

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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Correctional Services

EMERGENCY RULE MAKING

Packages and Articles Sent or Brought to Institutions

I.D. No. COR-11-07-00006-E

Filing No. 228

Filing date: Feb. 26, 2007

Effective date: Feb. 26, 2007

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

Action taken: Repeal of Part 724 and addition of new Part 724 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

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

Specific reasons underlying the finding of necessity: Packages have represented a window through which inmates and their external sources have attempted to transmit contraband items such as drugs, money and articles which can be used as or converted to weapons. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products. When such items are successfully smuggled into a correctional facility, they become an instant

threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, previously presented at section 724.4 of this regulation, has been removed. The listing, which has always been printed as part of the Department's internal directive #4911, "Packages and Articles Sent or Brought to Institutions," will henceforth be viewable on the Department's website and, as before, posted in facilities and available to inmates at facility libraries. The department will be able, thereby, to quickly revise the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

Concurrently, the remainder of Part 724 is amended to reflect procedures designed to enhance security, guard against abuse of package privileges and prevent importation of contraband into correctional facilities.

In view of the potential harm to public safety which may arise from abuse of inmate package privileges, I have concluded that this rule should be implemented on an emergency basis.

Subject: Packages and articles sent or brought to institutions.

Purpose: To update procedures consistent with security needs.

Substance of emergency rule: PACKAGES AND ARTICLES SENT OR BROUGHT TO INSTITUTIONS

This Part formerly consisted of four sections, 724.1 through 724.4. It now consists of five sections with the addition of a new section 724.2 on applicability, identifying which inmates and facilities may receive packages in accordance with this Part.

Section 724.3, "Policy" (formerly 724.2), has been greatly expanded. New material is summarized as follows:

Subdivision (a).

- Paragraph (3) restricts received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits;
- Paragraph (4) defines the value of an article as the actual purchase price, excluding tax, shipping or handling costs;
- Paragraphs (5) and (6) clarify procedures for disposition of previously received package items which subsequently become disallowed;
- Paragraph (7) specifies that the department is not responsible for articles damaged in shipping or received in spoiled condition;
- Paragraph (8) provides for a record of return-to-sender transactions.

Subdivision (b).

- Paragraphs (1) through (4) specify search procedures, including a procedure for handling items of religious significance;
- Paragraphs (5) and (6) define contraband and articles not permitted and include procedures for disposition;
- Paragraph (7) prohibits alteration of items once received;
- Paragraph (8) provides for review and disposition of items withheld by staff because of non-conformance with specifications.

Subdivision (d).

- Paragraph (1) adds procedures for disposition of packages not having return addresses;
- Paragraph (2) expands procedures for sending a package out of a facility at an inmate's request.

Subdivision (e) – limits receipt of art and handicraft supplies.

Subdivision (f) – explains procedures for handling packages brought by visitors.

Subdivision (g).

- Paragraph (2) requires that a received article valued at over \$20 must be accompanied by a receipt or bill;
- Paragraph (4) establishes special watch procedures to guard against importation of contraband in packages addressed to inmates who have been identified with contraband or drug-related misbehavior;

Subdivision (h).

- Paragraph (2) specifies that an inmate who orders a package while under a "loss of package" disciplinary disposition must pay to have it returned to sender.

Subdivision (i) provides for disposition of packages received for inmates in SHU.

Subdivision (j) provides for processing and forwarding or disposition of packages received for inmates who have been transferred or are temporarily away from a facility.

Section 724.4, "Local permits" (formerly 724.3), has not changed except for the following addition at paragraph (5): "If a permit is revoked, the article will be confiscated and disposed of at the inmate's expense in accordance with the departmental directive on inmate personal property limits."

Section 724.5, "Listing of approved items" (formerly 724.4, "Allowable Items") is completely changed. The department will no longer list items in this regulation because of the necessity of making changes as security needs require and on an expeditious basis. The new section is printed here in its entirety.

§ 724.5 Listing of approved items.

(a) The department shall promulgate a detailed listing of items approved for receipt by inmates through facility package rooms. This listing shall be appended to the departmental directive #4911, "Packages and Articles Sent or Brought to Institutions," made available to inmates in all facility libraries, posted in all facility package rooms and visiting rooms, and posted on the department's website at www.docs.state.ny.us/directives/4911.pdf

(b) This listing only identifies items which may be received through the package room and sets forth the conditions and restrictions for receipt of those items; this listing is not a comprehensive list of all items that an inmate may be authorized to possess.

(c) This list will be periodically updated and amended, consistent with the needs of the department.

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 May 26, 2007.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

By vesting the commissioner with this rule making authority, the legislature intended the commissioner to determine if inmates may receive packages from family members and other outside sources and, if allowed, to implement procedures to ensure that the privilege is not abused.

Needs and Benefits:

Inmates have long enjoyed the privileges of receiving packages from family and visitors and of ordering consumer goods from a list of approved articles. Packages, however, have represented a window through which inmates and their external sources have attempted to obtain contraband items such as drugs, money and articles which can be used or converted to weapons. Needless to say, when such items are successfully smuggled in, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

The Department has preserved these privileges despite the increasing sophistication of those who would attempt to smuggle contraband via packages. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, which has always been presented at section 724.4, has been removed and is being published in more rapidly changeable venues, including posting at the Department's website. The department will be able, thereby, to quickly alter the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

The remaining text has been thoroughly overhauled to ensure that package privileges are maintained for most inmates and that all related procedures serve the department's security interests. These detailed policies and procedures are currently implemented at department facilities and are posted and available to inmates.

Significant changes from the repealed text include: addition of a section on applicability, clarifying which inmates and facilities may receive packages in accordance with this Part; restriction of received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits; clarification of procedures for disposition of disallowed items; enhanced package-related record keeping; clarification of package and item search procedures; definitions of contraband and articles not permitted; a procedure for review of items withheld by staff because of non-conformance with specifications; procedures for sending packages out of a facility; procedures for handling packages brought with visitors; special watch procedures to guard against importation of contraband; procedures for handling packages for inmates in special housing units and for inmates who have been transferred or are temporarily away from a facility.

Costs:

- a. To State government: None.
- b. To local governments: None. The proposed amendment does not apply to local governments.
- c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.
- d. Costs to the regulating agency for implementation and continued administration of the rule:

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

- a. New reporting or application forms: None.
- b. Additions to existing reporting or application forms: None.
- c. New or addition record keeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

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

Duplication:

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

Alternatives:

The department has considered eliminating package privileges or severely restricting the number and circumstances under which packages may be received by inmates. It has concluded that such privileges represent a significant connection between inmates and their families and friends and, as such, have rehabilitative and quality-of-life value. As explained under "Needs and Benefits," the chosen course of action intends to maintain package privileges for most inmates while strengthening the procedures designed to ensure that these privileges are not abused and do not compromise security.

No other alternatives have been proposed or considered.

Federal Standards:

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

Compliance Schedule:

The Department of Correctional Services is in compliance with this proposed rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Grievance Program

I.D. No. COR-11-07-00004-P

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

Proposed action: This is a consensus rule making to amend sections 701.5(a)(2), (b)(4)(c) and 701.6(a), (f)(1) and (i)(2) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 139

Subject: Inmate Grievance Program.

Purpose: To correct citations and punctuation.

Text of proposed rule: The following sections of Part 701 of Title 7 NYCRR are amended as follows:

A punctuation error appears in the third sentence of section 701.5(a)(2) and is hereby amended as follows:

(2) Contents. In addition to the grievant's name, department identification number, housing unit, program assignment, etc., the grievance should contain a concise, specific description of the problem and the action requested and indicate what actions the grievant has taken to resolve the complaint, i.e., specific persons/areas contacted and responses received. The IGP supervisor shall review the grievance complaint and designate the grievance code and title. If the IGP supervisor determines that the grievance may be a harassment, discrimination or strip frisk/strip search grievance, it shall be processed in accordance with the respective expedited procedure (section 701.8, .9 or .10, below). The clerk shall consecutively number and log each grievance at the time of receipt.

A numbering error appears in section 701.5(b)(4)(i)(c). The sub clauses (i) through (iv) are hereby renumbered as (1) through (4) respectively.

