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.

Banking Department

EMERGENCY RULE MAKING

Licensed Check Cashers

I.D. No. BNK-14-06-00005-E
Filing No. 331
Filing date: March 21, 2006
Effective date: March 23, 2006

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

Action taken: Amendment of Part 400.5(a) of Title 3 NYCRR.

Statutory authority: Banking Law, section 371

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

Specific reasons underlying the finding of necessity: In order for licensed check cashers to conduct business, it is necessary that such licensees have and maintain a deposit account with a banking institution. Such an account enables licensees to deposit and clear the checks, drafts and money orders that have been cashed for customers, thus recouping for the licensees the funds paid out to customers. Absent this banking relationship, licensed check cashers would not be able to conduct business. Because of recent decisions by various banking institutions located within this state to end their deposit account relationships with licensed check cashers, it is necessary that the pool of banking institutions that licensees may use for such purposes be expanded.

Subject: Permissible banking institutions with which licensed check cashers may maintain deposit accounts.

Purpose: To permit licensed check cashers to maintain bank accounts with banking institutions or their branches located inside or outside this state.

Text of emergency rule: Section 400.5(a) of the Superintendent's Regulations is hereby amended to read as follows:

§ 400.5 Depositing of checks, etc.

(1) Except as hereinafter stated all checks, drafts and money orders must be deposited in the licensee's bank account in [the banking institution in this State] *a branch or principal office of a bank, savings bank, savings and loan association, trust company, national bank, federal savings bank, or federal savings and loan association or any other duly chartered depository institution that is insured by the Federal Deposit Insurance Corporation, regardless of whether the branch and/or principal office of the foregoing banking institution is located within or without this State (collectively, "banking institution"),* not later than the first business day following the day on which they were cashed. Such items must be deposited during the regular business hours of such [bank] *banking institution* so as to enable it to credit the deposits to the licensee's account on that business day.

(2) Any account maintained by a licensee for the deposit of checks, drafts or money orders in a banking institution shall be subject to a written account agreement between the licensee and the banking institution that expressly provides for the personal and in rem jurisdiction over the parties and the account, respectively, of state and federal courts located in the State of New York and the agreement shall be governed by the laws of the State of New York, except that this requirement shall not apply (a) with respect to an account maintained in New York or in a State of New York-chartered bank prior to November 1, 2005, unless or until such existing account agreement is amended subsequent to November 1, 2005, or (b) if this requirement is waived in the Superintendent's discretion. Every licensee or applicant for a license shall provide to the Superintendent a copy of any such account agreement within 15 days of establishing any such account or any amendment thereto relating to the items required by this subsection. Every licensee shall maintain a copy of such account agreement as part of its records available for examination by the Superintendent.

(3) Prior to depositing any checks, drafts or money orders in an account at a banking institution, the licensee shall cause such banking institution to give the Superintendent written authorization to conduct any such examination of all books, records, documents and materials, including those in electronic form, as they relate to such account and any checks, drafts, or money orders placed on deposit in such account, as the Superintendent in his/her discretion deems necessary, except that this written authorization requirement shall not apply (a) with respect to an account maintained in New York or in a State of New York-chartered bank prior to November 1, 2005, unless or until such existing account agreement is amended subsequent to November 1, 2005, or (b) if this requirement is waived in the Superintendent's discretion. The licensee shall pay the cost of any such examination.

(4) [(2)] When the number of payroll checks cashed at a limited station amount to 50 or more, the licensee may present those checks to the drawee bank or the maker of the checks and receive in exchange a single draft, provided full details of the transaction are recorded in a manner satisfactory to the superintendent.

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 June 18, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority. Section 371 of the Banking Law authorizes the Superintendent of Banks to adopt such rules and regulations as are necessary to ensure the proper conduct of the business of check cashing. Pursuant to section 400.5(a) of Title 3 NYCRR, the Superintendent requires licensed check cashers to deposit checks, drafts and money orders (hereafter "instruments") in a banking institution in this state no later than the first business day after the date on which the instruments were cashed for the customers.

2. Legislative Objectives. The Legislature, when enacting and periodically amending Article 9-A of the Banking Law, which requires regulatory supervision of the business of check cashing, has stated as matter of legislative intent that such businesses provide an important and vital service to New York citizens. The regulatory regime applicable to such industry is intended to ensure the consumer confidence in such business is maintained and the public interest is protected. The regulatory requirements addressed in this rule making are necessary to maintain the financial stability of the licensees, thus maintaining the public confidence in their operations.

3. Needs and Benefits. Section 400.5(a) requires that a check casher licensee maintain a deposit account with a banking institution in this State. Licensees are required to deposit any checks, drafts and money orders received into the deposit account within the next business day. The deposit of such instruments in New York facilitates the timely clearing process of such instruments through the banking system. In addition, if a check casher experiences financial or other difficulty and there is a need for the Superintendent to examine or intervene, having the licensee's deposit account at a banking institution in New York State permits the Superintendent to more readily to examine the account and/or obtain control of the licensee's assets through the judicial process, if this proved necessary. However, due to the decision of various in-state banking institutions not to provide further deposit account services to check cashing businesses, it is necessary to expand the pool of potential banking institutions that may be willing to provide such services. Permitting check cashers to open and maintain deposit accounts with banks or branches located out of state should assist in addressing this problem. While doing business with banks or branches located out of state may present certain logistical problems for check cashers in meeting the one-business day deposit requirement, there are mechanisms available within the banking system which should make such arrangements workable.

The ancillary regulatory requirements of the proposed rule in connection with a check casher establishing a deposit account relationship with a bank will ensure the Superintendent's supervisory oversight of and jurisdiction over the casher's banking relationship remains the same, regardless of whether the account is in a banking institution within or outside of New York and whether the federal or a state government has chartered the institution. Such requirements necessitate that (i) the licensee's account agreement provide for the personal and in rem jurisdiction by federal and state courts located in New York over the parties and the account and that the agreement be governed by the laws of New York State; and (ii) prior to making any deposit in such account, the licensee obtain the written authorization by the bank enabling the Superintendent to examine any records and related documents and materials, in whatever form, pertaining to the deposits and the account. This is a timely revision of the rule, given the current rule was adopted prior to the advent of interstate branch banking and the Comptroller of the Currency's recent preemption ruling prohibiting any state bank regulator from exercising visitation authority over national banks.

4. Costs. The proposed rule imposes no additional costs or regulatory burden upon regulated parties, the Banking Department or other state agencies, or any other unit of government.

5. Local Government Mandates. The proposed rule imposes no mandates or costs upon any type of governmental unit. The regulatory provisions apply only to licensed entities, and such entities are private business enterprises.

6. Paperwork. The proposed rule imposes no paperwork requirements upon regulated parties or any unit of state government.

7. Duplication. None.

8. Alternatives. There are few alternatives to address the present situation other than to increase the pool of potential banks with which licensed check cashers may do business. One alternative is the creation of a bank, either under private or public auspices, that specializes in servicing money services businesses. However, this would be a long-term solution, and not an alternative that may be developed in the short-term given that in-state banks are currently terminating their deposit account relationships with these businesses.

9. Federal Standards. There are no federal standards that apply to the daily operational aspects of the business of check cashing. The federal government does not license check cashers nor directly regulate the primary transaction activity of check cashers. When regulated, states are the sole supervisory regulators of the check cashing industry.

10. Compliance Schedule. The new requirements applicable to any licensee's new deposit account, or modification of an existing account agreement, took effect on November 1, 2005.

Regulatory Flexibility Analysis

The emergency rule facilities the conduct of business by and the financial stability of licensed check cashers, which are private businesses. Though the rule requires the licensee to obtain the agreement of the banking institution, when opening an account, to governance of the account relationship under New York law and courts located in New York, as well as to examination of its account-related records by the Superintendent, these are necessary additional conditions in order for the Superintendent to properly supervise licensed check cashers that may choose to open accounts in banking institutions outside New York and also in national banks regardless of where located. The Department has determined that the emergency rule has no impact upon other private businesses, or any unit of local government.

Rural Area Flexibility Analysis

The Department has determined the emergency rule has virtually no impact upon private businesses or units of local government situated in rural areas. Licensed check cashers are predominantly located in metropolitan and urban areas of this state. To the extent there are licensed check cashers in any rural locations, the emergency rule will facilitate the conduct of business by and the financial stability of such businesses. The emergency rule will have the same effect upon regulated entities, regardless of where located.

Job Impact Statement

The emergency rule is intended to facilitate the conduct of business by and the financial stability of check cashing businesses. Without deposit account relationships with banking institutions, licensed check cashers could not function. Therefore, the Department has determined the emergency rule has no adverse impact upon employment in the check cashing industry.

Department of Environmental Conservation

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Environmental Remediation Programs

I.D. No. ENV-46-05-00010-C

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

The notice of proposed rule making, I.D. No. ENV-46-05-00010-P was published in the *State Register* on November 16, 2005.

Subject: Environmental remediation programs.

Purpose: To revise, reorganize and restructure existing Part 375 to cover the requirements provided by, and provide for the implementation of, 2003 and 2004 Superfund/Brownfield Acts.

Substance of rule: This rulemaking is proposed by the New York State Department of Environmental Conservation (Department) to amend 6 NYCRR 375, the statewide regulations that implement the State Superfund Program, Article 27, Title 13 of the Environmental Conservation Law

(ECL), and the Environmental Restoration Program, Article 56, Title 5 of the ECL. The revisions are aimed at incorporating recent statutory changes, clarifying and streamlining the current regulations and addressing issues raised by state and local agencies, the public, and project sponsors since the last regulatory update of Part 375 in 1996.

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of brownfield sites. This rulemaking ensures the continued protection of public health and the environment. It will also assure the most efficient utilization of public and private funding sources for the investigation and remediation of sites under such remedial programs and will ensure remediation efforts are completed as quickly as possible.

Specific to this rulemaking, the State administers the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996.

Chapter 1 of the Laws of 2003 added a new ECL Article 27 Title 14 (the BCP); made extensive amendments to existing ECL Article 27 Title 13 (the SSF) and to existing ECL Article 56 Title 5 (the ERP); and made other related amendments. As a result of these statutory changes, it is necessary and desirable to revise the Departments regulations to conform to Chapter 1. Additionally, it is also necessary and desirable to revise the Departments regulations, both to conform to previous legislation and to make adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Accordingly, the Department is:

1. Incorporating requirements of New York State's Chapter 1, Laws of 2003;

2. Revising/enhancing the Inactive Hazardous Waste Disposal Site Remedial Program and Environmental Restoration Program regulations to address necessary legal, technical, and policy developments, as well as to reflect our extensive experience in remediating sites, that have occurred since the last major revisions to Part 375 in 1992 and 1996, respectively;

3. Establishing regulations for the Brownfield Cleanup Program.

The Department's current regulations governing the SSF and ERP are contained in 6 NYCRR Part 375. Revising, reorganizing, and restructuring existing Part 375, including the provision of regulations for the BCP is necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 statutory changes. These laws were enacted subsequent to the previous Part 375 rulemaking. Further, they will incorporate statutory changes that occurred after the current Part 375 was finalized and will improve the readability of the regulations and decrease confusion.

This action is not intended to mandate any specific remedial technology or approach. However, it will define the remedial process; and for the BCP, it will define the use-based soil cleanup objectives. The following outline highlights the reorganization of this Part.

Subpart 375-1: GENERAL REMEDIAL PROGRAM REQUIREMENTS

This rule identifies those requirements that are common to each of the remedial programs. Further, it incorporates the statutory changes since the previous Part 375 rulemaking, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Subpart 375-2: INACTIVE HAZARDOUS WASTE DISPOSAL SITE REMEDIAL PROGRAM

This rule maintains, but reorganizes and restructures, much of the existing Part 375. These rule changes primarily conform to the recent statutory changes and provide for greater consistency with the other remedial programs.

Subpart 375-3: BROWNFIELD CLEANUP PROGRAM (BCP)

This rule is new and implements recent changes to the law, which create the BCP. There are no substantive requirements that are not required by statute.

Subpart 375-4: ENVIRONMENTAL RESTORATION PROGRAM (ERP)

This rule conforms the existing subpart 375-4 to recent changes in the law and provides for some modest changes to increase consistency between the remedial programs. This rule maintains, but reorganizes and restructures, much of the existing subpart 375-4.

In summary, this rulemaking is proposed to incorporate the statutory changes since the previous Part 375 rulemaking, and make adjustments to conform to experience acquired. The revisions are intended to clarify and streamline the current regulations and to address issues raised by program stakeholders. This proposed rulemaking will facilitate the clean up and reuse of contaminated sites, thus stimulate economic revitalization, while ensuring the continued protection of public health and the environment.

Changes to rule: No substantive changes.

Expiration date: September 11, 2006.

Text of proposed rule and changes, if any, may be obtained from: Robert W. Schick, P.E., Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-9662, e-mail: rx-schick@gw.dec.state.ny.us

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

Department of Health

EMERGENCY RULE MAKING

Provision of Information by the EPIC Program

I.D. No. HLT-14-06-00003-E
Filing No. 329
Filing date: March 20, 2006
Effective date: March 20, 2006

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

Action taken: Amendment of section 9600.4(c) of Title 9 NYCRR.

Statutory authority: Elder Law, sections 244, 245 and 246

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

Specific reasons underlying the finding of necessity: The specific reason underlying the finding of necessity to adopt as an emergency rule: The proposed regulation will require EPIC to share data with OTDA so that OTDA can match the data against its files of individuals who are in receipt of Food Stamp benefits. The match will enable an automated increase in Food Stamp benefits for those EPIC participants enrolled in the Medicare prescription drug discount program who are also Food Stamp beneficiaries. In order to obtain a deduction for medical expenses that will result in this increased benefit for calendar year 2004, the exchange of data must take place before the end of the calendar year. There is not enough time to canvas all EPIC participants for their consent to release of data. An emergency regulation mandating the sharing of data is the only way to ensure that those EPIC participants enrolled in the Medicare prescription drug program who are Food Stamp eligible will have the opportunity to get their medical deduction before the end of this calendar year and that the sharing of the data does not violate the confidentiality requirements of HIPAA. For these reasons, the Department finds that the immediate adoption of the regulation is necessary for the preservation of the public health, safety and general welfare and that compliance with the procedural requirements of the State Administrative Procedure Act (SAPA) 202(1) would be contrary to the public interest.

