thoroughbred and harness race horses eligible for such administration. The existing Board rules establish a minimum required dose. Consequently, the rule neither affects small business, local governments, jobs nor rural areas. The modification of the minimum required dose does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). It does not effect employment. The proposal will not impose any adverse economic impact or any impact on reporting, recordkeeping or other compliance requirements for small businesses in rural or urban areas or on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, and because the Board has been previously been monitoring, and regulating the administration of medications, including furosemide, to harness and thoroughbred race horses.

Office of Real Property Services

NOTICE OF ADOPTION

Notice of Public Condemnation Hearings

I.D. No. RPS-14-05-00003-A
Filing No. 677
Filing date: June 21, 2005
Effective date: July 6, 2005

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

Action taken: Amendment of Part 185 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 202(1)(q) as added by L. 2004, ch. 450

Subject: Notice of public condemnation hearings.

Purpose: To facilitate the ascertainment and reporting of assessment record billing owner information in connection with public condemnation hearings.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-14-05-00003-P, Issue of April 6, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Joseph K. Gerberg, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.