A citation error appears in section 701.6(a). The citation in the first sentence is amended as follows:

(a) Advisors. An inmate may present or appeal a grievance unaided, or may be advised or assisted by a staff member or another inmate of his/her choosing subject to the restrictions set forth in sections 701.2[(g)] (h), above, and 701.7(c)(3), below. At the discretion of the superintendent, inmate advisors for keeplocked inmates may be limited to inmate clerks or inmate representatives on the IGRC and keeplocked inmates may be prohibited from serving as advisors to other inmates.

A citation error appears in section 701.6(f)(1) and is amended as follows:

(1) A code of ethics (see section 701.[10]11) for IGRC staff and inmate representatives, clerks, and chairpersons has been established to strengthen the credibility and effectiveness of the IGP. Violations of this code may result in removal from the IGP.

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

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed text as written as it merely corrects non-substantive, punctuation and citation errors in the existing rule. This proposal seeks to amend the text for Part 701 to Title 7 NYCRR that was adopted on July 1, 2006.

Job Impact Statement

job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal

merely seeks to rectify non-substantive, technical errors in the previously adopted rule.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Grievance Program Modification Plan

I.D. No. COR-11-07-00005-P

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

Proposed action: This is a consensus rule making to amend section 702.4(a)(4), (b)(1), (2), (c)(1), (2) and add sections 702.5, 702.6 and 702.7 to Title 7 NYCRR.

Statutory authority: Correction Law, section 139

Subject: Inmate Grievance Program modification plan.

Purpose: To amend timeframes and citations and add sections in order to provide consistency with Part 701 of Title 7 NYCRR.

Text of proposed rule: Sections of Part 702 of Title 7 NYCRR are amended as follows:

The timeframe in the text of Part 702.4(a)(4) is hereby amended as follows:

(4) If the grievance cannot be resolved informally [within four working days], the designated staff shall convene an IGRC hearing within *sixteen calendar* [seven working] days from the date the grievance was received by that staff person. The IGRC shall be composed of two staff representatives appointed by the superintendent, two inmates selected by the grievant, and a non-voting chairperson designated by the superintendent or designee.

The timeframe in the text of Part 702.4(b)(1) is hereby amended as follows:

(1) Within *seven*[four] working days of receiving the written recommendation by the IGRC on the grievance complaint form, the inmate or any direct party to the grievance may appeal the IGRC decision/recommendation to the superintendent by filing an appeal with the person designated by the superintendent. If no appeal is filed, it will be presumed that the inmate or direct party accepts the committee's decision/recommendation.

The citation in Part 702.4(b)(2) is hereby amended as follows:

(2) The normal procedure for step two (section 701.5(c)[7(b)] of this Title) shall then be followed.

The timeframe in the text of Part 702.4(c)(1) is hereby amended as follows:

(1) Within *seven*[four] working days after receipt of the superintendent's written response to the grievance, the inmate or any direct party to the grievance may appeal the superintendent's action to the Central Office Review Committee (CORC) by completing the Notice of Decision to Appeal and returning it to the person designated by the superintendent.

The citation in Part 702.4(c)(2) is hereby amended as follows:

(2) The normal procedure for step three (section 701.5(d)[7(c)] of this Title) shall then be followed.

The following section is hereby added to Part 702 of Title 7 NYCRR.

Section 702.5 Harassment

The procedures for processing grievances regarding allegations of employee harassment as outlined in section 701.8, of this title, shall be followed.

The following section is hereby added to Part 702 of Title 7 NYCRR.

Section 702.6 Unlawful Discrimination

The procedures for processing grievances regarding allegations of unlawful discrimination as outlined in section 701.9 of this title shall be followed.

The following section is hereby added to Part 702 of Title 7 NYCRR.

Section 702.7 Strip Search/Strip Frisk

The procedures for processing grievances alleging violation of department policy regarding strip searches or strip frisks as outlined in section 701.10 of this title shall be followed.

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

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written as it merely incorporates the applicable sections of Part 701 of this title, Inmate Grievance Program, adopted on July 1, 2006, with regard to the following:

The timeframes regarding the processing of Inmate Grievances; correcting inaccurate citations and repeating sections already cited in Part 701 to emphasize the expedited procedures for grievances that due to their specific allegations are of particular concern to department facility administrators.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely seeks to ensure consistency with Part 701 of Title 7 NYCRR, Inmate Grievance Program.

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-11-07-00003-E

Filing No. 227

Filing date: Feb. 26, 2007

Effective date: Feb. 26, 2007

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

Action taken: Addition of Part 402 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 899-a(4); and Executive Law, section 845-b(12)

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

Specific reasons underlying the finding of necessity: Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

Subject: Criminal history record check.

Purpose: To implement chapter 769 of the Laws of 2006 and a chapter of the Laws of 2006 (S. 6630) by requiring nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to request criminal background checks of certain prospective employees.

Substance of emergency rule: This regulation adds a new Part 402 to Title 10 NYCRR.

Chapter 769 of the Laws of 2005, as amended by Chapter 331 of the Laws of 2006, imposed the requirement of criminal history record checks commencing September 1, 2006 for each prospective unlicensed employee of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers. The purpose of this legislation was to enable such providers to identify appropriate individuals to staff their facilities and programs, through a review of both State and federal criminal history information.

The legislation requires the State Department of Health to promulgate regulations that establish standards and procedures for the criminal history record checks required by the statute. Accordingly, these regulations establish provisions governing the procedures by which fingerprints will be obtained, and describe the requirements and responsibilities of the Department and the aforementioned providers with regard to this process.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

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 May 26, 2007.

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:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivision (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 and Chapter 331 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 and Chapter 331 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate one or more "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. The fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-B of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application

in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law. For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

Costs:

Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check and a \$24 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$700,000 (See "Costs to State Government").

Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately \$2.8 million.

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Paperwork:

Chapter 769 of the Laws of 2005 and Chapter 331 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

The regulations also contain a requirement to keep a current roster of subject parties.

Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

Federal Standards:

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

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York state which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered "small businesses", and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee's eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See Regulatory Impact Statement - Costs to State Government).

For LHCSAs which are unable to access reimbursement from state and /or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See Regulatory Impact Statement - Costs to State Government).

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional “ink and roll” process. Under the “ink and roll” method, a trained individual rolls a person’s fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person’s name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b (1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Small Businesses and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000.

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

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

Albany	Erie	Oneida
Broome	Montroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the

procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

Compliance Costs:

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See “Regulatory Impact Statement – Costs to State Government”).

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See “Regulatory Impact Statement – Costs to State Government”).

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

Job Impact Statement

A Job Impact Statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 will not have any adverse impact on the existing unlicensed employees of providers as they apply only to future prospective unlicensed employees hired or used on or after September 1, 2006. It is anticipated that the number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

Insurance Department

EMERGENCY RULE MAKING

Claims for Personal Injury Protection Benefits

I.D. No. INS-11-07-00001-E

Filing No. 225

Filing date: Feb. 23, 2007

Effective date: Feb. 23, 2007

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

Action taken: Amendment of Subpart 65-3 (Regulation 68-C) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the eligible insurer’s liability to pay first party benefits. Section 11 codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the

current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the terms "special expedited arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the mechanism for informing applicants of the availability of the special expedited arbitration option.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Claims for personal injury protection benefits.

Purpose: To require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits.

Text of emergency rule: Subdivisions (b) and (c) of Section 65-3.12 is amended to read as follows:

(b) If a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(c) If the source of first-party benefits is at issue because the status of the injured person as a pedestrian or an occupant of a motor vehicle is in dispute, the insurer to whom notice of claim was given or if such notice was given to more than one insurer, the first insurer to whom notice was given shall, within 15 calendar days after receipt of notice, obtain an agreement with the other insurer or insurers as to which insurer will furnish no-fault benefits. If such an agreement is not reached within the aforementioned 15 days, then the insurer to whom such notice was first given shall process the claim and pay first-party benefits and resolve the dispute in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

Paragraphs (2), (3) and (4) of Section 65-3.13(a) are amended to read as follows:

(2) An applicant who is a named insured or a relative of a named insured covered by additional personal injury protection benefits, and who, while an operator or occupant of a motor vehicle, sustains a personal injury arising out of the use or operation of such motor vehicle outside of New York State, shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such in-

surer will accept and pay the claim initially. (See subdivision (b) of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(3) An applicant who is a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury through the use or operation of a motor vehicle or a motorcycle shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(4) An applicant who is not a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is an occupant of an insured motor vehicle covered for additional personal injury protection benefits or a motor vehicle operated by a person covered for additional personal injury protection benefits, and who sustains a personal injury through the use or operation of the insured motor vehicle outside of New York State, shall institute the claim against the insurer of the owner or operator of the insured motor vehicle. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

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 May 23, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Consolidated Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 2601, 5221 and 5106 of the Insurance Law and Section 2407 of the Vehicle and Traffic Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation (MVAIC) in the payment of no-fault benefits to qualified persons. Section 5106 of the Insurance Law sets forth an expedited eligibility hearing option and authorizes the superintendent to promulgate procedures to resolve disputes among eligible insurers using the expedited arbitration process that will designate the insurer responsible for the payment of first party benefits.