Subject: Provision of Information by the EPIC Program.

Purpose: To enable the provision of information to OTDA by EPIC regarding participants who are enrolled in the Medicare Prescription Drug Card Program, assisting these participants to receive an enhanced medical deduction in the calculation of Food Stamp benefits.

Text of emergency rule: A new subdivision (c) is added to Section 9600.4 of Title 9 NYCRR to read as follows:

(c) For the purpose of assisting participants to receive an appropriate amount of federal Food Stamp benefits, the Program for Elderly Pharmaceutical Insurance Coverage (EPIC) shall provide to the Office of Temporary and Disability Assistance (OTDA) information identifying EPIC participants who are also enrolled in the Medicare prescription drug discount card program authorized by Title XVIII of the Social Security Act. Information provided shall be limited to eligibility and enrollment data available to EPIC and sufficient to enable OTDA to identify those participants who are also Food Stamp recipients. OTDA's use of this information shall be limited to the purpose of identifying EPIC participants who are also

Food Stamp recipients and are eligible for additional Food Stamp benefits by virtue of their enrollment in the Medicare prescription drug discount card program.

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 June 17, 2006.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained sections 244(5)(a), 245(2) and 246(4) of the Elder Law.

Legislative Objectives:

Section 244(5)(a) of the Elder Law requires the Elderly Pharmaceutical Insurance Coverage (EPIC) panel, consisting of the Commissioners of the Departments of Education and Health, the Superintendent of Insurance, and the Directors of the State Office for the Aging and the Division of the Budget to promulgate regulations pursuant to Section 246(4) of the Elder Law, subject to the approval of the Director of the Budget. The Director of the Budget approved the promulgation of these regulations. Section 245(2) of the Elder Law requires the Executive Director of EPIC to appoint staff and request the assistance of any department or other agency of the State in performing such functions as may be necessary to carry out the provisions of the EPIC law and to perform such other functions as may be specifically required by the law, assigned by the EPIC panel, or necessary to ensure the efficient operation of the program. Section 246(4) of the Elder Law defines the scope of EPIC regulations as including procedures to ensure that all information obtained on persons applying for EPIC benefits remains confidential and is not disclosed to persons or agencies other than those entitled to such information because such disclosure is necessary for the proper administration of the EPIC program.

Needs and Benefits:

The EPIC program provides coverage of certain drugs for residents of the State of New York who are at least 65 years of age, who have incomes within the limitations prescribed by law, who are not in receipt of Medical Assistance and who do not have equivalent or better drug coverage from any other public or private third party payment source or insurance plan. The program provides an essential benefit for elderly New York residents who need financial assistance in order to obtain medications but who do not have other insurance benefits and are not in receipt of Medical Assistance coverage of their drug expenses. Chapter 49 of the Laws of 2004 authorizes the EPIC program to apply for transitional assistance under the Medicare prescription drug discount card program with a specific drug discount card under Title XVIII of the federal Social Security Act. EPIC automatically enrolled eligible participants in the Medicare prescription drug discount card program.

Section 1860D-31(g)(6) of the Social Security Act, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), 42 USC 1395w-141(g)(6), states that the availability of negotiated prices or transitional assistance received through the Medicare prescription drug card "shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program." The Secretary of the United States Department of Agriculture, through its Northeast Regional office, has interpreted this statute as requiring that the discounts and subsidy a household receives through the Medicare prescription drug discount card be treated as standard medical expenses to be used in determining the household's medical expenses deduction for Food Stamp eligibility purposes.

EPIC seeks to assist its participants who are enrolled in the Medicare prescription drug discount program who are applying for or in receipt of Food Stamp benefits to receive the appropriate amount of Food Stamp benefits. Providing information to the Office of Temporary and Disability Assistance (OTDA) about its participants who are also enrolled in the Medicare Prescription Drug card program will assist these participants to receive an enhanced medical deduction in the calculation of Food Stamp benefits. Improved health outcomes for these participants as a result of increased Food Stamp benefits and the resultant potential for decreased prescription drug needs for these participants has a direct impact on the EPIC program and justifies the sharing of this information with OTDA.

Costs:

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

There are no costs to regulated entities as a result of this proposed regulation which requires EPIC to share data with OTDA.

Costs to State and Local Governments:

There are no costs to State and local governments as a result of this proposed regulation.

Costs to the Department of Health:

The Department of Health will incur minimal costs in producing and transmitting the data required by this proposed regulation.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates on local governments.

Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment.

Duplication:

The proposed regulatory amendment does not duplicate any existing State or federal requirements.

Alternatives:

The alternative considered to the proposed regulatory amendment was to obtain individual consents for release of information from all EPIC participants who were enrolled in the Medicare prescription drug card program. The length of time required to obtain this consent would have meant that many elderly participants would lose the medical deduction to which they are entitled for the current year. Release of the information pursuant to regulation is a permissible release of protected health information under regulations implementing the Health Insurance Portability and Accountability Act (HIPAA) pursuant to 45 CFR 164.512(k)(6)(i).

Federal Standards:

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

Compliance Schedule:

The EPIC program will transfer data as required by this regulation as of the effective date of the regulation's filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The proposed amendment would not impose any adverse impact on businesses, either large or small, nor will the proposal impose any new reporting, record keeping or other compliance requirements on a business.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would require the EPIC program to share data concerning EPIC participants enrolled in the Medicare prescription drug program with OTDA in order for those participants to receive appropriate Food Stamp benefits. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, record keeping or any other new compliance requirements on rural or non-rural areas.

Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to assist EPIC participants enrolled in the Medicare prescription drug program to receive in a timely manner medical deductions, to which they are entitled, for Food Stamp eligibility purposes.

EMERGENCY RULE MAKING

Cytotechnologists Work Standard

I.D. No. HLT-14-06-00004-E
Filing No. 330
Filing date: March 20, 2006
Effective date: March 20, 2006

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

Action taken: Amendment of section 58-1.12(b)(7) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 576-a

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: New York Public Health Law Section 576-a establishes work standards for cytotechnologists who examine cytology slides at clinical laboratories. After initial enactment of Section 576-a, the Department adopted the first regulations in

the United States establishing cytotechnologist workload limits, a registration process for cytotechnologists, quality standards for cytology slides, as well as operational standards for clinical laboratories performing cytopathology testing. Since that time, the Department has worked closely with 285 clinical laboratories holding permits in the category of cytology (and which employ approximately 1,100 registered cytotechnologists full-time and part-time). The Department has gained significant experience in applying workload standards at these clinical laboratories.

Public Health Law Section 576-a also authorizes the Department to promulgate regulations to increase the maximum number of cytology slides that may be examined in a workday by cytotechnologists who use cytology slide examination or preparation technologies approved by the federal Food and Drug Administration (FDA). The Department has become aware of recent advances in cytology slide preparation and examination technology, which, according to recent studies conducted with the involvement of device manufacturers, improve detection of serious diseases (i.e., cervical cancers). These new technologies also vastly increase the rate at which cytotechnologists can effectively examine slides. The Department has examined claims made by developers of these new technologies and has considered the potential impact that they could have on public health and welfare.

The vast majority of New York permitted clinical laboratories are not acquiring and using these costly new slide examination technologies. Use of these technologies by cytotechnologists at workload levels currently authorized by New York law is not cost effective. Increased workload standards are essential to ensure that clinical laboratories can afford, and immediately acquire and use these important, potentially life saving technologies. Therefore, the Department must immediately authorize, pursuant to this proposed emergency rulemaking, clinical laboratories to increase the workload limits for its cytotechnologists who use this new technology. This proposed rule making allows needed flexibility in increasing workload limits for cytotechnologists using FDA approved slide preparation and/or examination devices, as soon as they become commercially available for use by clinical laboratories.

The Department is committed to ensuring that New York residents and laboratories promptly benefit from new technologies with potential to improve gynecological cytology test methods without adding significantly to health care costs. This proposed rule making, once adopted, would promote use of new technologies that hold promise for more accurate, efficient and effective cervical cancer diagnosis, without compromising accuracy and reliability.

For the foregoing reasons, the Department finds that immediate adoption of this rule is necessary to preserve the public health, safety and general welfare, and that compliance with State Administrative Procedure Act (SAPA) Section 202(1) for this rule making would be contrary to the public interest and welfare. The alternative – to promulgate this proposed rulemaking pursuant to SAPA section 202(1) would unreasonably delay and hinder the Department's ability encourage appropriate use of new, and perhaps better, technology. To avoid unnecessary and potentially detrimental delay in the Department's implementation of appropriate work standards for cytotechnologists using new technologies for cervical cancer detection and diagnosis, the amendment to 10 NYCRR Section 58-1.12(b) is hereby proposed for adoption by emergency promulgation.

Subject: Cytotechnologists work standard.

Purpose: To provide flexability to the department in establishing work standards that consider new technologies for pap smear screening.

Text of emergency rule: Paragraph (7) of subdivision (b) of Section 58-1.12 is amended to read as follows:

(7) Exceptions. (i) Each laboratory [must] *shall* evaluate the performance of each cytotechnologist *in its employ*, and establish an appropriate examination volume limitation based on *the cytotechnologist's* experience, documented accuracy[,] and performance in proficiency testing, or [for] *on* other reasons, including false-negative *or false-positive interpretations* [reports]. Under no circumstances [should] *shall* this volume be exceeded, even if it is [less] *lower* than the maximum work standard.

(ii) A cytotechnologist may exceed the work standard by [10] *twenty (20)* percent, with the written approval of the department. The laboratory director may request such approval based on each cytotechnologist's experience, documented accuracy, including false-negative or *false*-positive [reports] *interpretations*, and *a* performance *score* in proficiency testing of not more than two *(2)* errors. Documentation of [this] *department* approval [must] *shall* be available in the laboratory, and may be revoked by the department with prior notice to the laboratory, based on a cytotechnologist's performance in proficiency testing or other evidence that the cytotechnologist's accuracy is [less] *other* than acceptable. The laboratory director [must] *shall* monitor the performance of each cytotechnologist and advise the department [when the] *whenever the* approval is to be revoked based on on-the-job performance.

(iii) Cytotechnologists who qualify as supervisors under section 58-1.4 of this Subpart may re-examine up to [20] *twenty (20)* slides per day [separate from] *in addition to* the workload standard, *provided the combined total number of slides does not exceed one-hundred (100)*, as part of the [quality control-] quality assurance program of the laboratory, with the prior approval of the department, based on documented accuracy, including [false negative or positive reports] *false-negative and false-positive interpretations*, and performance in proficiency testing. Such approval may be revoked, with prior notice to the laboratory, based on proficiency testing performance or other evidence that the cytotechnologist's accuracy is [less] *other* than acceptable. Records [must] *shall* be maintained to document the *examination* volume and hours worked *by each cytotechnologist.*

(iv) The department may increase the cytotechnologist work standard beyond the level already authorized elsewhere in this section for cytotechnologists using a federal Food and Drug Administration (FDA)-approved device in the preparation or examination of cytology slides:

(a) in determining whether to increase the cytotechnologist work standard with respect to a particular device, the department shall consider the following: the FDA's approved use of the device; studies of the accuracy, reliability and appropriate use of the device; input from clinical laboratories using the device; recommendations of experts in the field of cytology and/or cytotechnology; and other relevant information as appropriate;

(b)(1) the department may require a clinical laboratory wishing to exceed the cytotechnologist work standard set forth elsewhere in this section to request in writing the department's approval. The department may also require the applicant laboratory to provide, in a form acceptable to the department, some or all of the following information regarding the device in use at the laboratory: the device manufacturer's recommendations, if any, regarding the quantity (i.e., slide volume), speed or manner of slide examination, and the basis for such recommendations; documentation of training for each cytotechnologist using the device; each cytotechnologist's experience using the device, including false-negative and false-positive interpretations, workload, and number of hours spent examining slides; each cytotechnologist's performance on proficiency testing; as well as any other information as determined appropriate by the department to assess device capacity and user capability; and

(2) the department shall provide written notice of the authorized work standard established pursuant to this subparagraph. The department may set a work standard in writing that applies to one or more cytotechnologists.

(c) laboratories shall maintain documentation of approval pursuant to this subparagraph for a minimum of two (2) years after use of the device is discontinued;

(d) if the department determines that a cytotechnologist work standard authorized pursuant to this subparagraph increases the rate of errors or compromises the reliability of results, the department shall adjust the standard as it deems appropriate and shall notify the affected clinical laboratories in writing of such change. Clinical laboratories that find the adjustment unacceptable may request only in writing that the department reconsider its determination; and

(e) notwithstanding the foregoing, any cytotechnologist work standard authorized by the department pursuant to this subparagraph shall be at least as stringent as the federal standards promulgated under the federal clinical laboratory improvement amendments of nineteen hundred and eighty-eight (1988) and/or other applicable law(s).

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 June 17, 2006.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law Section 576-a was enacted as Chapter 539 of the Laws of 1988. The statute established standards for cytotechnologists' workload, a registration requirement for individuals engaged in initial examination of slides, and quality standards for preparing and examining

the slides. Regulations adopted as 10 N.Y.C.R.R. Sections 58-1.12 and 58-1.13 pursuant to that legislation have been in effect since 1989. Public Health Law, Article 5, Title V was amended by Chapter 436 of the Laws of 1993. Section 576-a of that legislation modified the state's cytotechnologist work standard, (i.e., a numeric limitation on the cytology slides, including Pap smears, that a cytotechnologist may examine during a work day) to effect parity with federal standards in the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88). Section 576-a also includes a provision authorizing the Department to increase the cytotechnologist work standard in response to technological advances in instrumentation and devices for assisted examination of cytology slides.