2. Legislative objectives: Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicles Insurance Reparations Act, popularly referred to as the No-Fault Law. No-fault insurance was introduced to rectify many problems that were inherent in the existing tort system utilized to settle claims, and to provide for prompt payment of health care and loss of earnings benefits. Chapter 452 of the Laws of 2005 which amends Section 5106 of the Insurance Law codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of the claim for first party benefits. It also enhances the current arbitration procedures to include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits.

3. Needs and benefits: When there was a dispute regarding which insurer, among two or more responsible insurers regarding who would be responsible for the payment of the claim for first party benefits to the applicant (injured party or health care provider per assignment of benefits from the injured party), generally the insurer that received notice of the claim first was required by regulation to furnish the benefits. When an insurer failed to comply with this regulatory requirement, the applicant's recourse was to seek resolution of the dispute in arbitration or a court of competent jurisdiction. Because of the inherent delays in the resolution of cases in arbitration and court, a faster recourse was needed to assure accident victims that the failure of one or more insurers to meet their regulatory responsibility would not result in the failure of accident victims to be swiftly compensated for their economic losses. Chapter 452 of the Laws of 2005 provides for an expedited eligibility hearing option. These rules implement the law and require an insurer to issue a denial with specific language advising the applicant of the availability of special expedited arbitration to resolve the issue of which insurer is to be designated to process the claim for first party benefits.

The rules also provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits. By providing notification of, and procedures for, administration of the special expedited arbitration, an applicant can utilize the special expedited arbitration to expeditiously resolve all disputes regarding which insurer should be liable for the payment of the claim for first party benefits.

4. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005, but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes. [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs].

Any additional costs associated with these rules for insurers or self-insurers would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute. The additional costs would include: the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants' attorney fees. These additional cases will increase the insurers' and self-insurers' share of costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction.

A cost associated with the rules for the applicant is the \$40 filing fee. However, this fee will be reimbursed by the insurer determined to be responsible for processing the claim.

Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

5. Local government mandates: Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of these rules. The Department has not been able to determine the number of local governments that are self-insured. However, we did outreach by contacting a large local government that is self-insured to determine the impact this change would have on them. It was determined that there would be a very minimal impact since almost all injuries are work related and therefore covered by workers compensation rather than no-fault law.

6. Paperwork: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self-insurers associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. However, under most circumstances, the submission of the paperwork will eliminate the requirement of the attendance of the applicant (unless the arbitrator determines that a hearing is necessary) thus saving the applicant the time and expense of attending the special expedited arbitration. Since the special expedited arbitration option is being utilized to resolve "priority of payment" disputes, the applicant does not have to submit bills for this arbitration and the specific notification language for the special expedited arbitration required by this rule has been amended to specifically inform the applicant that bills do not have to be submitted. Insurers and self-insurers will have additional paperwork related to typing or printing the language onto the NF-10 form since it is not preprinted on the form. There will also be paperwork associated with reimbursing filing fees and paying applicants their attorney fees.

The insurers and self-insurers will also incur additional paperwork to comply with record retention requirements. However, it is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes and therefore paperwork should be minimal.

7. Duplication: None.

8. Alternatives: The Department considered changing the NF-10 form to include the specific notification language for the special expedited arbitration pre-printed on it. However, because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes, it is anticipated that there will be few requests for the special expedited arbitration and the specific notification language would be rarely used. Therefore, the Department decided against changing the form since the costs involved, i.e., insurers and self-insurers would have to discard the current forms in use and print new forms, far outweigh the benefits of having pre-printed language. It was deemed preferable, for those rare instances where the language is needed, to have the affected entities write the prescribed language in space provided on the current form.

The Department considered using a shorter specific notification language for the special expedited arbitration. However, after receiving comments, and based on the Department's evaluation of these comments including assessment of the needs and benefits as well as any potential negative consequences that would result from making the change, it was determined that it would be appropriate to expand the specific notification language to provide further clarification.

It was also suggested that any filing fee be initially financed by the Department. The Department does not have the legislative authorization to fund an arbitration between private parties; therefore, the filing fee cannot be waived. However, in accordance with the regulation's existing provision that the filing fee will be refunded to the applicant by the insurer determined to be responsible for processing the claim, the Department has revised the required specific notification language to advise applicants of this provision.

9. Federal standards: None.

10. Compliance schedule: These rules have an immediate effective date because of the effective date of Chapter 452 of the Laws of 2005. The AAA, insurers, and self-insurers will be able to implement these rules immediately upon the regulation taking affect.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: The Insurance Department finds that these rules will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments except as noted below. The basis for this finding is that these rules are primarily directed to property/casualty insurance companies authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business". The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and determined that none of them would fall within the definition of "small business", because there are none which are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department has no information to indicate that any self-insurers are small businesses.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers may be considered small businesses.

Some local governments are self-insured for no-fault benefits. The Department has not been able to determine the number of local governments that are self-insured. However, we did outreach by contacting a large local government that is self-insured to determine the impact this change would have on them. It was determined that there would be a very minimal impact since almost all injuries are work related and therefore covered by workers compensation rather than no-fault law.

2. Compliance requirements: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. There will be additional paperwork requirements imposed on local governments that are self-insured for no-fault benefits associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The local governments will have additional paperwork related to typing or printing the language onto the NF-10 form since it is not preprinted on the form.

The local governments will also incur additional paperwork to comply with record retention requirements. However, the arbitration alternative is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs] and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties.

3. Professional services: The health care provider and local government are not required to use professional services to comply with the rules. However, it is at their option if they wish to use attorneys for the special expedited arbitration.

4. Compliance costs: Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

A cost associated with the rules for the applicant is the \$40 filing fee. However, this fee will be reimbursed by the insurer determined to be responsible for processing the claim.

Additional arbitration requests may be filed against local governments who are self insured for no-fault benefits because applicants can seek the resolution of priority of payments disputes in special expedited arbitration. Such disputes will require the self-insurers to incur the costs of defending

cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The additional cases will increase the self insured local government's costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction. The arbitration alternative is mandated by Chapter 452 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because self-insurers are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a). As such, it is also anticipated that the additional aforementioned costs to self-insurers should be minimal.

5. Economic and technological feasibility: Compliance with the rules should be economically and technologically feasible for health care providers since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Compliance with the rules by self insured local governments should be economically and technologically feasible since the rules are using the procedures already in place for disputes involving late notices to now also apply to disputes involving which insurer is to be designated to process the claim for first party benefits. In addition, the notice requirements are using a form already in use by the companies.

6. Minimizing adverse impact: This rule applies uniformly to regulated parties and is mandated by statute. This rule does not impose any additional burden on small businesses and local governments. It is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties.

7. Small business and local government participation: This agency action appeared as a proposal in the Insurance Department's current Regulatory Agenda.

Consolidated Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and self-insurers covered by this regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act. Some of the home offices of these insurers and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers are in rural areas.

2. Reporting, recordkeeping and other compliance requirements: To the extent that additional applicants (injured party or health care provider per assignment of benefits from the injured party) have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self-insurers (including local governments self-insured for no-fault benefits) associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The insurers and self-insurers will also incur additional paperwork to comply with record retention requirements. Insurers and self-insurers will have additional paperwork related to typing or printing the language onto the form since the NF-10 form does not have the required language preprinted on the form.

To the extent that additional applicants will also have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. However, under most circumstances, the submission of the paperwork will negate the requirement of the attendance of the applicant (unless the arbitrator determines that a hearing is necessary). Since the special expedited arbitration option is being utilized to resolve "priority of payment" disputes, the applicant does not have to submit bills for this arbitration and the specific notification language for the special expedited arbitration required by this rule has been amended to specifically inform the applicant that bills do not have to be submitted. In addition, the arbitration alterna-

tive is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties because insurers and self-insurers are already required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes. [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs].

3. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because insurers and self-insurers (including local governments self insured for no-fault benefits) already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of most "priority of payment" disputes. Any additional costs associated with these rules would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute. The additional costs would include: the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants' attorney fees. These additional cases will increase the insurers' and self-insurers' share of costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction.

A cost associated with the rules for the applicant is the \$40 filing fee. However, this fee will be reimbursed by the insurer determined to be responsible for processing the claim.

Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State and is mandated by statute. The Insurance Department does not believe that it will have an adverse impact on rural areas. Any additional costs associated with these rule would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's current Regulatory Agenda.

Consolidated Job Impact Statement

These rules will not have any adverse impact on jobs and employment opportunities in this State since the changes made only require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits and provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first part benefits.

EMERGENCY RULE MAKING

Arbitration

I.D. No. INS-11-07-00002-E

Filing No. 226

Filing date: Feb. 23, 2007

Effective date: Feb. 23, 2007

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

Action taken: Amendment of Subpart 65-4 (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the eligible insurer's liability to pay first party benefits. Section 11 codifies the resolution process when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the terms "special expedited arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the procedures for administration of the special expedited arbitration for disputes regarding the designation of an insurer for the processing of first part benefits. By making the insurers and applicants aware of these procedures, applicants will be able to utilize special expedited arbitration when where is a dispute between multiple eligible insurers over which carrier has primary responsibility for the payment of first party benefits.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Arbitration.

Purpose: To provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first part benefits.

Text of emergency rule: Subdivision (b) of Section 65-4.5 is amended to read as follows:

(b) Special expedited arbitration.

(1) Special expedited arbitration shall be available for disputes involving [the]:

(i) *The failure to submit notice of claim within 30 calendar days after the accident and where it has been determined by the insurer that reasonable justification for late notice has not been established; and*

(ii) *The proper application of subdivisions (b) and (c) of Section 65-3.12 of this Part and of paragraphs (2), (3) and (4) of Section 65-3.13(a) of this Part.*

(2)(i) An applicant may request special expedited arbitration for resolution of the dispute involving late notice within 30 calendar days after mailing of the denial of claim by the insurer stating that reasonable justification for late notice has not been established.

(ii)(a) *In regard to disputes related to subdivisions (b) and (c) of Section 65-3.12 or paragraphs (2), (3) and (4) of section 65-3.13(a) of this Part, an applicant may request special expedited arbitration to designate an insurer that is responsible for processing first-party benefits and additional first party benefits, after each insurer has issued a Denial of Claim form (NF-10) stating that the insurer is not the insurer eligible to process the first-party benefits claimed.*

(ii)(b) *Special expedited arbitration required by clause (a) of this subparagraph shall only designate an insurer to commence processing the claim based upon the first insurer notified that is otherwise liable for the payment of first party benefits. The insurer designated by the arbitration shall retain all rights of investigation afforded under statute and regulation, and the ultimate liability for payment of benefits shall be resolved in accordance with section 65-4.11 of this Subpart.*

(3) At the time of [such] a request for special expedited arbitration, the applicant shall make a complete written submission supporting his or her position. [No] Any further written submissions shall be accepted [unless requested by] into evidence at the discretion of the arbitrator.

[(3)] (4) Applications for special expedited arbitration shall be submitted to the conciliation center of the designated organization and shall comply with the requirements for initiation of arbitration contained in [paragraph 65-4.2(b)(1)] subparagraph 65-4.2(b)(1)(iii) of this Subpart.

[(4)] (5) The applicant's submission shall be forwarded by the conciliation center to the insurer within 3 business days of receipt. The insurer may provide the center with reasonable special mailing or transmittal instructions to facilitate the processing of these arbitration requests.

[(5)] (6) The insurer shall respond in writing to the applicant's submission within 10 business days after the mailing by the center. No further submissions shall be accepted unless requested by the arbitrator.

[(6)] (7) The dispute shall be resolved solely upon the basis of written submissions unless the arbitrator concludes that the issues in dispute require an oral hearing.

[(7)] (8) The arbitrator shall issue a written decision within 10 business days after receipt of all written submissions from the parties or at the conclusion of an oral hearing.

[(8)] (9) For the purpose of special expedited arbitration, the superintendent may appoint arbitrators, qualified in accordance with the provisions of this section, to serve on a per diem basis. Such arbitrators shall contract with the designated organization. The rate of per diem compensation shall be determined by the designated organization, after consultation with the no-fault arbitrator screening committee subject to the approval of the superintendent. Such arbitrators shall be independent contractors, and shall not be employees or agents of the designated organization or the Insurance Department.

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 May 23, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-11-07-00001-E, Issue of March 14, 2007.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-11-07-00001-E, Issue of March 14, 2007.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-11-07-00001-E, Issue of March 14, 2007.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-11-07-00001-E, Issue of March 14, 2007.

NOTICE OF ADOPTION

Personal Injury Protection Benefits

I.D. No. INS-52-06-00006-A

Filing No. 223

Filing date: Feb. 23, 2007

Effective date: March 14, 2007

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

Action taken: Amendment of Subpart 65-3 (Regulation 68-C) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

Subject: Claims for personal injury protection benefits.

Purpose: To require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-52-06-00006-P, Issue of December 27, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Arbitration

I.D. No. INS-52-06-00007-A

Filing No. 224

Filing date: Feb. 23, 2007

Effective date: March 14, 2007

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

Action taken: Amendment of Subpart 65-4 (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

Subject: Arbitration.

Purpose: To provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-52-06-00007-P, Issue of December 27, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

National Criminal History Background Checks

I.D. No. OMH-11-07-00007-P

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

Proposed action: This is a consensus rule making to amend Part 550 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.35; and Executive Law, section 845-b

Subject: National criminal history background checks for certain providers of mental health services.

Purpose: To implement a nondiscretionary statutory requirement to conduct national criminal history background checks of certain providers of mental health services.

Text of proposed rule: 1. Subdivision (a) of Section 550.1 of Title 14 NYCRR is amended to read as follows:

(a) Chapter 643 of the Laws of 2003, as amended by Chapter 575 of the Laws of 2004 and amended further by chapter 673 of the laws of 2006, imposed the requirement of criminal history record checks on each prospective operator, employee, or volunteer of certain mental health treatment providers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such providers.

2. Subdivision (c) of Section 550.4 of such Title is amended to read as follows:

(c) "Criminal history information," "criminal background," or "criminal history record" means a record of pending criminal charges, criminal convictions which are not vacated or reversed, and certificates filed pursuant to subdivision (2) of Section 705 of the Correction Law, and which the New York State Division of Criminal Justice Services is authorized to maintain pursuant to subdivision (6) of Section 837 of the Executive Law. For purposes of this Part, on or after March 12, 2007, "criminal history information," "criminal background," or "criminal history record" shall also include information from the federal bureau of investigation as a result of a national criminal history record check.

3. Subdivisions (a) and (b) of Section 550.5 of such Title are amended to read as follows:

(a) The Office shall perform a criminal history record check regarding any prospective operator, employee, or volunteer of a provider of services which is required to comply with Chapter 575 of the Laws of 2004, as set forth in subdivision (a) of Section 550.2 of this Part. *For purposes of this Part, the inclusion of a national criminal history background check shall apply to all prospective operators, employees, or volunteers whose applications are submitted to the office for a criminal history background check on or after March 12, 2007.*

(b) Any provider of services subject to compliance with this Part which is issued an operating certificate on or after April 1, 2005 shall require a criminal history record check of natural persons with an ownership interest in such providers, *provided, however, that for purposes of this Part, the inclusion of a national criminal history background check of natural persons with such an ownership interest shall apply to all providers of service issued an operating certificate on or after March 12, 2007.* Any change in the ownership interest of any provider on or after April 1, 2005, for which a new natural person becomes or joins as an operator shall require a criminal history record check of such new natural person or persons, which shall be performed in concert with the prior approval process established in Section 551.6 of Part 551 of this Title, or the application process established in Section 87.3 of Part 87 of this Title, as applicable. *For purposes of this Part, the inclusion of a national criminal history background check of new or additional natural person operators shall apply to all such changes in ownership proposed on or after March 12, 2007.*

4. Subparagraph (iii) of paragraph (4) of subdivision (e) of Section 550.5 of such Title is amended to read as follows:

(ii) the provider of services has informed the prospective employee or volunteer that he or she has the right to obtain, review, and seek correction of his or her criminal history record in accordance with regulations and procedures of the Division and the Federal Bureau of Investigation;

(iii) the provider of services has obtained the signed, informed consent of the prospective employee or volunteer on a form supplied by the Office which indicates that such person:

(A) has been informed of the right and procedures necessary to obtain, review, and seek correction of his or her criminal history information;

(B) has been informed of the reason for the request for his or her criminal history information;

(C) *has been informed that the criminal history information sought will include both a New York State and, on or after March 12, 2007, a national criminal history information check;*

(D) has consented to such request for a report of his or her criminal history information, *with respect to New York State and, on or after March 12, 2007, national criminal history information;*

[(D)] (E) has supplied a current mailing or home address on the form;

[(E)] (F) has or has not, to the best of his or her knowledge, ever been convicted of a crime in New York State or any other jurisdiction; and

(G) has or has not, to the best of his or her knowledge, any felony or misdemeanor charges currently pending against him or her that remain unresolved.