Legislative Objectives:

In 1988, media reports made the public aware of problems associated with inordinate cytotechnologist workloads in clinical laboratories examining gynecologic slides (Pap smears) for evidence of cervical cancer. At that time, New York was the only state with a comprehensive program of oversight of these laboratories, including review of cytotechnologist qualifications, and on-site assessment of laboratory operations and proficiency testing. While excessive testing volumes had not been reported in New York State, the Legislature determined that additional steps were required to protect women residents of the State, and Public Health Law Section 576-a was enacted as Chapter 539 of the Laws of 1988. The legislation established a work standard for initial examination of cytologic specimens (i.e., a numeric limitation on the cytology slides, including Pap smears, that a cytotechnologist or pathologist may examine during a work day), a registration requirement for individuals engaged in slide examination, and quality standards for the slides. Chapter 436 of the Laws of 1993 modified the State's cytotechnologist work standard for parity with federal standards in CLIA '88; specifically, the Legislature enacted an increase of 20 percent above the limit of 80 gynecologic slides, or 96 slides per work day, from the previous limit of 10 percent above the 80-slide limit, or 88 slides.

Needs and Benefits:

After initial enactment of Section 576-a, the Department adopted the first regulations in the country establishing cytotechnologist workload standards, a registration process for cytotechnologists, requirements for the quality of slides, as well as general standards for operation of cytopathology laboratories. The Department has not revised these regulations since their promulgation in 1990. During that time, the Department has gained significant experience in applying workload standards for 285 clinical laboratories with a permit in the cytology testing category that employ more than 1,200 registered cytotechnologists full-time and part-time.

The Food and Drug Administration (FDA) has approved for marketing a cytology slide screening device that increases the number of slides a cytotechnologist can accurately and reliably examine per day. The Department needs to consider, on a case by case basis and in the most expeditious manner possible, establishment of a cytotechnologist workload limit other than that set earlier to promote accurate and reliable slide examination by the conventional (manual) method. The Department must now ensure that New York residents and laboratories benefit from new technologies with the potential to improve gynecological cytology test methods without adding significantly to health care costs. To this end, it is proposed to amend existing regulations, and allow needed flexibility for increasing the workload limit for cytotechnologists using automated slide preparation and/or examination methods as new methods are approved by the FDA and become available for use by clinical laboratories.

Technological advances have permitted automation to make inroads in the discipline of cytology, a field of laboratory medicine that historically has relied solely on the joint expertise of cytotechnologists and pathologists for accurate and reliable diagnosis of cancers and other abnormalities detectable at the cellular level. Slides for cervical cancer screening, once prepared in the physician's office, can now be produced in the laboratory as a clean preparation of target cells, free of any obscuring blood or inflammation debris, deposited on a glass slide in a single layer, well-separated and with little or no overlap of cells to interfere with a cytotechnologist's ability to locate and identify aberrant cell types indicative of cervical cancer and other abnormalities. The FDA's approval of several automated systems for cytology slide preparation (i.e., fix-and-stain material on microscopic slides) as in-vitro diagnostic devices, and overwhelming acceptance of the devices by the clinical laboratory industry and women's health practitioners and advocates have opened the door to further advances in the science of cytology, specifically, development of computerized algorithms for detection of cells not meeting criteria as normal. The purported advantage of this new technology is that it allows cytotechnologists to focus on accurate interpretation, resulting not only in increased productivity but, more importantly, the potential to improve diagnostic performance.

During conventional (manual) slide examination, the cytotechnologist must use locator skills to detect cells that are abnormal according to pre-established criteria for nuclear density and other factors, such as the relative size of the cell nucleus compared to the rest of the cell. Several device manufacturers have programmed a computer with an algorithm similar to that used by cytotechnologists to identify abnormal cells, thereby allowing a computer to take over the tiresome task of scanning numerous slides to look for the usually rare abnormal cell. The algorithms are sophisticated, but, as yet, are not capable of definitively classifying cells as pre-cancerous or indicative of malignancy. Devices that locate and mark suspect cells, guiding the cytotechnologist to them for interpretation, have already received FDA approval. Another device approved by the FDA classifies as within normal limits slides with no to very low probability of an abnormal finding, allowing up to 25 percent of gynecologic specimens to be reported as within normal limits without human review.

New slide preparation and screening technologies are changing the way laboratories diagnose cervical cancer and other malignant diseases detectable at the cellular level. Clinical trial data and preliminary data from laboratories using location guidance devices for detection of cancerous cells may increase by 50 percent or more the number of slides a cytotechnologist may reliably examine during a given time period. More importantly, evidence is emerging that this technology can increase the probability that no truly abnormal cell, however rare, would be missed due to human factors, such as fatigue and momentary lapses in vigilance, which have been widely recognized as capable of compromising result reliability. Manufacturers' claims that this technology can better locate cells typical of low- and high-grade squamous intraepithelial lesions (LSIL and HSIL, respectively), the most clinically important findings other than squamous cell carcinoma, are of particular interest to the Department in fulfilling its mandate to promote and protect the public health, because such claims, if proved correct, signal the potential to reduce morbidity in women who are routinely screened for cervical cancer.

Moreover, the Department has been informed that laboratories are reluctant to purchase automated devices for cytology examinations if the instrumentation cannot be utilized to near-full potential or in an otherwise cost-effective manner. This proposed rule making to increase the workload limit would better enable laboratories to acquire new technologies that hold promise for more efficient and effective cervical cancer diagnosis without compromising safety, accuracy and reliability.

In addition to allowing flexibility to change cytology workload standards without repetitive rule making, the proposed regulation would also provide affected parties with Department criteria for setting such standards, and make clear that, at the Department's discretion, laboratories may be required to request and be granted device-specific approval to examine Pap smears applying a workload standard other than that in place for conventional (manual) examination methods. Moreover, the proposed amendment establishes the Department's authority to make an immediate adjustment to any work standard pursuant to the rule upon a determination that error rates have increased or the reliability of results has been compromised following approval of an increased work standard.

The proposed amendment would also make the regulation consistent with its authorizing statute as modified by Chapter 436 of the Laws of 1993, which provided for an increase in the work standard of 20 percent above the limit of 80 gynecologic slides, or 96 slides per work day. Existing regulation must be changed, as it set the previous restriction as 10 percent above the 80-slide limit, or 88 slides, and, as such, does not accurately reflect the Department's practice of authorizing up to 96 slides to be examined per work day.

Several housekeeping modifications were also proposed to facilitate compliance. The Department has received numerous inquiries related to the allowance for cytotechnologists' qualified supervisors to examine up to 20 slides beyond the work standard, and finds it necessary to clarify that the combined total number of slides may not exceed 100. In three instances, the term "reports" has been changed to "interpretations" to make clear that the Department considers all errors as relevant to approval (i.e., false-negatives and false-positives), including errors in the cytotechnologist's interpretation, regardless whether corrected during re-examination or slide review by a pathologist prior to reporting - and not only erroneous results (typically false-negatives) reported to medical practitioners and discovered through retrospective review following a finding of HSIL or an equivalent, or malignancy.

Costs:

Costs to private regulated parties:

Since the proposed rule making does not require purchase or use of any devices for preparation and/or examination of cytology slides, this proposed rulemaking does not require private affect parties to incur costs. To the contrary, several clinical laboratories operating in New York State and using or considering use of new technology for examination of slides, have conveyed to the Department their desire to have cytotechnologist work standards specific to such devices in place as soon as practicable so that specimen throughput may be increased, which, in turn, would allow for increased reimbursement for cytopathology services and potentially increased profits.

Costs for implementation and administration of the rule:

Costs to State government:

State government is not expected to incur costs attributable to this proposed amendment.

Costs to the department:

The Department is not expected to incur costs attributable to this proposed amendment. A system is already in place for review of laboratories' requests for qualified cytotechnologists to exceed the existing workload limit by 20 percent, and it is expected that the few additional requests submitted as a direct result of this amendment would be able to be processed under the same system and using the same personnel.

Costs to local government:

Local government-operated clinical laboratories would have the opportunity to increase reimbursement and profits by increasing throughput of cytology examination specimens under the provisions of this proposal, as described for private regulated parties.

Paperwork:

The Department may experience a minimal increase in paperwork from the intermittent need to communicate new standards to affected laboratories in writing. The Department already has an established system for review of laboratories' requests for qualified cytotechnologists to exceed the workload limit by 20 percent, and expects few additional requests as a direct result of this amendment.

Local Government Mandates:

The proposed regulation imposes no new mandates on any county, city, town or village government; or school, fire or other special district.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternative Approaches:

In drafting this proposed rule, the Department has considered the diversity of technological approaches to automating Pap smear examinations already in place and those known to be in development. The only consistent feature of these devices appears to be generalized use of a computerized algorithm to simulate human decision-making. The Department believes it is not feasible to arrive at a single, universally applicable work standard that could be set forth in regulation for all existing and future Pap examination technologies. The alternative — promulgation of revised regulations to establish workload limits each time a device is granted FDA approval — would be unacceptably burdensome to the Department, and would possibly delay the use of technology in New York that could more effectively identify cancerous and precancerous cells.

Federal Standards:

Federal workload standards for cytotechnologists performing conventional (manual) examination of cytology slides have been promulgated under CLIA '88. Both the FDA and U.S. Centers for Medicaid and Medicare Services (CMS) have declined to set in federal regulation standards specific to any current commercial automated slide examination device. This proposed amendment contains a provision that any cytotechnologist work standard authorized by the Department pursuant to the amendment must be at least as stringent as the respective federal standards.

Compliance Schedule:

The Department has been engaged in ongoing communication with several device manufacturers, and has responded to many letters from women's health organizations and laboratories stating its intent to ensure that safe, efficient and effective tests for cervical cancer are available to New York's women. These interested parties include: National Association of Nurse Practitioners in Women's Health; National Black Women's Health Imperative; Center for Women Policy Studies; National Partnership for Women and Families; National Family Planning & Reproductive Health Association; Memorial Hospital for Cancer & Allied Diseases, Department of Pathology; Memorial Sloan-Kettering Cancer Center; Albany Cytopath Labs, Inc.; Centrex Clinical Laboratories, Inc.; ACM Medical Laboratory, Inc.; ClearPath Diagnostics; University of Rochester-Strong Memorial Hospital Clinical Laboratories; and Sunrise Medical Laboratories, Inc.

The Department is not aware of any opposition to increasing workload limits for cytotechnologists using automated devices, and there appears to be no potential for organized opposition. Regulated parties should be able to comply with these amendments as of their effective date, upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This proposed amendment to allow needed flexibility to increase workload limits for cytotechnologists using automated slide preparation and/or examination methods would affect clinical laboratories operated as small businesses or by local government, provided such facilities hold or are seeking a permit in the category of cytology, and opt to use U.S. Food and Drug Administration (FDA)-approved devices for automated slide preparation and/or examination. Of the 253 clinical laboratories holding a Department permit in cytology, 44 have declared themselves to be small businesses in permit applications submitted to the Department, and local governments, including the City of New York, operate seven such laboratories.

Compliance Requirements:

The Department expects that affected clinical laboratories operated as small businesses or by local governments would experience minimal impact from this proposal's adoption. Most of these facilities engaged in the examination of cytologic material, including Pap smears, do not process the high number or type of specimens that would make purchase and use of an automated device for slide examination a financially prudent decision. However, any laboratory that has purchased automated devices for preparation and/or examination of cytology slides would benefit from the flexibility this amendment would afford.

The Department has a system already established for review of laboratories' requests for qualified cytotechnologists to exceed the workload limit by 20 percent, and anticipates few, if any, additional requests as a direct result of this amendment from laboratories operated as small businesses or by a local government. Therefore, the Department expects that this small segment of the affected regulated parties would be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated.

Compliance Costs:

This rule making does not impose any additional costs on clinical laboratories operating as small businesses or by a local government since it does not require purchase or use of automated devices for preparation and/or examination of cytology slides. To the contrary, several clinical laboratories operating in New York State, and using or considering use of such devices have conveyed to the Department their desire to have cytotechnologist work standards specific to such devices in place as soon as practicable so that they may increase specimen throughput, in turn allowing for increased reimbursement for cytopathology services and potentially increased profits. This potential benefit may also apply to any small business or local government laboratory operator opting to use automated devices for cytologic material examination.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses or local governments that operate clinical laboratories affected by this amendment. This proposal does not impose a requirement for purchase or use of new technologies, i.e., automated devices for cytologic material examination.

Minimizing Adverse Impact:

These amendments will not have an adverse impact on the ability of regulated parties that are small businesses or operated by local governments to comply with Department requirements for cytotechnologist work standards.

Small Business and Local Government Participation:

This amendment is being proposed as an emergency rule. Notifying small businesses or local government affected parties about its provisions and requirements in accordance with the State Administrative Procedures Act (SAPA) process would incur unnecessary and potentially detrimental delay in establishing new and expanded work standards for cytotechnologists using automated devices for slide preparation and/or examination. All laboratories holding a permit in the category of cytology, including those operated as small businesses or by local government, are being notified of the provisions of this amendment, and, following its adoption, will be invited to provide comments and otherwise participate in the development of standards for workload limits.

Compliance Schedule:

The director of the Department's Wadsworth Center and his staff, including the director for Regulatory Affairs, held discussions with representatives of the Governor's Office, the Commissioner of Health's Office, firms that manufacture and/or distribute automated devices for cytological examinations, and regulated parties (i.e., clinical laboratories) currently using such devices. Various Department groups, including the Office of Medicaid Management and the Office of Managed Care, have been working together in an ongoing effort to ensure adequate reimbursement for cytological examinations, including Pap smears, using FDA-approved cytological screening devices.

This amendment does not impose any new or more stringent requirements on regulated clinical laboratories; rather, it affords flexibility to laboratories that handle medium- to high-volumes of cytology specimens, and wish to use automated devices to examine increased numbers of slides without compromising testing accuracy and reliability. Strong support for the amendment is expected from clinical laboratories holding or seeking a permit in the category of cytology, and patient advocacy organizations, especially those focused on women's health; indications of support have been expressed by the medical community at large, which has just begun to become educated in the availability and reliability of the new technologies for cytological examination. The Department will continue to work with interested and affected parties in carrying out this amendment's provisions, and will notify laboratories in an unequivocal and timely manner of any changes affecting the cytotechnologists' workload standard or exceptions to that standard following adoption of this proposal.

The Department is not aware of any opposition to increasing workload limits for cytotechnologists using new technologies, and no potential of organized opposition is apparent. Consequently, regulated parties, including those operated as a small business or by local government, should be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population under 200,000 and, for counties with a population larger than 200,000, rural areas are defined as towns with population densities of 150 or fewer persons per square mile. Forty-four counties in New York State with a population under 200,000 are classified as rural, and nine other counties include certain townships with population densities characteristic of rural areas. Of the 253 clinical laboratories holding a permit in the category of cytology, 88, many of which are hospital-based, are located in rural areas.