5. Subparagraph (ii) of paragraph (2) of subdivision (f) of Section 550.5 of such Title is amended to read as follows:

(ii) prevent any person with a conviction or pending charge of one or more of the following from being temporarily approved, provided that the provider of services has been previously informed by the prospective employee or volunteer in the application process, or by the Office prior to issuance of its determination, of such conviction or pending charge:

(A) a felony sex offense;

(B) a felony within the past ten years involving violence; [or]

(C) endangering the welfare of an incompetent or physically disabled person pursuant to Section 260.25 of the Penal Law; [and] *or*

(D) *on or after March 12, 2007, any comparable offense in any other jurisdiction; and*

6. Paragraphs (1) and (2) of subdivision (a) of Section 550.6 of such Title is amended to read as follows:

(1) Applicant to be a natural person operator of a new provider of services after April 1, 2005; or a new natural person operator of an existing provider after April 1, 2005.

(i) Where an applicant to be an operator of a new provider of services, or an applicant to be a new operator of an existing provider of services, has no criminal history, the Office shall promptly resume its

review of the application in accordance with the provisions of Part 551 or Part 87 of this Title, as applicable.

(ii) Where the criminal history record of an applicant to be an operator of a new provider of services, or an applicant to be a new operator of an existing provider of services, reveals a felony conviction at any time for a sex offense, a felony conviction within the past ten years involving violence, or a conviction for endangering the welfare of an incompetent or physically disabled person pursuant to Section 260.25 of the Penal Law *or, for an applicant to be an operator of a new provider of services on or after March 12, 2007, or an applicant to be a new operator of an existing provider on or after March 12, 2007, any comparable offense in any other jurisdiction,* the Office shall deny the application unless the Office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of clients in the facility or program.

(iii) Where the criminal history record of an applicant to be an operator of a new provider of services, or an applicant to be a new operator of an existing provider of services, reveals a conviction for any crime other than one set forth in subparagraph (ii) of paragraph (1) of this subdivision, the Office may, consistent with article 23-A of the Correction Law, deny the application.

(iv) Where the criminal history record of an applicant to be an operator of a new provider of services, or an applicant to be a new operator of an existing provider of services, reveals a charge for any felony *or, for applications made on or after March 12, 2007, any comparable offense in any other jurisdiction,* the Office shall hold the application in abeyance until the charge is finally resolved.

(v) Where the criminal history record of an applicant to be an operator of a new provider of services, or an applicant to be a new operator of an existing provider of services, reveals a charge for any misdemeanor *or, for applications made on or after March 12, 2007, any comparable offense in any other jurisdiction,* the Office may hold the application in abeyance until the charge is finally resolved.

(2) Applicant to be an employee or volunteer.

(i) Where a prospective employee or volunteer of a provider of services has no criminal history, the Office shall promptly advise the provider of services that it shall not issue a denial for employment or volunteer service and is not directing the provider of services to issue a denial.

(ii) Where the criminal history record of a prospective employee or volunteer of a provider of services reveals a felony conviction at any time for a sex offense, a felony conviction within the past ten years involving violence, or a conviction for endangering the welfare of an incompetent or physically disabled person pursuant to Section 260.25 of the Penal Law *or, for applications made on or after March 12, 2007, any comparable offense in any other jurisdiction,* the Office shall direct the provider to deny employment or authorization to provide services by such person, unless the Office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of clients in the facility or program.

(A) The Office shall provide a summary of the criminal history record along with such notification, *provided, however, that with respect to information obtained from the federal bureau of investigation as a result of a national criminal history record check, only information authorized for disclosure under applicable federal laws shall be transmitted to the provider.*

(B) In cases where the Office does not issue a denial, or does not direct the provider of services to issue a denial, the provider of services may act on the application in its own discretion, consistent with all applicable laws and regulations.

(iii) Where the criminal history record of a prospective employee or volunteer of a provider of services reveals a conviction for any crime other than one set forth in subparagraph (ii) of paragraph (1) of this subdivision, the Office may, consistent with article 23-A of the Correction Law, direct the provider to deny employment/authorization to provide services.

(A) The Office shall provide a summary of the criminal history record along with such notification, *provided, however, that with respect to information obtained from the federal bureau of investigation as a result of a national criminal history record check, only information authorized for disclosure under applicable federal laws shall be transmitted to the provider.*

(B) In cases where the Office does not issue a denial, or does not direct the provider of services to issue a denial, the provider of services may act on the application on its own discretion, consistent with all applicable laws and regulations.

(iv) Where the criminal history record of a prospective employee or volunteer of a provider of services reveals a charge for any felony *or, for applications made on or after March 12, 2007, any comparable offense in any other jurisdiction*, the Office shall hold the application in abeyance until the charge is finally resolved.

(v) Where the criminal history record of a prospective employee or volunteer of operator of a provider of services reveals a charge for any misdemeanor *or, for applications made on or after March 12, 2007, any comparable offense in any other jurisdiction*, the Office may hold the application in abeyance until the charge is finally resolved.

6. Paragraph (1) of subdivision (d) of Section 550.6 of such Title is amended to read as follows:

(d) Documentation and confidentiality requirements.

(1) Only the authorized person or his or her designee and the relevant subject party shall have access to criminal history information received by a provider of services. However, criminal history information may be disclosed by the authorized person to other parties who are directly participating in any decision with regard to such subject party, to which this information is relevant, *provided, however, that with respect to information obtained from the federal bureau of investigation as a result of a national criminal history record check, only information authorized for disclosure under applicable federal laws shall be transmitted to the provider.*

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

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

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

Consensus Rule Making Determination

Chapter 643 of the Laws of 2003, as amended by Chapter 575 of the Laws of 2004, imposed the requirement of criminal history record checks on each prospective operator, employee, or volunteer of certain mental health treatment providers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such providers. The OMH is required to process these requests, to perform a Correction Law Article 23-A analysis with respect to the results. After undertaking such review, the OMH will summarily advise providers whether or not the applicant can be approved for consideration. This statute also authorized OMH to promulgate regulations that establish the standards and procedures for such criminal history record checks, which are embodied in 14 NYCRR Part 550.

This law was amended by Chapter 673 of the Laws of 2006, which extended the authority of OMH and OMRDD in Executive Law Section 845-b to request criminal history background information on a national level from the FBI, effective March 12, 2007. The proposed rule will amend 14 NYCRR Part 550 to incorporate this requirement into its existing criminal history background check process, as required by, and consistent with, Chapter 673 of the Laws of 2006. As such, it is noncontroversial since it implements nondiscretionary State statutory provisions.

Job Impact Statement

The proposed amendments to 14 NYCRR Part 550 should not have any adverse impact on the existing employees and volunteers of providers of mental health services as it applies only to future prospective employees and volunteers, i.e., those whose applications are submitted on or after March 12, 2007. Nonetheless, as a result of the implementation of this nondiscretionary statutory requirement to perform a national criminal history background check, it is anticipated that the number of all future prospective employees/volunteers of mental health providers of services who have regular and substantial unsupervised or unrestricted physical contact with clients will be reduced to the degree that the national criminal history record check reveals a criminal record barring employment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Windshield Stickers

I.D. No. MTV-01-07-00009-A

Filing No. 230

Filing date: Feb. 27, 2007

Effective date: March 14, 2007

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

Action taken: Amendment of Part 174 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(1)

Subject: Windshield stickers.