Compliance Requirements:

The Department expects that affected clinical laboratories located in and serving rural areas will experience minimal impact by anticipated adoption of this proposal. With the possible exception of one or two large rural hospital pathology departments, most laboratories operated in rural areas and engaged in examination of cytologic material, including Pap smears, do not process the high volume and type of cytologic specimens that would make purchase and use of an automated device for slide examination a financially prudent decision. However, any laboratory that has purchased such automated devices will be able to take advantage of the flexibility this amendment would afford. Therefore, the Department anticipates that regulated parties in rural areas will be able to comply with this amendment as of its effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated.

Compliance Costs:

Clinical laboratories operating in rural areas are not required to incur additional costs as a result of this proposed amendment, since this rule making does not require purchase or use of automated devices for preparation and/or examination of cytology slides. To the contrary, several clinical laboratories operating in New York State and using or considering use of devices for the examination of slides, have conveyed to the Department their desire to have cytotechnologist work standards specific to such devices in place as soon as practicable so that they may increase specimen throughput, in turn allowing increased reimbursement for cytopathology services and potentially increased profits. This benefit may also apply to laboratories located in rural areas, especially larger hospital-based pathology laboratories opting to use automated devices for cytologic material examination.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to facilities located in rural areas. This proposal does not impose a requirement for purchase or use of new technologies, i.e., devices for cytologic material examination.

Minimizing Adverse Impact:

These amendments will not have an adverse impact on the ability of regulated parties in rural areas to comply with Department requirements for cytotechnologist work standards.

Participation by Parties in Rural Areas:

This amendment is being proposed as an emergency rule. Notifying affected parties in rural areas about its provisions and requirements in accordance with the State Administrative Procedures Act (SAPA) process would cause unnecessary and potentially detrimental delay in establishing new and expanded work standards for cytotechnologists using automated devices for slide preparation and/or examination. All laboratories holding a permit in the category of cytology, including those located in rural areas, are being notified of this amendment's provisions, and, following its adoption, will be invited to provide comments and otherwise participate in development of standards for workload limits.

Compliance Schedule:

The Department has been engaged in ongoing communication with several device manufacturers, and has responded to many letters from women's health organizations and laboratories stating its intent to ensure that safe, effective, and efficient tests for cervical cancer are available to New York's women. These interested parties include: National Association of Nurse Practitioners in Women's Health; National Black Women's Health Imperative; Center for Women Policy Studies; National Partnership for Women and Families; National Family Planning & Reproductive Health Association; Memorial Hospital for Cancer & Allied Diseases, Department of Pathology; Memorial Sloan-Kettering Cancer Center; Albany Cytopath Labs, Inc.; Centrex Clinical Laboratories, Inc.; ACM Medical Laboratory, Inc.; ClearPath Diagnostics; University of Rochester–Strong Memorial Hospital Clinical Laboratories; and Sunrise Medical Laboratories, Inc.

The Department is not aware of any opposition to increasing workload limits for cytotechnologists using new technology, and no potential for organized opposition is apparent. Regulated parties, including those operating in rural areas, should be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Job Impact Statement

Nature of Impact:

This proposed rule making would have an impact on the productivity of cytotechnologists who use the new cytology slide preparation and examination technology. The proposed rule would authorize cytotechnologists using such technologies to increase, with Department approval, the number of slides that can be effectively reviewed in a given time period.

In addition, the proposed rule making would make it more financially attractive for clinical laboratories to acquire new cytology slide preparation and examination technology. Therefore, more cytotechnologists will use such technology. Experienced cytotechnologists will have to receive on the job training to use some of the new technologies, while persons studying to become cytotechnologists will learn to use the new technology as part of their course work. However, given workforce shortage of cytotechnologists nationally and in New York, the Department does not expect that the use of the new technologies will have an adverse impact on employment opportunities for cytotechnologists.

Category and Numbers Affected:

Cytotechnologists working in New York licensed clinical laboratories may be affected by this rule. There are approximately 1,100 registered cytotechnologists working (on a part time or full time basis) in New York licensed clinical laboratories. However, many of these cytotechnologists work in clinical laboratories that are not located in New York State. It is unclear how many cytotechnologists will use new technologies pursuant to this proposed rulemaking to review more slides than is currently permissible.

Regions of Impact:

Cytotechnologists work in laboratories throughout New York State. However, as described below, the Department of Health does not believe that this proposed rule making would have a significant adverse impact on employment opportunities for cytotechnologists.

Likelihood of Adverse Impact:

The Department expects that the proposed rule making, if implemented, will increase cytotechnologists' productivity, and it will not adversely affect job opportunities for cytotechnologists. There is currently a significant workforce shortage of cytotechnologists in the United States, including New York. This workforce shortage is expected to worsen in coming years as large numbers of cytotechnologists retire and relatively few are being trained to replace them. The federal Clinical Laboratory Advisory Committee, the US Department of Labor and several health care

professional organizations have acknowledged this workforce shortage problem. Some clinical laboratories have urged the Department to promulgate this regulation to alleviate cytotechnologist-staffing shortages.

EMERGENCY RULE MAKING

Opioid Overdose Prevention Programs

I.D. No. HLT-14-06-00021-E
Filing No. 334
Filing date: March 22, 2006
Effective date: April 1, 2006

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

Action taken: Amendment of section 80.138 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3309(1)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this regulation is necessary for the preservation of the public health, safety and general welfare because any delay with the implementation of opioid overdose prevention programs could result in additional deaths that could have been prevented through proper training to be offered through these programs. The legislation recognized the immediacy of the need for opioid overdose prevention programs by making the effective date April 1, 2006. Since compliance with standard rule making procedures would make implementation by the effective date of this law impossible, compliance with those requirements is contrary to the public interest.

Subject: Opioid overdose prevention programs.

Purpose: To implement chapter 413 of the Laws of 2005 which establishes standards for opioid overdose prevention programs to prevent fatalities due to overdose.

Text of emergency rule: The Table of Contents for Part 80 of Title 10 NYCRR is amended to read as follows:

PART 80
RULES AND REGULATIONS ON CONTROLLED SUBSTANCES
(Statutory authority: Public Health Law, Sections 338, 3300, 3305, 3307, 3308, *3309*, 3381, 3701(1), (6), art. 33)

Sec.
GENERAL PROVISIONS
* * *
80.138. Opioid Overdose Prevention Programs
A new Section 80.138 is added as follows:

Section 80.138. Opioid Overdose Prevention Programs.

(a) Definitions.

(1) "Registered provider" for the purposes of this section shall mean any of the following that have registered with the Department pursuant to subsection (b):

(i) a health care facility licensed under the public health law;

(ii) a physician, physician assistant, or nurse practitioner who is authorized to prescribe the use of an opioid antagonist;

(iii) a drug treatment program licensed under the mental hygiene law;

(iv) a not-for-profit community-based organization incorporated under the not-for-profit corporation law and having the services of a Clinical Director;

(v) a local health department as defined by the public health law.

(2) "Opioid Overdose Prevention Program" means a program the purpose of which is to train individuals to prevent a fatal opioid overdose in accordance with these regulations.

(3) "Program Director" means an individual who is identified to manage and have overall responsibility for the Opioid Overdose Prevention Program.

(4) "Clinical Director" means a physician, physician assistant or nurse practitioner who provides oversight of the clinical aspects of the Opioid Overdose Prevention Program. This oversight includes serving as a clinical advisor and liaison concerning medical issues related to the Opioid Overdose Prevention Program, providing consultation on training and reviewing reports of all administrations of an opioid antagonist.

(5) "Opioid" means an opiate as defined in section 3302 of the public health law.

(6) "Opioid antagonist" means an FDA-approved drug that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid in the body. The opioid antagonist is limited to naloxone or other medications approved by the Department for this purpose.

(7) "Opioid Overdose Prevention Training Program" means a training program offered by an authorized Opioid Overdose Prevention Program which instructs a person to prevent opioid overdoses, including by providing resuscitation, contacting emergency medical services and administering an opioid antagonist.

(8) "Person" means an individual other than a licensed health care professional, law enforcement personnel, and first responders otherwise permitted by law to administer an opioid antagonist.

(9) "Trained Overdose Responder" means a person who has successfully completed an authorized Opioid Overdose Prevention Training Program offered by an authorized Opioid Overdose Prevention Program within the past two years and has been authorized by a Registered Provider to possess the opioid antagonist.

(b) Registration.

(1) Authorized providers may operate an Opioid Overdose Prevention Program if they obtain a certificate of approval from the Department and otherwise comply with the provisions of this section.

(2) Authorized providers in good standing may apply to the Department to operate an Opioid Overdose Prevention Program on forms prescribed by the Department which must include, at a minimum, the following information:

(i) the provider name, address, operating certificate or license number where appropriate, telephone number, fax number, e-mail address, Program Director and Clinical Director;

(ii) the name, license type and license number of the affiliated prescriber(s);

(iii) the name and location of the site(s) at which the Opioid Overdose Prevention Program will be conducted;

(iv) a description of the targeted population to be served and recruitment strategies to be employed by the Opioid Overdose Prevention Program; and

(v) the addresses, telephone numbers, fax numbers, e-mail addresses and signatures of the Program Director and Clinical Director.

(c) Program Operation.

(1) Each Opioid Overdose Prevention Program shall have a Program Director who is responsible for managing the Opioid Overdose Prevention Program and shall, at a minimum:

(i) identify a physician, physician assistant or nurse practitioner to oversee the clinical aspects of the Opioid Overdose Prevention Program;

(ii) establish the content of the training program, which meets the approval of the Department;

(iii) identify and train other program staff;

(iv) select and identify persons as Trained Overdose Responders;

(v) issue certificates of completion to Trained Overdose Responders who have completed the prescribed program;

(vi) maintain Opioid Overdose Prevention Program records including Trained Overdose Responder training records, Opioid Overdose Prevention Program usage records and inventories of Opioid Overdose Prevention Program supplies and materials;

(vii) ensure that all Trained Overdose Responders successfully complete all components of Opioid Overdose Prevention Training Program;

(viii) provide liaison with local emergency medical services and emergency dispatch agencies, where appropriate;

(ix) assist the Clinical Director with review of reports of all overdose responses, particularly those including opioid antagonist administration; and

(x) report all administrations of an opioid antagonist on forms prescribed by the Department.

(2) Each Opioid Overdose Prevention Program shall have a Clinical Director who is responsible for clinical oversight and liaison concerning medical issues related to the Opioid Overdose Prevention Program and, at a minimum, shall:

(i) provide clinical consultation, expertise, and oversight;

(ii) serve as a clinical advisor and liaison concerning medical issues related to the Opioid Overdose Prevention Program;

(iii) provide consultation to ensure that all Trained Overdose Responders are properly trained;

(iv) adapt and approve training program content and protocols; and

(v) review reports of all administrations of an opioid antagonist.

(3) The Trained Overdose Responders shall:

(i) complete an initial Opioid Overdose Prevention Training Program;

(ii) complete a refresher Opioid Overdose Prevention Training program at least every two (2) years;

(iii) contact the emergency medical system during any response to a victim of suspected drug overdose and advise if an opioid antagonist is being used;

(iv) comply with protocols for response to victims of suspected drug overdose; and

(v) report all responses to victims of suspected drug overdose to the Opioid Overdose Prevention Program Director.

(4) The opioid antagonist shall be dispensed to the Trained Overdose Responder in accordance with all applicable laws, rules and regulations.

(5) The Opioid Overdose Prevention Program will maintain and provide response supplies including: latex gloves, sharps container, mask or other barrier for use during rescue breathing, and agent to prepare skin before injection.

(6) The Opioid Overdose Prevention Program will establish and maintain a record keeping system that will include, at a minimum, the following information:

(i) list of Trained Overdose Responders, including dates of completion of training;

(ii) a log of Opioid Overdose Prevention Trainings which have been conducted;

(iii) copies of program policies and procedures;

(iv) copy of the contract/agreement with the Clinical Director, if appropriate;

(v) opioid antagonist administration usage reports and forms; and

(vi) documentation of review of administration of an opioid antagonist.

(7) The Opioid Overdose Prevention Program will establish a procedure by which any administration of Opioid Antagonist to another individual by a Trained Overdose Responder affiliated with an Opioid Overdose Prevention Program, shall be reported on forms prescribed by the Department.

(8) Approval obtained pursuant to this section shall consist of a certificate of approval provided by the Department that shall remain in effect for two years or until receipt by the authorized provider of a written notice of termination of the program from the Department, whichever shall first occur. The Department may renew a certificate of approval for a subsequent two-year period if the registered provider is in good standing with all applicable state and federal licensing agencies and such provider is found to have complied with the requirements of this section and has submitted a request for renewal.

(9) Pursuant to 3309(2) the purchase, acquisition, possession or use of an opioid antagonist by an Opioid Overdose Prevention Program or a Trained Overdose Responder in accordance with this section and the training provided by an authorized Opioid Overdose Prevention Program shall not constitute the unlawful practice of a professional or other violation under title eight of the education law or article 33 of the public health law.

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 June 19, 2006.

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

Regulatory Impact Statement

Statutory Authority:

Chapter 413 of the Laws of 2005 amended the Public Health Law to add a new Section 3309 to provide for opioid overdose prevention programs in New York State. Section 3309(1) authorizes the Commissioner of Health to establish standards for approval of opioid overdose prevention programs, including, but not limited to, standards for program directors, clinical oversight, training, recordkeeping and reporting. The effective date of Chapter 413 of the Laws of 2005 is April 1, 2006.

Legislative Objectives:

This legislation was enacted to reduce the incidence of fatal opioid overdoses by providing training to individuals to increase the likelihood that timely administration of life-saving medication will be provided on an emergency basis to individuals who experience accidental opioid drug overdoses.

Needs and Benefits:

Approximately half of all injection drug users (IDUs) experience at least one nonfatal overdose during their lifetime. According to the New York State (NYS) Office of Alcoholism and Substance Abuse Services (OASAS) estimates, there are approximately 171,500 IDUs in NYS. Overdose is a preventable cause of death in the majority of cases involving opioids. Opioids include heroin, morphine, codeine, methadone, oxycodone (Oxycontin, Percodan, Percocet), hydrocodone (Vicodin), fentanyl (Duragsic) and hydromorphone (Dilaudid). In an opioid overdose, the user becomes sedated and gradually loses the urge to breathe, leading to death from respiratory depression. Naloxone is an opioid receptor antagonist that can be used to reverse an opioid overdose within 1-2 minutes of administration. An untreated heroin overdose will result in death in 1-3 hours.

Although a comprehensive picture of the extent of opioid overdose in NYS does not yet exist, drug overdose is known to be a major cause of death among heroin users (Garfield and Drucker, 2001). Accidental fatal drug overdose continues to be a substantial cause of death. It has been one of the top ten causes of death in New York City (NYC) from 1993 to present (NYC Department of Health and Mental Hygiene, 2003). According to a study conducted by the New York Academy of Medicine, between 1990 and 1998 there were 5,506 accidental fatal overdoses in NYC involving opiates (Galea et al., 2003). These reflected 74% of all accidental overdose deaths (7,451) in NYC during that period.

NYS Department of Health (NYSDOH) hospital data show that, during 1998-2004, there were 3,408 hospital discharges reflecting admissions for which heroin-overdose was a factor. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) determined that the case rate for emergency department heroin admissions in NYC in 2002 was reported to be 123 per 100,000 population, which was more than three times the national rate of 36 per 100,000 (SAMHSA, March 2004). Between 1995 and 2002, heroin-related emergency department visits in Buffalo increased 125 percent (from 41 to 93 visits per 100,000 population with a 29 percent increase from 2001 to 2002 (from 72 visits) (SAMHSA, April 2004).

Most overdoses are not instantaneous and the majority of them are witnessed by others. Therefore, many overdose fatalities are preventable, especially if witnesses have had appropriate training and are prepared to respond in a safe and effective manner. Prevention measures include education on risk factors (such as polydrug use and recent abstinence), recognition of the overdose and an appropriate response. Response includes contacting emergency medical services (EMS) and providing resuscitation while awaiting the arrival of EMS. Resuscitation consists of rescue breathing, or if available, injectable naloxone which immediately reverses the effects of heroin overdose. Naloxone is an opioid antagonist with no abuse potential and no effect on a recipient who has not taken opioids. Provision of naloxone has been suggested for many years and is being offered in a variety of settings in jurisdictions outside of NYS. Complications of naloxone in the medical setting are rare. Naloxone is inexpensive ($1.00-$1.50) and there have been no cases in which it has developed a street value.

Opioid overdose prevention programs have proven effective in preventing unnecessary deaths abroad and elsewhere in the United States (US). In the US, opioid overdose prevention programs exist in New Mexico; Chicago, Illinois; Baltimore, Maryland; and San Francisco, California, for example, and programs are being planned elsewhere. A recently published evaluation of an opioid overdose prevention program in San Francisco showed that of the 20 heroin overdoses witnessed by trained program participants there were no deaths. (Seal et al., 2005). As of August 2005, the New Mexico Department of Health had trained and provided naloxone to a total of 1,168 individuals. There were over 191 reports of lives saved, of which 185 involved administration of naloxone. Almost all administrations of naloxone were accompanied by rescue breathing and 5 lives were saved with rescue breathing alone. (Fiuty, P., personal communication, November 3, 2005). The Chicago Recovery Alliance has reported training over 4,500 individuals, with 374 reported reversals using naloxone, as of November 3, 2005. There has been a 30% overall decline in overdose related deaths reported in Cook County, Illinois (Carlberg, S. Personal communication, November 3, 2005). The Baltimore City Health Department has reported 888 persons trained, 101 reported reversals and over 20 persons placed into drug treatment. A 17% decrease in overdose deaths

was observed from 2001 to 2002 (Rucker, M., personal communication, November 3, 2005).

The potential exists to achieve similar outcomes in NYS through the establishment of opioid overdose prevention programs. Potential providers that may register voluntarily with NYSDOH to offer such programs include health and human service providers serving IDUs (such as NYSDOH-approved syringe exchange programs and other community-based organizations, health care practitioners (specifically physicians, physician assistants and nurse practitioners), local health departments, health care facilities licensed by NYSDOH under Article 28 of the NYS Public Health Law and drug treatment programs licensed by the NYS Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to the NYS Mental Hygiene Law).

The proposed rule, which is entirely within the legislative mandate of Section 3309 of the Public Health Law, is consistent with established models for opioid overdose prevention programs elsewhere. Common features of opioid overdose prevention programs operating elsewhere that have been incorporated into the proposed rule include: a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and CPR and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

The anticipated benefits under the proposed rule are: reduced incidence of fatal opioid overdoses, increased contact of IDUs with medical personnel, greater awareness of risk factors for overdose, increased knowledge of safer injection practices and an increased number of persons trained in rescue breathing. The creation of opioid overdose prevention programs will not lead to increased drug use. Naloxone is not addictive and does not cause a "high." It has no potential for abuse or street value.

Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Local Government Mandates:

This regulation does not impose any program, service, duty, or other responsibility on any county, city, town, village, school, fire district, or other special district except to the extent that such entities choose to provide opioid overdose prevention programs and, consequently, would be subject to the same requirements as all other providers.

Paperwork:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional recordkeeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

Duplication:

The proposed regulation does not duplicate any existing state or federal law or regulation regarding opioid overdose prevention.

Alternatives:

The proposed regulation does not exceed the specific requirements of the legislation. Because offering an opioid overdose prevention program is voluntary, the regulation was designed to encourage eligible individuals and organizations to provide opioid overdose prevention services allowed under law and regulation. The registration process will be simple and the reporting and financial impact of establishing a voluntary opioid overdose prevention program will be minimal. Any other alternatives would require a more complex and more costly approach for both the NYSDOH and volunteer operators of opioid overdose prevention programs.

Federal Standards:

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

Compliance Schedule:

Each individual or organization that chooses to establish an opioid overdose prevention program must submit a registration form to the Department. Information will be distributed to eligible parties to allow implementation on April 1, 2006. Registration information will be used to develop a listing of opioid overdose prevention programs holding certificates of approval issued by the Department. Registration forms from those seeking to establish opioid overdose prevention programs will be accepted on a continuous basis, with review and renewal of certificates of approval taking place at two-year intervals.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will have no impact on small businesses unless such businesses voluntarily decide to operate an Opioid Overdose Prevention Program. The types of businesses that could be affected include hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local governments (health departments). In New York State there are 7 hospitals, 245 clinics, 1,164 drug treatment programs, an unknown number of community-based organizations and 36 county health departments that are considered small businesses.

Compliance Requirements:

Under the proposed rule, hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments that elect to establish opioid overdose prevention programs will report aggregate data on forms prescribed by the NYSDOH. Providers must have a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and CPR and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

Programs must also keep records including but not limited to documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Aside from simple reporting of certain easy-to-collect data, no new requirements are mandated.

Professional Services:

No additional professional services will be required since providers and others will be able to utilize existing staff.

Compliance Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Economic and Technological Feasibility:

Most health care facilities, health care practitioners, drug treatment programs, community-based organizations and local health departments that are eligible to offer opioid overdose prevention programs have the capacity and expertise to carry out the necessary activities. Small businesses that opt to voluntarily offer opioid overdose prevention programs will be provided with necessary forms and instructions to register and

comply with reporting requirements. In large part, these forms and instructions are being/will be developed with specific input from regulated parties and NYSDOH staff are being made available to provide instructions and technical assistance.

Minimizing Adverse Impact:

There are no alternatives to the proposed recordkeeping and reporting requirements due to the need for the NYSDOH to assure that registered providers holding certificates of approval to operate opioid overdose prevention programs conduct activities in a safe and effective manner. Reporting requirements are those minimally necessary for the Department to coordinate oversight and provide information to the Governor and the Legislature as required by Section 3309(4) of the Public Health Law.

Small Business and Local Government Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Small businesses (hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments) will have opportunities to review and comment on the proposed regulations. The NYSDOH has already begun to have conversations with providers interested in offering this service that are small businesses and local health departments and has consulted with representatives of opioid overdose prevention programs already operating in other states that are offered by small businesses and local health departments.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. There are 44 counties in NYS with a population less than 200,000. Nine counties have certain townships with population densities of 150 persons or less per square mile. The proposed rule will have no impact on hospitals, clinics, health care practitioners, drug treatment programs and local governments in these rural areas, unless such providers voluntarily decide to operate opioid overdose prevention programs.

Hospital, clinic, health care practitioner, drug treatment program, community-based organization and local health department participation in making opioid overdose prevention programs available will be on a voluntary basis and potential providers will make individual decisions regarding participation. Potential providers are most likely to be located in urban or suburban, not rural, areas. For example, NYSDOH SPARCS data show 3,408 hospital discharges for admissions related to opioid overdose during 1998-2002. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions. Similarly, OASAS county-level estimates of treatment need show that the greatest need for opioid overdose prevention programs is in urban or suburban areas (OASAS, 2004 County Resource Book, Volume 1. Service Need and Utilization Data, Table 2).

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional recordkeeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Minimizing Adverse Impact:

The program is designed to minimize impact on those who will participate: participation is voluntary, the registration process will be simple, no fee will be charged, and recordkeeping requirements will be minimal.

The new opioid overdose prevention programs will build upon already-existing programs and services for IDUs — through hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. The NYSDOH will maintain and make available a list of registered programs holding certificates of approval.

Rural Area Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments in rural areas will have opportunities to review and comment on the proposed regulations. The NYSDOH has already consulted with representatives of opioid overdose prevention programs already operating in rural areas of other states.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

Job Impact Statement

A Job Impact Statement is not required. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities based upon its nature and purpose.

Insurance Department

EMERGENCY RULE MAKING

Rules for Key Person Corporate-Owned Life Insurance

I.D. No. INS-14-06-00006-E
Filing No. 333
Filing date: March 21, 2006
Effective date: March 21, 2006

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

Action taken: Addition of Part 48 (Regulation 180) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 3205

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

Specific reasons underlying the finding of necessity: Corporate-owned life insurance covering rank-and-file employees, also called "janitors insurance" or "dead peasant insurance," has been the focus of numerous negative press articles and public commentaries over the last several years. In many cases, the covered employees were not notified and did not consent to such insurance. In addition, the Internal Revenue Service has pursued litigation against some companies using corporate-owned life insurance as a means of evading taxes.

Most recently in response to criticism concerning COLI, the United States Senate has drafted legislation that provides for the taxation of death proceeds of corporate-owned life insurance under certain circumstances. The Senate's proposal addresses the abuses of "janitor insurance" and recognizes the legitimate business need for COLI to serve as a funding vehicle for employee benefit plans. As a result, the Senate's legislative proposal provides that death benefits under corporate-owned life insurance policies will not be taxable if the employee is a key employee as defined in the proposed legislation.

The potential for abuse in the corporate-owned life insurance market has long been a concern of the New York Legislature. Chapter 491 of the Laws of 1996 added a new subsection (d) to section 3205 to provide notice, consent and termination rights to employees, including rank-and-files employees, whose lives were insured under corporate-owned life insurance programs designed to fund employee benefit plans. Such notice, consent and termination rights were designed to reduce the potential for abuse in the COLI market.

Since the notice, consent and termination rights only apply in the case of section 3205(d) COLI and not key person COLI under section 3205(a)(1)(B), it is imperative that insurers only insure key employees under section 3205(a)(1)(B). This will also ensure that rank and file employees and other non-key employees receive the notice, consent and termination rights prescribed by section 3205(d) and to curb some of the reported abuses associated with COLI on rank-and-file employees. This will serve to ensure that employees insured pursuant to the insurable interest provisions of section 3205(a)(1)(B) are key employees.

The establishment of a key employee standard based on the proposed Federal legislation will aid in curbing abuse in the corporate-owned life insurance market. Therefore, for the reasons stated above, this rule must be promulgated on an emergency basis for the preservation of the general welfare.

Subject: Rules for key person corporate-owned life insurance.

Purpose: To provide guidance to insurers in defining the term key person for the purpose of compliance with the requirements of Insurance Law, section 3205(a)(1)(B) and (d).

Text of emergency rule: A new Part 48 of Title 11 NYCRR (Regulation No. 180) is adopted to read as follows:

§ 48.0 Preamble and Purpose.

(a) Section 3205(b)(2) of the Insurance Law provides in part that "No person shall procure or cause to be procured, directly or by assignment or otherwise any contract of insurance upon the person of another unless the benefits under such contract are payable . . . to a person having, at the time when such contract is made, an insurable interest in the person insured."

(b) Section 3205(a)(1)(B) of the Insurance Law defines the term "insurable interest", for the purposes of life and accident and health insurance, to include ". . .a lawful and substantial economic interest in the continued life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured."

(c) Under Section 3205(a)(1)(B), an employer has an insurable interest in the lives of certain employees and other persons, commonly referred to as "key employees" or "key persons", whose services and qualifications are of such nature that their death or disability would cause the employer to incur a substantial pecuniary loss.

(d) The purpose of this Part is to establish standards for life insurers and fraternal benefit societies issuing key person company-owned life insurance to ensure that the employees or other persons on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key persons.

§ 48.1 Underwriting Guidelines.

An insurer using key person company-owned life insurance shall establish and apply appropriate underwriting guidelines to ensure that the employees or other persons on whose lives policies are written pursuant to Section 3205(a)(1)(B) are actually key persons.

§ 48.2 Standards.

For purposes of this Part and for establishing whether there exists an insurable interest under Section 3205(a)(1)(B) at the time the policy is issued, the term key person shall include the following persons:

(a) An employee who is one of the five highest paid officers of the employer;

(b) An employee who is a five-percent owner of the employer. A "five-percent owner" shall mean:

(1) If the employer is a corporation, any person who owns or controls more than five percent of the outstanding stock of the corporation or stock possessing more than five percent of the total combined voting power of all stock of the corporation; or

(2) If the employer is not a corporation, any person who owns more than five percent of the capital or profits interest in the employer;

(c) An employee who had compensation from the employer in excess of $90,000 in the preceding year;

(d) An employee who is among the highest paid 35 percent of all employees; or

(e) An employee or other person who makes a significant economic contribution to the company, including but not limited to, an employee who is responsible for management decisions, has a significant impact on sales or a special rapport with customers and creditors, possesses special skills, or would be difficult to replace. Criteria for the employer's determination shall be included in the insurer's underwriting guidelines.