Purpose: To allow the New York City Taxi and Limousine Commission to place a for-hire sticker on the windshield of for-hire vehicles regulated by the commission.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-01-07-00009-P, Issue of January 3, 2007.

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.

NOTICE OF ADOPTION

Low Speed Vehicles

I.D. No. MTV-01-07-00010-A

Filing No. 229

Filing date: Feb. 27, 2007

Effective date: March 14, 2007

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

Action taken: Amendment of Part 102 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 121-f and 2270

Subject: Low speed vehicles.

Purpose: To conform the regulatory definition of low speed vehicles to the statutory definition.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-01-07-00010-P, Issue of January 3, 2007.

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.

Public Service Commission

NOTICE OF ADOPTION

Deliverability Demand Components

I.D. No. PSC-50-06-00010-A

Filing date: Feb. 27, 2007

Effective date: Feb. 27, 2007

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

Action taken: The commission, on Feb. 27, 2007, adopted an order approving Central Hudson Gas & Electric Corporation's (the company) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service P.S.C. No. 12 to become effective March 1, 2007.

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

Subject: Deliverability demand components.

Purpose: To update the determination of deliverability demand billing components applicable to customers taking transport service under the company's gas retail access program.

Substance of final rule: The Commission adopted an order approving a tariff filing by Central Hudson Electric & Gas Corporation (the company) to revise P.S.C. No. 12 to update the determination of deliverability demand billing components applicable to customers taking transport service under the company's gas retail access program.

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-G-1434SA1)

NOTICE OF ADOPTION

Transfer of Water Plant Assets and Electronic Tariff Filing by Piney Point Homeowners Water Association

I.D. No. PSC-51-06-00019-A

Filing date: Feb. 27, 2007

Effective date: Feb. 27, 2007

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

Action taken: The commission, on Feb. 27, 2007, approved a petition filed by Piney Point Homeowners Water Association to transfer the water plant assets formerly owned by Piney Point Inc., and approved the electronic tariff schedule, P.S.C. No. 1—Water, and a waiver of the Public Service Commission's rate setting authority.

Statutory authority: Public Service Law, sections 89-c(1) and (10), 89-h, 4(1), 5(1)(f) and (4)

Subject: Transfer of water plant assets and electronic tariff filing.

Purpose: To transfer the water plant assets formerly owned by Piney Point, Inc., and approve an electronic tariff schedule, P.S.C. No. 1—Water, for the Piney Point Homeowners Water Association.

Substance of final rule: The Commission approved a petition filed by Piney Point Homeowners Water Association to transfer the water plant assets formerly owned by Piney Point Inc., and approved the electronic tariff schedule, P.S.C. No. 1—Water effective March 1, 2007, and a waiver of the Public Service Commission's rate setting authority, 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. (06-W-1443SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Rate Filing by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-07-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject or modify, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 9—Gas.

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

Subject: Major rate filing.

Purpose: To increase annual gas revenues by approximately \$196.7 million or 10.7 percent (increase delivery rates by approximately 34 percent).

Public hearing(s) will be held at: 1:00 p.m. and continuing daily as required, April 16, 2007 at Consolidated Edison Company of New York, Inc., 90 Church St., 4th Fl., Hearing Rm. A, New York, NY.

*There could be requests to reschedule the hearing. Notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Case 06-G-1332.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s request to increase annual gas revenues by approximately \$196.7 million or 10.7%. The proposed delivery rate increase equates to 34%.

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. Brillong, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-G-1332SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Investigation of the Electric Power Outages by the Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-07-00010-P

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

Proposed action: The commission is considering the recommendations contained in a staff report issued in Case 06-E-0894 – proceeding on motion of the commission to investigate the electric power outages in Consolidated Edison Company of New York, Inc.'s Long Island City network (the company). The commission may approve, reject or modify

the recommendations made in staff's report and other recommendations that may be developed and/or identified as a result of staff's investigation and may direct the company to implement said recommendations.

Statutory authority: Public Service Law, sections 5, 12, 65(1) and 66(1)
Subject: Staff report issued in Case 06-E-0894 – proceeding on motion of the commission to investigate the electric power outages in the company and other recommendations that may be developed and/or identified as a result of staff's investigation.

Purpose: To consider directing the company to implement the recommendations in staff's report issued in Case 06-E-0894 and other recommendations that may be developed and/or identified as a result of staff's investigation.

Substance of proposed rule: The Commission is considering the recommendations contained in a Staff Report issued in Case 06-E-0894 – Proceeding on Motion of the Commission to Investigate the Electric Power Outages In Consolidated Edison Company of New York, Inc.'s Long Island City Network (the Company). The Commission may approve, reject or modify the recommendations made in Staff's Report and other recommendations that may be developed and/or identified as a result of Staff's investigation and may direct the Company to implement said recommendations. Among the issues to be considered are the necessity of the recommendations and the feasibility of the time frame upon which the Company has to implement the recommendations.

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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-E-0894SA4)

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

Storm-Related Power Outages by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-07-00011-P

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

Proposed action: The Public Service Commission is considering whether and how to modify Consolidated Edison Company of New York, Inc.'s (Consolidated Edison, the company) response to storm-related power outages. The Department of Public Service staff's (staff) investigation of the Westchester County storm-related outages that occurred in 2006 identified a number of recommendations for improvements in the company's outage management, restoration, and communications activities, and the commission is considering whether these and/or any other changes are warranted. The commission may also consider requiring any changes to be implemented before the summer of 2007, requirements that could reduce the frequency or duration of any outages that may occur, and other related matters.

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

Subject: To consider whether and how to modify Consolidated Edison's response to power outages, the timing for any such changes, and other related matters.

Purpose: To determine whether and what improvements should be made to the manner in which Consolidated Edison responds to power outages, the timing for making any such improvements, the steps the company takes to reduce the frequency and duration of such outages, and other related matters.

Substance of proposed rule: During 2006, Consolidated Edison Company of New York, Inc. (Consolidated Edison, the Company) was confronted with a series of substantial power outages due to storms in Westchester County. Department of Public Service Staff investigated the

Company's responses to these outages and prepared a report detailing its assessments, conclusions, and recommendations. The report is titled "July and September 2006 Severe Storms - A Report On Con Edison Performance" and can be found on the Commission's website. In the report, Staff determined that improvements should be made in the manner in which Consolidated Edison communicates with its customers, elected officials, and others during the outages and subsequent restoration periods and in which the Company performs its outage management and restoration activities.

Based on the Staff report, on input from interested parties, and other information it receives or develops, the Public Service Commission is considering whether Consolidated Edison should be required to make changes to its Emergency Response Plan, promulgated and filed pursuant to Part 105 of the Commission's regulations, as well as to outage management systems and procedures, communications protocols, and/or restoration plans and procedures, and, if so, what those changes should be. The Commission may also consider requiring implementation of any such changes prior to the summer of 2007, imposing other requirements that could reduce the frequency or duration of any outages that may occur, and 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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-E-1158SA1)

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

Submetering of Electricity by 95 Wall Associates, LLC

I.D. No. PSC-11-07-00012-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 95 Wall Associates, LLC, to submeter electricity at 95 Wall 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 consider the request of 95 Wall Associates, LLC, to submeter electricity at 95 Wall St., New York, 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 95 Wall Associates, LLC, to submeter electricity at 95 Wall Street, New York, 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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-E-0188SA1)

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

Street Lighting—Pole Rental Charges by Central Hudson Gas and Electric Corporation

I.D. No. PSC-11-07-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas and Electric Corporation (Central Hudson) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15, to become effective June 1, 2007.

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

Subject: Street lighting — pole rental charges.

Purpose: To modify Central Hudson's street lighting pole rental charges applicable to service classification no. 8.