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 June 18, 2006.

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 adoption of Regulation 180 (11 NYCRR 48) is derived from Sections 201, 301, and 3205 of the Insurance Law.

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 3205 of the Insurance Law defines the term "insurable interest" and sets forth insurable interest requirements for any policy of life insurance and accident and health insurance.

2. Legislative objectives:

The insurable interest requirements contained in Section 3205 reflect the state's public policy against contracts wagering on human life. Section 3205(b)(2) prohibits the issuance of any policy upon the life of another person unless the beneficiary is the insured, personal representative of the insured, or a person having an insurable interest in the insured at the time the policy is issued.

Section 3205(a)(1)(B), applicable when policies are purchased by persons not closely related to the insured by blood or by law, defines "insurable interest" to include a lawful and substantial economic interest in the continued, life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured. Employers and insurers have historically relied upon Section 3205(a)(1)(B) to satisfy the insurable interest requirement for the purchase of insurance on the lives of "key persons" or "key employees."

In 1996, the Legislature added new subsections (d) and (e) to Section 3205 of the Insurance Law (L. 1996 c. 491) to specifically grant employers an insurable interest in any employee or retiree who is eligible to participate in an employee benefit plan. The Legislature enacted Section 3205(d) in order to assist employers with the financing of employee benefit plans through the use of corporate-owned life insurance ("COLI") purchased on the lives of employees.

The purpose of the proposed regulation is to establish standards for life insurers issuing key employee COLI, pursuant to Section 3205(a) rather than Section 3205(d) COLI, to ensure that the employees on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key employees.

3. Needs and benefits:

As noted in the Federal Standard section below, the definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft bill pending in the United States Senate which

provides for the taxation of death proceeds of COLI under certain circumstances. The Senate's proposal is intended to eliminate well-publicized abuses of COLI. The proposal also recognizes the legitimate business need for employers to use corporate owned policies as a funding vehicle for employee benefits, and specifically provides that COLI death benefits would not be taxable if the covered employee meets the definition of a key employee.

The potential for abuse in the COLI market has historically been a concern of the New York legislature as evidenced by the enactment of notice, consent and termination rights in Section 3205(d) and (e) of the Insurance Law in 1996, establishing an insurable interest for the purchase of life insurance used to fund employee benefit plans. Since the employee notice, consent and termination rights are not required when company-owned life insurance is purchased under Section 3205(a)(1)(B), it is imperative that insurers be provided with standards for key employees to ensure that such employees are key employees and to avoid the potential for any further abuses in the market. The establishment of a key employee standard would provide such guidance.

In addition, a key employee standard would enhance the Department's market conduct exams by providing field examiners with a reference point. Field examiners currently lack statutory or regulatory standards for determining the proper application of Section 3205(a) and, specifically, whether COLI insurance issued pursuant to Section 3205(a) is on key employees.

The key employee standard is particularly important in the bank-owned life insurance market, in which employees do not receive Section 3205(d) protections. Currently, banks do not purchase coverage under Section 3205(d) because the employee's ability to terminate coverage makes the policy an unreliable mechanism for funding plan liabilities and results in adverse tax consequences to the bank. When bank-owned life insurance is issued as key employee coverage under Section 3205(a)(1)(B), the key employee standard created by this proposed regulation will help ensure that the covered employees will in fact be key employees.

4. Costs:

Life insurers licensed in New York that sell key employee COLI are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key employee COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the proposed regulation. Any insurers in the key employee COLI market that lack established key person underwriting guidelines would incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the proposed regulation.

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

5. Local government mandates:

The proposed 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 proposed regulation imposes no new reporting requirements.

7. Duplication:

The proposed regulation does not duplicate any existing law or regulation.

8. Alternatives:

The Department considered but rejected the prospect of issuing a Circular Letter to establish the standard for key person. The Department was concerned that the Circular Letter proposal would not have the same force and effect of a regulation, and would therefore be an inadequate mechanism to apply and enforce the insurable interest requirements of Section 3205.

9. Federal standards:

The definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft COLI bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate bill, which was approved by the Senate Finance Committee in February, 2004, provides that a key employee may be either a "highly compensated employee" under Section 414(q) of the Internal Revenue Code or a "highly compensated individual" under Section 105(h)(5) of the Internal Revenue Code (except that '35 percent' shall be substituted for '25 percent' in subparagraph (C) thereof). The purpose of the definition of key employee in the Senate bill is to create an exemption from tax for death proceeds paid to employers in connection with COLI, and does not relate to state insurable interest laws. There is no federal standard that defines key employee in the context of insurable interest for life insurance.

10. Compliance schedule:

The proposed regulation establishes a standard for all key employee life insurance policies issued before and after the effective date of the Regulation.

Regulatory Flexibility Analysis

1. Small businesses:

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

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

The regulation provides guidance to insurers in defining the term key person.

3. Costs:

Life insurers that sell key person COLI to fund broad-based employee benefit plans are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key person COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the Regulation. Any insurers in the key person COLI market that lack established key person underwriting guidelines will incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the Regulation.

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

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with the Life Insurance Council of New York, a trade organization representing life insurers in New York.

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 provides guidance to insurers in defining the term key person for the purpose of compliance with the requirements of section 3205(a)(1)(B) of the Insurance Law.

Categories and number affected: No categories of jobs or number of jobs will be affected.

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

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

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

Division of the Lottery

EMERGENCY RULE MAKING

Video Lottery Gaming

I.D. No. LTR-14-06-00002-E
Filing No. 328
Filing date: March 17, 2006
Effective date: March 17, 2006

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

Action taken: Addition of Part 2836 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1617-a

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

Specific reasons underlying the finding of necessity: (1) The nature and location of the general welfare need:

The New York Lottery operates lottery games to fund education in New York State. It is projected that the operation of video lottery gaming in New York State may generate over $1 billion for education annually when fully implemented. Any game delay that jeopardizes start up of video lottery gaming this fiscal year could result in a loss of approximately $1 to $4 million weekly in aid to education that are needed to offset anticipated shortfalls.

Since passage of the legislation in October 2001 which authorized the Division to license the operation of video lottery gaming at racetracks in New York State, the Division has worked diligently with contractors and racetrack owners to develop the game and the gaming facilities. Five facilities are now in operation. The Legislature enacted changes to the legislation in April 2005. In enacting Chapter 61 of the Laws of 2005, the Legislature found that the revenue generated from video lottery gaming to that date had not met predictions. Overall, the Legislature found that lottery revenue would be maximized by making available to the video lottery gaming facilities an increased vendor's fee and a vendor's marketing allowance. The legislation was designed to provide the necessary resources and incentives to the video lottery gaming facilities to undertake the capital, marketing and other expenditures necessary to create and sustain video lottery gaming and maximize lottery revenue to support education. These regulations are a result of that legislation and were initially issued in September 2005, almost six (6) months after passage of Chapter 61. These Emergency Regulations permit the vendor's to receive the benefits of the increased vendors fee and the vendor's marketing allowance, pending formal adoption of these regulations by the Division. The Division met with each of the current and pending vendors and operators of the video gaming facilities during the months of October and November, 2005 to solicit comments on the Emergency Regulations. While the facilities agreed to submit written comments, the regulations expired requiring a new emergency filing on December 20, 2005. The video lottery gaming facilities submitted comments in late December, 2005. Since that date, the Division has been meeting with the facility owners and operators and determining the best approach on implementing proposed and acceptable changes. Accordingly, although timing requires issuance of these Emergency Regulations for a third time, it is expected that final regulations will be published for public comment within sixty (60) days.

(2) Description of the cause, consequences, and expected duration of the need to file emergency rules:

The cause of the need is set forth in paragraph #1 above. The consequence of filing this emergency rule making is that the stated Legislative goal of Chapter 61 of the Laws of 2005 will be implemented and lottery revenue to support education will be maximized. The Division intends to file shortly a Notice of Proposed Rule making pursuant the State Administrative Procedure Act Section 202(4-a) to continue the normal rule making procedures relative to these regulations within sixty (60) days.

(3) Compliance with the requirements of § 202(1) of the State Administrative Procedure Act would be contrary to the public interest because it would delay implementation and deprive the state of needed revenue to education.

(4) Circumstances necessitate that the public and interested parties be given less than the minimum period of 30 days for notice and comment at this time since there is insufficient time to commence a formal rule making process and permit such public comment period. The Division expects to commence the formal rule making process within sixty (60) days. Such delay would thereby result in a loss of needed aid to education. This is the earliest the regulations could have been finalized in light of the new legislation, leaving inadequate time to comply with the normal rule making procedure set forth in the State Administrative Procedure Act Section 202(1). Delaying the implementation of the increased vendor's fee and the providing of the marketing allowance would mean a loss in lottery revenue to aid education and frustrate the legislative intent of Chapter 61 of the Laws of 2005.

Subject: Video lottery gaming.

Purpose: To allow for licensed operation of video lottery gaming.

Substance of emergency rule: Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the Laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and as amended further by Chapter 61 of the Laws of 2005, codified as §§ 1612 and 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks in New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

In April, 2005, Chapter 61 of the Laws of 2005 amended § 1612 of the Tax Law to provide an increase to the vendor fee to be paid to each video lottery terminal operator and also permits a marketing allowance for each such facility. These changes have necessitated a revision to the Emergency Regulations. Regulations were initially adopted on an Emergency basis in 2003. Since that date, the regulations have been renewed every 90 days. The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for principles and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. Annually, the agents will be required to submit a marketing plan for approval by the Division. The marketing plan will identify those marketing or promotion costs which may be reimbursed from the marketing allowance permitted by § 1612 of the Tax Law. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations. Since issuing the Emergency Regulations in September, 2005, the Division has met and discussed the marketing procedures with each of the existing and pending vendors and operators. Formal comments have been submitted by those facilities. The Division is in the process of responding to these comments and expects to commence the formal rulemaking within sixty (60) days.

The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

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 June 14, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Robert J. McLaughlin, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: rmclaughlin@lottery.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: On October 31, 2001, Governor Pataki signed into law Part C of Chapter 383 of the Laws of 2001, codified as §§ 1612 and 1617-a of the New York State Tax Law, which authorizes the New York State Division of the Lottery ("Division") to license the operation of

video lottery gaming at racetrack locations around the state. Chapter 383 of the Laws of 2001 has been amended by Chapter 85 of the laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and amended further by Chapter 61 of the Laws of 2005. The legislation directs the Division to promulgate regulations allowing for the licensed operation of video lottery gaming. These regulations fulfill that mandate, enabling the licensing and operation of video lottery gaming at authorized racetracks.

2. Legislative Objectives: These proposed regulations advance the legislative objective of raising additional revenue for education by establishing video lottery gaming and, as required by Chapter 61 of the Laws of 2005, permitted vendors to receive an increased vendor fee and a vendor marketing allowance.

3. Needs and Benefits: The regulations satisfy a legislative mandate directing the Division to promulgate regulations for the design, licensing and implementation of video lottery gaming. Pursuant to a Memorandum of Understanding between the Division and the Racing and Wagering Board, potential duplicative licensing requirements for the racetrack employees have been eliminated.

The regulations set forth the manner in which the regulated community will be licensed to conduct video lottery gaming. Additionally, they describe the game operation, financial operations, terminal design, the manner in which the security systems must operate, certain requirements for the physical layout of the gaming facilities, and how the marketing allowance will be disbursed. These regulations provide the regulated community with the details and guidance to effectively implement video lottery gaming in New York State.

While video lottery gaming has been held to be similar to other lottery games that the Division has successfully conducted for over thirty years, some components set it apart from those more traditional games. For example, most of the Division's current licensed agents are food and beverage retailers. Video lottery gaming requires the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key and other employees.

A Notice of Proposed Rulemaking was first published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Based on comments received during the public comment period, it was necessary to revise the proposed regulations. Emergency regulations have been promulgated since early 2004. Subsequently, the Legislature made certain additional changes to the statute authorizing video lottery gaming. By way of example, Chapter 61 of the Laws of 2005 increases the vendors fee originally promulgated and adds a new marketing allowance subject to the supervision of the Lottery.

These regulations will assist the regulated parties to fully understand and comply with all the requirements of the operation of video lottery gaming, while generating sales and revenue to aid education in the State of New York. Since issuing the Emergency Regulations in September, 2005, the Division has met and discussed the marketing procedures with each of the existing and pending vendors and operators. Formal comments have been submitted by those facilities. The Division is in the process of responding to these comments and expects to commence the formal rule making within sixty (60) days.

4. Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

According to data provided by the racetracks, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will approximate $550 million if all eligible venues participate. Each racetrack's proposed project differs. The cost for each facility ranges from $4 million to $250 million. The regulations require video lottery gaming agents to equip the facility with an alternate emergency power source. It is estimated that this could cost those agents an additional $250-$300 per video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electrical and communication upgrades.

The racetracks will incur certain labor costs associated with operating video lottery gaming. Such gaming facilities throughout the state are expected to employ more than 4,000 people. Individual video lottery gaming agents will be employing approximately 110 to 1,200 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to $65 per hour, with annual salaries ranging from $22,000 to $250,000. Total annual payroll for each racetrack could range from $1.8 million to over $10.8 million.

There are other incidental costs that will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. It is anticipated that most of these controls will be established through sufficient experienced racetrack personnel. Additional external auditing costs are expected to average approximately $100,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a $10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately $100 to cover the cost of fingerprints.

Portions of these rules and regulations identify the guidelines and requirements in relation to marketing expenses and the utilization of the legislatively provided funds. It is anticipated that the licensed video gaming facilities will take full advantage of the allowable uses of the funds which when fully implemented will create over $70 million annually in available resources for increasing the amount of aid to education from the video gaming program. The use of the marketing allowance funds is voluntary for video gaming facilities as is participation in the video gaming program in general.

The Lottery expects to annually expend over $110 million in gaming vendor fees in generating over $800 million in aid to education annually from the video gaming program when fully implemented. Video gaming facilities which are not yet open, but have construction intentions, will likely expend approximately $300 million in renovations and new construction for video gaming.