Substance of proposed rule: The Commission is considering Central Hudson Gas and Electric Corporation's (Central Hudson's) request to revise its street lighting pole rental charges applicable to Service Classification No. 8. Central Hudson's proposed filing modifies the annual rental charge as currently contained in the tariff to an annual administrative fee for street light fixtures that are owned by Central Hudson but maintained by the customer, and those that are both owned and maintained by the customer. Central Hudson's filing has a proposed effective date of June 1, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-E-0220SA1)

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

Petroleum Infrastructure Study by the New York State Energy Research and Development Authority

I.D. No. PSC-11-07-00014-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 and how to modify the tariffs of local distribution companies and/or change the alternate fuel inventory requirements for interruptible gas customers. This matter is being considered as a result of the analysis and conclusions of a petroleum infrastructure study recently filed with the commission by the New York State Energy Research and Development Authority.

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

Subject: Modification of utility tariffs and interruptible customer fuel inventory requirements.

Purpose: To determine whether the results of a recently completed study of petroleum infrastructure indicate a need to modify utility tariffs and fuel inventory requirements for certain customer requirements.

Substance of proposed rule: In 2003, the Public Service Commission (Commission) directed that a study be performed of the petroleum industry's infrastructure to determine whether and what changes, if any, should be made to the tariffs of local distribution companies and to the requirements imposed on interruptible gas customers for alternate fuel inventories. The New York State Energy Research and Development Authority

commissioned the study, which was completed and filed with the Commission in September 2006.

The Commission is now considering whether the analysis and conclusions of that study, which may be found on the Commission's web site at <http://www.dps.state.ny.us/GasNews.htm> under the heading "Case 00-G-0996," indicate that there is a need for such changes. If it determines that changes are needed, the Commission will also consider what those changes should be and may direct the utilities to modify their tariffs accordingly.

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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(00-G-0996SA11)

Department of State

EMERGENCY RULE MAKING

Statewide Wireless Network

I.D. No. DOS-11-07-00008-E

Filing No. 231

Filing date: Feb. 27, 2007

Effective date: Feb. 27, 2007

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

Action taken: Amendment of sections 1201.2(d) and 1204.1; addition of section 1204.3(f)(4) and (h)(3); renumbering section 1204.3(i) to section 1204.3(l); and addition of section 1204.3(i), (j) and (k) to Title 19 NYCRR.

Statutory authority: Executive Law, section 381

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve the public safety and general welfare and because time is of the essence. This rule clarifies an existing rule, which provides that the State is accountable for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority, by expressly providing that the State will be responsible for administration and enforcement of the Uniform Code with respect to facilities to be included in the Statewide Wireless Network to be established and implemented by the Office for Technology. Adoption of this rule on an emergency basis preserves the public safety and general welfare by clarifying the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network, and thereby permitting the immediate commencement of the review and permitting process incidental to the construction and implementation of the Statewide Wireless Network.

Subject: Accountability for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code with respect to facilities to be included in the Statewide Wireless Network.

Purpose: To clarify that the State will be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code with respect to facilities to be included in the Statewide Wireless Network.

Text of emergency rule: Subdivision (d) of section 1201.2 of Title 19 NYCRR is amended to read as follows:

(d) (1) The State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority.

(2) Without limiting the generality of the provisions of paragraph (1) of this subdivision, the State shall be accountable for administration and enforcement of the Uniform Code with respect to all statewide wireless network facilities (as that term is defined in subdivision (j) of section 1204.3 of Part 1204 of this Title) and all activities related thereto undertaken by the Office for Technology; provided, however, that nothing in this paragraph shall be construed as subjecting to the provisions of the Uniform Code any statewide wireless network facility that would not otherwise be subject to the provisions of the Uniform Code.

(3) In the case of a statewide wireless network facility (as that term is defined in subdivision (j) of section 1204.3 of Part 1204 of this Title) which is constructed or installed on or in a statewide wireless network supporting building (as that term is defined in subdivision (k) of section 1204.3 of Part 1204 of this Title):

(i) the State shall be accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network facility and all activities related thereto undertaken by the Office for Technology, but the State shall not be accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building;

(ii) the governmental entity that would have been accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building if such statewide wireless network facility had not been constructed or installed thereon or therein shall remain accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building, but such governmental entity shall not be responsible for administration and enforcement of the Uniform Code with respect to such statewide wireless network facility; and

(iii) the State and such governmental entity shall consult with each other and fully cooperate with each other in connection with the performance of their respective administrative and enforcement obligations, and in particular, but not by way of limitation, the State shall make all records in its possession pertaining to such statewide wireless network facility available to such governmental entity upon request by such governmental entity, and such governmental entity shall make all records in its possession pertaining to such statewide wireless network supporting building available to the State upon request by the State. Nothing in this paragraph shall require the State to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency (as that term is defined in subdivision (h) of section 1204.3 of Part 1204 of this Part) to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.

Section 1204.1 Title 19 NYCRR is amended to read as follows:

Section 1204.1 Introduction. Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Uniform Code). Section 1201.2(d) of this Title provides that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises, and equipment in the custody of, or activities related thereto undertaken by, a State agency and with respect to all statewide wireless network facilities and all activities related thereto undertaken by the Office for Technology. This Part establishes procedures for the administration and enforcement of the Uniform Code by state agencies. Buildings and structures exempted from the Uniform Code by other preclusive statutes or regulations are not subject to the requirements of this Part.

New paragraph (4) of subdivision (f) of section 1204.3 of Title 19 NYCRR is added to read as follows:

(4) Notwithstanding any other provision of this subdivision to the contrary and without regard to the criteria mentioned in paragraph (3) of this subdivision, for the purposes of this Part the Office for Technology shall be considered to have custody and effective control of all statewide wireless network facilities; provided, however, that nothing in this subdivision shall be construed as subjecting to the provisions of the Code any statewide wireless network facility that would not otherwise be subject to the provisions of the Code; and provided further that for the purposes of

this Part, the Office for Technology shall not be considered to have custody or effective control of any statewide wireless network supporting building merely by reason of the construction or installation of any statewide wireless network facility thereon or therein.

New paragraph (3) of subdivision (h) of section 1204.3 of Title 19 of the NYCRR is added to read as follows:

(3) Without limiting the generality of paragraphs (1) and (2) of this subdivision, for the purposes of this Part and for the purposes of Part 1201 of this Title, the term "State agency" shall include the Office for Technology.

Subdivision (i) of section 1204.3 of Title 19 NYCRR is renumbered subdivision (l) and new subdivisions (i), (j), and (k) are added to read as follows:

(i) Statewide wireless network. An integrated statewide communications system intended to link state and local first responders to each other and to allow state and local first responders to communicate reliably during emergency situations, as contemplated by section 402(1)(a) of the State Technology Law. The term "statewide wireless network" shall include such communications system as originally developed and constructed and as thereafter extended, improved, upgraded, or otherwise modified from time to time.

(j) Statewide wireless network facility. Any tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network, and any building or structure which is constructed specifically for the purpose of supporting or containing any such tower, antenna, or equipment.

(k) Statewide wireless network supporting building. A building or structure which is not a statewide wireless network facility (i.e., which was not constructed specifically for the purpose of supporting or containing a tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network), but which has a statewide wireless network facility constructed or installed thereon or therein. For example, if a tower, antenna, and equipment used or intended to be used in the operation of the statewide wireless network, and a building or structure which will contain such equipment or support such tower, are constructed on the top of an existing office building, then:

(1) such office building would be a statewide wireless network supporting building;

(2) such office building would not be a statewide wireless network facility; and

(3) the tower, antenna, equipment, and building or structure constructed on the top of such office building would be a statewide wireless network 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 May 27, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: jball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

The statutory authority for this rule is section Executive Law section 381(1), which provides that the Secretary of State shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code"), and Executive Law section 381(2), which provides that every local government shall administer and enforce the Uniform Code "(e)xcept as may be provided in regulations of the secretary. . . ."

2. LEGISLATIVE OBJECTIVES.

"In general, section 381 of the Executive Law directs that the State's cities, towns and villages administer and enforce the New York State Uniform Fire Prevention and Building Code (Uniform Code). However, the statute contemplates the need for alternative procedures for certain classes of buildings based upon their design, construction, ownership, occupancy or use, and authorizes the Secretary of State to establish those procedures. . . ." 19 NYCRR section 1201.1.

Rules and regulations previously adopted by the Secretary of State pursuant to Executive Law section 381(2) provide that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority.

The rule now being adopted by the Secretary of State clarifies that the State will be accountable for administration and enforcement of the Uniform Code with respect to facilities in the Statewide Wireless Network to be constructed and implemented by the Office for Technology.