5. Local Government Mandates: No local mandates are imposed by rule upon any county, city, village, etc. The legislation permits local communities which have racetracks not expressly identified in the legislation to pass local laws authorizing video lottery gaming at racetracks in their communities, if they so choose.

6. Paperwork: The regulations require that the regulated entities complete a licensing application, including fingerprints, and to update and renew the application periodically. The application will follow a standard multi-state format used by other states that license similar gaming activities. Completion of these applications will be a new responsibility for the video lottery gaming agents, their principals, and key employees. Agents, their principals and key employees will be required to provide more detailed disclosure than they have previously been required to provide for licensure. This level of disclosure is common in other gaming states. Provisional licenses will be granted under certain circumstances, so that the licensing review process is not expected to pose a barrier to immediate entry into the business.

The regulated vendors should be familiar with these licensing forms and reporting requirements as they are similar to those required in other states where these vendors currently do business. In fact, gaming vendors routinely have regulatory compliance departments to assist in fulfillment of these requirements.

Vendors supplying goods or services not directly related to gaming must register to do business with the video lottery gaming agents. Any registered vendor may be required to be licensed as determined by the Division and if their contracts exceed certain thresholds outlined in the regulations, they will be required to undergo a full licensing procedure. In particular, non-gaming vendors will be required to submit license applications if any of the following conditions exist:

(a) the non-gaming vendor has a contract with a video lottery gaming agent that exceeds $150,000.00 in any twelve (12) month period;

(b) the non-gaming vendor has contracts with more than one video lottery gaming agent that combined exceed $500,000.00 in any twelve (12) month period;

Video lottery gaming agents will be required to submit business plans that will include floor plans of the gaming areas, staffing plans, internal control procedures, marketing plans, and security plans. These will need to be updated periodically.

In order to ensure the financial integrity and security of video lottery gaming, the video lottery gaming agents will be required to develop internal control procedures, to undergo an auditing process and to submit financial reports. These financial reports are produced during the regular course of business, and their submission should not prove burdensome. These will need to be updated periodically.

Finally, video lottery gaming agents are required to submit an annual marketing plan to the Division which describes the proposed use of the marketing allowance permitted by Chapter 61 of the Laws of 2005.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the New York State Racing and Wagering Board must license the operation of pari-mutuel wagering at the racetracks as well as licensing racetrack employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Division may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Division and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. Alternatives: The Division has conducted outreach sessions with each of the operating video lottery gaming facilities and believes that these regulations fulfill its statutory mandate while addressing those comments. While the majority of requests for revision were accommodated whenever feasible, the Division did not accept any requests for change that in its estimation would undermine the security and integrity of the game. All comments received are available for public review by contacting Robert J. McLaughlin, Esq., General Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, New York 12301 or by calling 518-388-3408 or e-mailing to rmclaughlin@lottery.state.ny.us.

As another alternative, the Division entered into a Memorandum of Understanding with the Racing and Wagering Board to avoid potential duplicative licensing requirements for the racetrack employees.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: The licenses must be issued prior to commencement of video lottery gaming. In many instances, the license applicants will be issued provisional licenses immediately upon filing their application. All requirements concerning the conduct and operation of video lottery gaming must be complied with prior to actual commencement of the games and maintained on-goingly throughout the operation of the games.

Regulatory Flexibility Analysis

1. Effect of Rule: The Division of the Lottery finds that the rule will not adversely affect local government. The rule will impact a number of different types of businesses:

(a) Licensed racetracks: It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102;

(b) Gaming vendors: Vendors wishing to supply gaming products and services must be licensed. These include the supplier of the central computer system that will support the video lottery games, the companies supplying the games and terminals, management companies and certain lenders. It is anticipated that, these companies will recoup any costs associated with licensing and start-up from operations;

(c) Non-gaming vendors: Most vendors supplying goods and services not directly related to gaming will be required to complete a registration process only. However, if their contract exceeds a certain value, or if the Division otherwise determines, such vendors will be required to comply with licensing provisions. While it is difficult to estimate all costs associated with doing business with a video lottery gaming agent, the costs of registration will be minimal. The costs of licensing, should that be necessary, should not exceed $100 per application for the costs of fingerprinting.

Participation in video lottery gaming by any of these entities is voluntary and it is expected they will use good business judgment when deciding whether or not to participate in these games. It is expected there will be no adverse economic impact on any of these regulated businesses.

2. Compliance Requirements: These rules will not require small businesses to complete burdensome forms or reports. Certain small vendors may not even be required to register.

3. Professional Services: It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming operation. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

Based on forecasted estimates, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will exceed $550 million if all eligible remaining venues participate. Each facility's proposed project differs. The cost for each facility ranges is from $4 million to over $250 million dollars. The regulations require video lottery gaming agents equip the facility with an alternate emergency power source. It is estimated that this will cost those agents an additional $250-$300 per installed video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each racetrack's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The gaming facilities throughout the state are expected to employ more than 4,000 people. Individual gaming agents will be employing between approximately 110 to 1,200 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to $65 per hour, with annual hourly salaries between $22,000 to $250,000. Total annual payroll for each racetrack will range from $1.8 million to over $10.8 million, with an average payroll of over $6.6 million.

There are other incidental costs which will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racetrack facilities. The majority of these controls are put in place through adequate experienced personnel and the personnel costs are set forth above. Additional external auditing costs are expected to average approximately $100,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a $10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately $100 to cover the cost of fingerprints.

5. Economic and Technological Feasibility: The economic and technological impact of these rules on local government is minimal.

There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impact: In the case of smaller, non-gaming vendor contracts, these vendors will not be required to comply with licensing and background checks.

7. Small Business and Local Government Participation: During the pre-proposal stage of the regulatory process, members of the regulated community were contacted and given the opportunity to participate in the formation of these regulations. The New York Lottery received numerous comments from members of the community, many of which were incorporated during the final drafting of the proposed regulations. These emergency regulations include revisions made to the regulations as a result of such comments.

Rural Area Flexibility Analysis

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County.

However, the Division has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Division believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

Job Impact Statement

The Division has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the agency has determined the rule will have a positive impact on jobs and employment opportunities.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ more than 4,000 people. Individual gaming agents will be employing between approximately 110 to 1,200 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to $65 per hour, with annual salaries between $22,000 to $250,000. Total annual payroll for each racetrack will range from $1.8 million to over $10.8 million, with an average payroll of over $6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs. It is expected that, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

Department of Motor Vehicles

NOTICE OF ADOPTION

Driver License Requirements

I.D. No. MTV-04-06-00002-A
Filing No. 332
Filing date: March 21, 2006
Effective date: April 5, 2006

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

Action taken: Amendment of Part 3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 501 and 501-a

Subject: Driver license requirements.

Purpose: Conforms regulations to driver license requirements in the Vehicle and Traffic Law.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-04-06-00002-P, Issue of January 25, 2006.

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

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

Assessment of Public Comment
The agency received no public comment.

Niagara Falls Water Board

NOTICE OF ADOPTION

Adoption of a Schedule of Rates, Fees and Charges

I.D. No. NFW-01-06-00006-A
Filing No. 327
Filing date: March 15, 2006
Effective date: March 15, 2006

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

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

Statutory authority: Public Authorities Law, section 1230-j

Subject: Adoption of a schedule of rates, fees and charges with respect to the board's regulation of water, wastewater distribution and collection system in Niagara Falls, NY (Title 21 NYCRR).

Purpose: To establish a revised schedule of rates, fees and charges for all users of the system that will generate revenues sufficient to meet the board's financial obligations in operating the "system".

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. NFW-01-06-00006-EP, Issue of January 4, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Gerald Grose, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 283-9770 ext. 104, e-mail: ggrose@nfwb.org

Assessment of Public Comment
The agency received no public comment.

Public Service Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-11-06-00013-P, pertaining to Major Rate Case by Orange and Rockland Utilities, Inc., published in the March 15, 2006 issue of the *State Register* contained an incorrect statement regarding the public comment period. Public comment for this rule making will be received until June 16, 2006.

The Department of State apologizes for any inconvenience this may have caused.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Exemption from Certain Charges by Delphi Corporation

I.D. No. PSC-14-06-00001-EP
Filing date: March 15, 2006
Effective date: March 15, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order in Case 06-E-0265 approving on an emergency basis, Delphi Corporation's request to exempt the corporation from certain charges related to the delivery of 10 MW in new expansion power for its Lockport, NY facility.

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

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

Specific reasons underlying the finding of necessity: Immediate adoption is necessary to ensure that by designing a special economic development rate that waives New York State Electric and Gas Corporation's system benefit charge, renewable portfolio standards and non-bypassable wires charges for delivery of 10 MW of New York Power Authority expansion power to Delphi's Lockport manufacturing facility, the facility will be able to remain in operation and the 4,000 jobs created there will be retained, preventing the significant adverse impact closure of the facility would have on the State and local economies and the attendant loss of tax revenues.

Subject: Exempting Delphi Corporation from certain charges related to the delivery of 10 MW in new expansion power for its Lockport, NY facility.

Purpose: To design a special economic development rate that waives New York State Electric and Gas Corporation's system benefits charge, renewable portfolio standards and non-bypassable wires charges for delivery of 10 MW of New York Power Authority expansion power to Delphi's Lockport manufacturing facility.

Substance of emergency/proposed rule: The Commission approved on an emergency basis Delphi Corporation's petition for an order exempting it from certain charges related to the delivery of 10 MW in new Expansion

Power for its Lockport, New York facility, subject to the terms and conditions set forth in the order.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire June 12, 2006.

Text of rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (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.

(06-E-0265SA1)

NOTICE OF ADOPTION

Demand Side Management Action Plan by the New York State Energy Research and Development Authority

I.D. No. PSC-35-05-00009-A
Filing date: March 17, 2006
Effective date: March 17, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order in Case 04-E-0572 regarding a demand side management action plan filed by the New York State Energy Research and Development Authority in the Consolidated Edison Company of New York, Inc. electric rate case.

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

Subject: Consideration of a demand side management action plan.

Purpose: To approve the demand side management action plan related to energy efficiency and load management and resolve disputed matters set forth in the action plan and other related issues.

Substance of final rule: The Commission approved the Demand Side Management Action Plan and authorized New York State Energy Research and Development Authority and Consolidated Edison Company of New York, Inc. to proceed with implementation of their respective service territory-wide and targeted demand management programs, 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-0572SA6)

NOTICE OF ADOPTION

Uniform System of Accounts by Corning Natural Gas Corporation

I.D. No. PSC-47-05-00010-A
Filing date: March 20, 2006
Effective date: March 20, 2006

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

Action taken: The commission, on March 15, 2006, approved the proposal filed by Corning Natural Gas Corporation to defer the incremental uncollectible account expense it incurred during the fiscal year ended Sept. 30, 2005.

Statutory authority: Public Service Law, section 66-9

Subject: Uniform system of accounts—request for accounting authorization.

Purpose: To allow the company deferred accounting treatment of expense beyond the end of the year in which it occurred.

Substance of final rule: The Commission approved Corning Natural Gas Corporation's request for deferred accounting treatment for incremental uncollectible account expense in the amount of $118,600, 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-G-1283SA1)

NOTICE OF ADOPTION

Transfer of Ownership Interests between Central New York Oil and Gas Company, LLC and the Town of Owego, Tioga County

I.D. No. PSC-50-05-00006-A
Filing date: March 17, 2006
Effective date: March 17, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order in Case 05-E-1392 approving Central New York Oil and Gas Company, LLC's request to transfer its ownership interests in electric transmission facilities located in the Town of Owego, Tioga County.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests in electric facilities.

Purpose: To approve the transfer.

Substance of final rule: The Commission approved a request by Central New York Oil and Gas Company, LLC for the transfer of ownership interests in electric transmission facilities located in the Town of Owego, Tioga County, 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-E-1392SA1)

NOTICE OF ADOPTION

Recovery of Net Lost Revenues by National Fuel Gas Distribution Corporation

I.D. No. PSC-50-05-00007-A
Filing date: March 17, 2006
Effective date: March 17, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order in Case 05-G-1492 approving the petition of National Fuel Gas Distribution Corporation (NFG) for permission to recover $347,587 in net lost revenues resulting from the operation of its billing back-out credit to energy service companies.

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

Subject: National Fuel Gas Distribution Corporations request to recover net lost revenues resulting from the billing back-out credit to energy service companies.

Purpose: To recover net lost revenues resulting from the billing back-out credit to energy service companies.

Substance of final rule: The Commission approved a petition filed by National Fuel Gas Distribution Corporation to recover $347,587 in net lost revenues resulting from the operation of its billing back-out credit for the period October 1, 2004 through July 31, 2005.

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-1492SA1)

NOTICE OF ADOPTION

Agreement for the Provision of Water Service by Saratoga Water Services, Inc.

I.D. No. PSC-51-05-00014-A
Filing date: March 17, 2006
Effective date: March 17, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order approving the request by Saratoga Water Services, Inc. and the New York State Energy Research and Development Authority for the provision of water service to a proposed development in the Town of Malta, Saratoga County and a waiver of certain tariff provisions that related to main extensions.

Statutory authority: Public Service Law, section 89-b

Subject: Agreement for the provision of water service and a waiver of certain tariff provisions of 16 NYCRR Parts 501 and 502.

Purpose: To approve the agreement.

Substance of final rule: The Commission granted approval of an agreement between Saratoga Water Services, Inc. and the New York State Energy Research and Development Authority (NYSERDA) for the provision of water service to a proposed commercial development being constructed by NYSERDA in the Town of Malta, Saratoga County and granted a waiver of the requirements of inconsistent tariff provisions of 16 NYCRR Parts 501 and 502 concerning water main extensions.

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-W-0765SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Hudson Street Associates, LLC

I.D. No. PSC-52-05-00020-A
Filing date: March 20, 2006
Effective date: March 20, 2006

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

Action taken: The commission, on March 15, 2006 adopted an order in Case 05-E-1515 approving the petition of Hudson Street Associates LLC to submeter electricity at 255 Hudson St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the request of Hudson Street Associates LLC to submeter electricity at 255 Hudson St., New York, NY.

Substance of final rule: The Commission approved a request by Hudson Street Associates LLC to submeter electricity at 255 Hudson Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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-1515SA1)

NOTICE OF ADOPTION

Transfer of Certain Cable System Facilities by Carmel Cable Television, Inc.

I.D. No. PSC-52-05-00022-A
Filing date: March 17, 2006
Effective date: March 17, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order approving, with conditions, a request by Carmel Cable Television, Inc. (Carmel Cable) and Comcast of Danbury, Inc. (Comcast) to transfer certain cable assets.

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system facilities located in Dutchess, Putnam and Westchester Counties, New York.

Purpose: To approve the transfer of certain cable system facilities owned and operated by Carmel Cable to Comcast.

Substance of final rule: The Commission adopted an order approving the request of Carmel Cable Television, Inc. and Comcast of Danbury, Inc. to transfer certain cable system facilities located in Dutchess, Putnam and Westchester Counties, 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-V-1533SA1)

NOTICE OF ADOPTION

Uncompressed Natural Gas Vehicle Transportation Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI

I.D. No. PSC-01-06-00012-A
Filing date: March 15, 2006
Effective date: March 15, 2006

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

Action taken: The commission, on March 15, 2006, approved the tariff filing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery – Long Island to make changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: Uncompressed natural gas vehicle transportation service.

Purpose: To replace S.C. No. 11 with S.C. No. 5—firm transportation service.

Substance of final rule: The Commission approved KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery – Long Island's request to transfer uncompressed natural gas vehicle transportation service from S.C. No. 11 to S.C. No. 5 — Firm Transportation Service.

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-1554SA1)

NOTICE OF ADOPTION

Partnership for Distributed Generation Pilot Program by National Fuel Gas Distribution Corporation

I.D. No. PSC-03-06-00015-A
Filing date: March 20, 2006
Effective date: March 20, 2006

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

Action taken: The commission, on March 15, 2006, approved the proposal filed by National Fuel Gas Distribution Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 8.

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

Subject: Partnership for Distributed Generation Pilot Program.

Purpose: To extend the program for an additional three years.

Substance of final rule: The Commission approved National Fuel Gas Distribution Corporation's request to extend for an additional three years its Partnership for Distributed Generation pilot program, 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.

(02-G-0858SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inter-Carrier Telephone Service Quality Standards and Metrics by the Carrier Working Group

I.D. No. PSC-14-06-00007-P

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

Proposed action: The Public Service Commission is considering modification to existing inter-carrier telephone service quality measures and standards as proposed by the Carrier Working Group and recommended by staff.

Statutory authority: Public Service Law, section 94(2)

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To review recommendations from the Carrier Working Group to incorporate appropriate modifications to the existing inter-carrier telephone service quality measures and standards.

Substance of proposed rule: The Commission is considering modifications to the New York State Inter-Carrier Service Quality Guidelines (the C2C Guidelines), which were established, and are routinely updated, in Case 97-C-0139. Revisions to the C2C Guidelines are proposed by the Carrier Working Group (CWG), an industry group that meets regularly and whose active participants includes the incumbent and competitive local exchange telecommunications carriers in New York State and the staff of the Department of Public Service. Department staff will be making recommendations to modify the C2C Guidelines applicable to Verizon New York Inc. and Frontier Telephone of Rochester, which may be derived by consensus of the Carrier Working Group or by analysis of the CWG parties' non-consensus positions. The specific modifications to the C2C Guidelines being considered by the Commission in this action include: administrative changes, i.e., non-process changes of a clerical nature or that correct minor errors, and other administrative modifications developed by the Joint Subcommittee which incorporate the findings of audits conducted in other state C2C proceedings; and, the modification of Verizon retail data reporting to include lines formerly provided by MCI. The most recent version of the C2C Guidelines is available at: http://www22.verizon.com/wholesale/attachments/east-perf_meas/East_C2C_guidelines_Sept_2005_PA.doc.

A link to the Commission Order approving the most recent version of the C2C Guidelines is available at http://www.dps.state.ny.us/carrier.htm

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(97-C-0139SA25)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rural Telephone Bank Dissolution

I.D. No. PSC-14-06-00008-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 how the proceeds from the dissolution of the rural telephone bank should be utilized by certain rural incumbent local exchange carriers in New York.

Statutory authority: Public Service Law, sections 94 and 101

Subject: Rural telephone bank dissolution.

Purpose: To determine how the proceeds from the dissolution of the rural telephone bank should be utilized in New York.

Substance of proposed rule: The Commission initiated a proceeding, on or about March 15, 2006, to consider how rural Incumbent Local Exchange Carriers (ILECs) in New York will use their proceeds from the dissolution of the Rural Telephone Bank (RTB). The RTB was established to assist rural carriers in developing and maintaining their infrastructure. The amount of RTB stock purchased by these carriers was included in the loans previously approved by the Commission and supported by ratepayers.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(06-C-0314SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Herbert E. Hirschfeld, P.E.

I.D. No. PSC-14-06-00009-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Hebert E. Hirschfeld, P.E., on behalf of Noble Mansion, to submeter electricity at 1500 Noble Ave., Bronx, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Herbert E. Hirschfeld, P.E., on behalf of Noble Mansion, to submeter electricity at 1500 Noble Ave., Bronx, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Noble Mansion, to submeter electricity at 1500 Noble Avenue, Bronx, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(06-E-0252SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electric Service at the Griffiss Business and Technology Park by Niagara Mohawk Power Corporation

I.D. No. PSC-14-06-00010-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 a petition from Niagara Mohawk Power Corporation, Griffiss Local Development Corporation and Griffiss Utility Services Corporation for approval of a service agreement for electric service, approval of the transfer of a certificate of public convenience and necessity and the adoption of a lightened regulatory regime, for electric service at the Griffiss Business and Technology Park located in Rome, NY.

Statutory authority: Public Service Law, sections 2(13), 5(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b, 119-c

Subject: Service agreement, transfer of certificate of public convenience and necessity and lightened regulatory regime for electric service at the Griffiss Business and Technology Park.

Purpose: To approve the electric service at the Griffiss Business and Technology Park.

Substance of proposed rule: The Public Service Commission is considering a petition from Niagara Mohawk Power Corporation, Griffiss Local Development Corporation and Griffiss Utility Services Corporation for approval of a service agreement for electric service, approval of the transfer of a Certificate of Public Convenience and Necessity and the adoption of a lightened regulatory regime, for electric service at the Griffiss Business and Technology Park located in Rome, New York. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(06-E-0287SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mini Rate Increase by the Village of Churchville

I.D. No. PSC-14-06-00011-P

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

Action taken: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by the Village of Churchville to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service — P.S.C. No. 1 to become effective July 1, 2006.

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

Subject: Mini rate increase.

Purpose: To increase annual electric base revenues by $107,522 or 14.1 percent.

Substance of final rule: On March 17, 2006, the Village of Churchville (Churchville) filed proposed tariff amendments to increase its annual electric base revenues by approximately $107,522 or 14.1% to become effective July 1, 2006. The Commission may approve, reject or modify, in whole or in part, Churchville's proposed tariff revisions.

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.

(06-E-0334SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Value Added Charge by Central Hudson Gas & Electric Corporation

I.D. No. PSC-14-06-00012-P

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

Action taken: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff leaves filed by Central Hudson Gas & Electric Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 14 — interruptible transportation service to electric generation facilities. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of final rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff leaves filed by Central Hudson Gas & Electric Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 14 — Interruptible Transportation Service to Electric Generation Facilities. The value added charge is a part of the standard gas transportation rate for generators which is intended to provide to gas utilities and their ratepayers the benefit of a portion of the difference between changes in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-G-1392SA4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Value Added Charge by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-14-06-00013-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, modify or reject, in whole or in part, tariff leaves filed by Consolidated Edison Company of New York, Inc. regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 9 — transportation service. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the costs of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff leaves filed by Consolidated Edison Company of New York, Inc. regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 9 - Transportation Service. The value added charge is a part of the standard gas transportation rate for generators which is intended to provide to gas utilities and their ratepayers the benefit of a portion of the difference between changes in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(03-G-1392SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Value Added Charge by National Fuel Gas Distribution Corporation

I.D. No. PSC-14-06-00014-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, modify or reject, in whole or in part, tariff leaves filed by National Fuel Gas Distribution Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 21—basic gas-for-electric-generation-service. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff leaves filed by National Fuel Gas Distribution Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 21—Basic Gas-For-Electric-Generation-Service. The value added charge is a part of the standard gas transportation rate for generators which is intended to provide to gas utilities and their ratepayers the benefit of a portion of the difference between changes in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(03-G-1392SA6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Value Added Charge by New York State Electric & Gas Corporation

I.D. No. PSC-14-06-00015-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, modify or reject, in whole or in part, tariff leaves filed by New York State Electric & Gas Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 15—basic electric generation transportation service. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff leaves filed by New York State Electric & Gas Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 15—Basic Electric Generation Transportation Service. The value added charge is a part of the standard gas transportation rate for generators which is intended to provide to gas utilities and their ratepayers the benefit of a portion of the difference between changes in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(03-G-1392SA7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Value Added Charge by Orange and Rockland Utilities, Inc.

I.D. No. PSC-14-06-00016-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, modify or reject, in whole or in part, tariff leaves filed by Orange and Rockland Utilities, Inc. regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 14—withdrawable transportation to fuel electric generating facilities of 50 megawatts or greater. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff leaves filed by Orange and Rockland Utilities, Inc. regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 14—Withdrawable Transportation to Fuel Electric Generating Facilities of 50 MegaWatts or Greater. The value added charge is a part of the standard gas transportation rate for generators which is intended to provide to gas utilities and their ratepayers the benefit of a portion of the difference between changes in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(03-G-1392SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Value Added Charge by Rochester Gas and Electric Corporation

I.D. No. PSC-14-06-00017-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 whether to approve, modify or reject, in whole or in part, tariff leaves filed by Rochester Gas and Electric Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 10—gas service-point transportation service. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff leaves filed by Rochester Gas and Electric Corporation regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 10—Gas Service-Point Transportation Service. The value added charge is a part of the standard gas transportation rate for generators which is intended to provide to gas utilities and their ratepayers the benefit of a portion of the difference between changes in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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.

(03-G-1392SA9)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deferral Accounting and Related Matters by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-14-06-00018-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 a request by Consolidated Edison Company of New York, Inc. for approval to record as a regulatory asset the difference between actual rental payments made to the City of New York for transformer vaults and the straight line rental accrual required by SFAS No. 13. The commission may approve, reject, or modify, in whole or in part, this request, and it may also consider other related matters.

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

Subject: Authorization of deferral accounting and related matters.
Purpose: To consider a request for deferral accounting of certain expenses and related matters.
Substance of proposed rule: Consolidated Edison Company of New York, Inc. seeks authorization from the New York State Public Service Commission to establish a regulatory asset to defer the difference between the actual rental payments made to the City of New York for transformer vaults and the straight line rental accrual that would otherwise be chargeable to income in accordance with SFAS No. 13, Accounting for Leases. The regulatory asset would reverse over a ten-year period. The Commission may grant, deny, or modify, in whole or part, the company's request, and it may consider other, related matters.
Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500
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.
(06-M-0229SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Rolling Meadows Water Corporation

I.D. No. PSC-14-06-00019-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 tariff revisions filed by Rolling Meadows Water Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 4—Water, to become effective Sept. 1, 2006.
Statutory authority: Public Service Law, section 89-c(10)
Subject: Water rates and charges.
Purpose: To increase Rolling Meadows Water Corporation's annual revenues by about $116,500 or 24 percent.
Substance of proposed rule: On March 14, 2006, Rolling Meadows Water Corporation (Rolling Meadows or the company) filed to become effective September 1, 2006, First Revised Leaf No. 10 and Fifth Revised Leaf No. 12, to its electronic tariff schedule, P.S.C. No. 4—Water. The company provides metered water to approximately 1,059 customers in five subdivisions known as Rolling Meadows, Elmendorf, Hillside Acres, Leewood Knolls and High Ridge, located in the Towns of Hurley, Ulster and Marbletown, Ulster County. Rolling Meadows is requesting to increase its annual operating revenues by $116,500 or 24% but notes that the Kingston Purchased Water Surcharge for the Hillside Acres system will not be affected. The company also proposes to increase its Restoration of Service Charge during normal business hours (8:00 AM to 4:00 PM, Monday through Friday) from $25 to $40, outside of normal business hours Monday through Friday from $35 to $70 and on weekends or public holidays from $50 to $100. Rolling Meadows also proposes increasing its Late Payment Charge from 1½% to 3% and instituting a $35 Collection Fee when payment is obtained at the premise, thereby eliminating the Restoration of Service Charge. As part of its filing, the company is proposing a $41,400 long term capital improvement program for the Rolling Meadows, Elmendorf and Hurley systems to add storage capacity to the systems' grid to equalize water pressure throughout the system. Rolling Meadow's tariff, along with its proposed changes, is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us located under Commission Documents). The Commission may approve or reject, in whole or in part, or modify the company's petition.
Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500
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.
(06-W-0302SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges and Issuance of Debt by Windover Water Works

I.D. No. PSC-14-06-00020-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 a petition filed by Windover Water Works requesting authority to finance approximately $99,400 to make improvements to its water system and to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water, to become effective Sept. 1, 2006.
Statutory authority: Public Service Law, section 89-c(10) and 89-f
Subject: Water rates and charges and issuance of debt.
Purpose: To finance $99,400 and to increase Windover Water Works' quarterly flat rate charge from $20 to $303.
Substance of proposed rule: On March 8, 2006, Windover Water Works (Windover or the company) filed a petition requesting authority to finance approximately $99,400 so it can make capital improvements to its water system and seeks permission to authorize a surcharge mechanism to collect the interest and principal on a loan for the capital improvements. Windover also filed, to become effective September 1, 2006, Third Revised Leaf No. 8, to its tariff schedule, P.S.C. No. 1—Water. Windover is requesting to increase its quarterly flat rate charge from $20 to $303 so that it can meet its operating expenses and secure insurance for the company. In addition to the company's quarterly flat rate charge, customers pay for water purchased by the company from the Town of Evans based on their metered usage. The company provides water to 8 customers in a development known as Windover Farm, located in the Village of Derby, Town of Angola, Erie County. The Commission may approve or reject, in whole or in part, or modify the company's petition.
Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500
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.
(06-W-0327SA1)