3. NEEDS AND BENEFITS.

The existing policy of this State, as reflected in the existing rules and regulations, is that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority. This rule will clarify that this policy shall apply to facilities in the Statewide Wireless Network to be constructed and implemented by the Office for Technology.

This rule will also address the situation that will arise when a governmental agency other than the State (a local government, in most cases) is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure, and a Statewide Wireless Network facility is to be constructed or installed in or on such building or structure. This rule will provide that in such a case: (1) the local government will continue to have responsibility for administration and enforcement of the Uniform Code with respect to the building or structure; (2) the State will be responsible for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facility to be constructed on installed in or on the building or structure; and (3) the local government and the State must consult and cooperate with each other with respect to their respective administrative and enforcement responsibilities, and must make their records available to each other on request. The rule would provide that the State would not be required to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency to guarantee the security of its information technology assets, such as assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.

It is appropriate that the State have the responsibility for administration and enforcement of the Uniform Code with respect to the facilities that will be part of the Statewide Wireless Network. This will simplify and streamline the permitting process for all Statewide Wireless Network facilities to be constructed throughout the State. However, it may not be clear that the Office for Technology is a "department, bureau, commission, board or authority," as that phrase is currently used in 19 NYCRR section 1201.2(d), and it may not be clear that all facilities in the Statewide Wireless Network will be in the "custody" of the Office for Technology, as that term is currently used in 19 NYCRR section 1201.2(d). Since Statewide Wireless Network facilities will be constructed in numerous communities throughout the State, it is appropriate to provide those communities, as well as the Office for Technology, with a clear indication of the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facilities.

Adoption of this rule on an emergency basis preserves the public safety and general welfare by providing an immediately effective clarification of the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facilities. This will permit the immediate commencement of the review and permitting activities incidental to construction of the Statewide Wireless Network.

4. COSTS.

a. Cost to regulated parties for the implementation of and continuing compliance with this rule: This rule imposes no obligation on any private party.

b. Costs to the Department of State: The Department of State anticipates that it will incur no costs as a result of this rule.

c. Costs to other State agencies: This rule will clarify that the State will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State anticipates that the Office of General Services ("OGS") will be the construction-permitting agency for Statewide Wireless Network facilities. The Department of State views this aspect of this rule more as a clarification of existing rules and regulations, rather than the creation of a new obligation that OGS would not otherwise have.

The Office for Technology will be required to comply with the Uniform Code in constructing any Statewide Wireless Network facility that is subject to the Uniform Code. However, this obligation exists under existing law and regulation, and not by reason of this rule.

d. Cost to local governments: This rule will require local governments having the responsibility for administration and enforcement of the Uniform Code with respect to buildings and structures to consult and cooperate with the State, and to make their records available to the State, when a

Statewide Wireless Network facility is constructed or installed in or on any such building or structure. However, the Department of State anticipates that existing staff in the code enforcement offices of the affected local governments will be able to provide the required consultation and cooperation, and the Department of State anticipates that this part of this rule will impose little or no new costs on local governments.

5. PAPERWORK.

This rule will clarify that the State, rather than local governments, will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State anticipates that the amount of paperwork that will be required if the State is responsible for administration and enforcement of the Uniform Code will be no greater than the paperwork that would be required if local governments were given that responsibility.

6. LOCAL GOVERNMENT MANDATES.

As stated in subparagraph 6(d) (Costs to local governments) of this Regulatory Impact Statement, this rule will require local governments having the responsibility for administration and enforcement of the Uniform Code with respect to buildings and structures to consult and cooperate with the State, and to make their records available to the State, when a Statewide Wireless Network facility is constructed or installed in or on any such building or structure. However, the Department of State anticipates that existing staff in the code enforcement offices of the affected local governments will be able to provide the required consultation and cooperation.

7. DUPLICATION.

The Department of State is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

8. ALTERNATIVES.

Making local governments, and not the State, responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities was considered but rejected for the reasons set forth in the Regulatory Impact Statement. The Department of State has not considered any other alternative to this rule.

9. FEDERAL STANDARDS.

The Department of State is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE.

This rule can be complied with immediately. The Office of General Services has the ability to act as the construction-permitting agency, and should be able to begin the required permitting process with little or no delay.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule does not apply directly to any business. However, to the extent that any business becomes involved in the Uniform Code permitting process incidental to construction of any Statewide Wireless Network facility, such business will be indirectly affected by this rule, since this rule will provide that the State will be responsible for such permitting.

This rule will affect local governments in municipalities in which Statewide Wireless Network facilities are to be constructed, since this rule will clarify that the State, and not the local government, will be responsible for administration and enforcement of the Uniform Code with respect to such Statewide Wireless Network facilities.

This rule will provide that when a local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and a Statewide Wireless Network facility is constructed or installed in or on such building or structure: (1) the local government will retain the responsibility for administration and enforcement of the Uniform Code with respect to the building or structure, (2) the State will have responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facility constructed on installed in or on such building or structure, and (3) the local government and the State will be required to consult and cooperate with each other in connection with the performance of their respective administrative and enforcement obligations, and to make records available to each other upon request. (The rule would provide that the State would not be required to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency to guarantee the security of its information technology assets, such as assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.)

2. COMPLIANCE REQUIREMENTS.

Any business involved in the construction of any Statewide Wireless Network facility will be required to comply with the Uniform Code (to the extent that the Uniform Code applies to such facility). However, that requirement exists under current law, not by reason of this rule. This rule will clarify that the State will be responsible for administration and enforcement of the Uniform Code with respect to such facility; this rule will not impose any new compliance requirement on any business.

This rule will clarify that the State, and not local governments, will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. This part of the rule imposes no compliance requirements on local governments.

This rule will provide that a local government that is responsible for administration and enforcement of the Uniform Code with respect to a building or structure shall retain such responsibility even if a Statewide Wireless Network facility is constructed or installed in or on such building or structure. This part of the rule imposes no new compliance requirements on local governments.

This rule will require a local government to consult and cooperate with the State, and to make its records available to the State, when the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and a Statewide Wireless Network facility is constructed or installed in or on such building or structure.

3. PROFESSIONAL SERVICES.

This rule imposes no new compliance requirements on businesses. Therefore this rule creates no new reporting, recordkeeping, or other requirements for business which would require professional services.

A local government will be required to consult and cooperate with the State, and to make its records available to the State, when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that existing staff in the code enforcement office of the local government will be able to provide the necessary consultation and cooperation. Therefore, except for such professional services as may be provided by existing staff, the Department of State anticipates that local governments will not require professional services to comply with this rule.

4. COMPLIANCE COSTS.

This rule imposes no new compliance requirements on businesses. Therefore this rule creates no new compliance costs for businesses.

This rule requires a local government to consult and cooperate with the State, and to make records available to the State, when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that existing staff in the code enforcement office of the local government will be able to provide the necessary consultation and cooperation. Therefore, the Department of State anticipates that local governments will incur little or no additional costs in complying with this consultation and cooperation requirement.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State anticipates that the Office of General Services will serve as the construction-permitting agency in connection with the State's obligation to administer and enforce the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State believes that the permitting process incidental to the construction of a Statewide Wireless Network will be facilitated and simplified if that process is centralized in a single State agency. Therefore, to the extent that any small business becomes involved in the permitting process, this rule should enhance the economic and technological feasibility of compliance with the permitting requirements by such business.

The Department of State anticipates that existing staff in the code enforcement offices of local governments will be able to provide the consultation and cooperation that this rule will require when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that it will be economically and technologically feasible for local governments to comply with this rule.

6. MINIMIZING ADVERSE IMPACT.

This rule imposes no new obligation on businesses of any size. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has notified local governments and other interested parties throughout the State of the provisions of this rule by publishing a notice of the previous emergency adoption of this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule clarifies that the State will be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to facilities to be included in the Statewide Wireless Network to be established by the Office for Technology. This rule will apply uniformly throughout the State, including all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule creates no new reporting, record keeping, or compliance requirement for any business. In particular, this rule creates no new reporting, record keeping, or compliance requirement for businesses located in rural areas.

Local governments that are responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure will be required to consult and cooperate with the State, and to make its records available to the State, when a Statewide Wireless Network facility is constructed in or on such building or structure. This requirement will apply to all local governments, including local governments located in rural areas.

3. COSTS.

The Department of State anticipates that this rule will impose no new cost on any business. In particular, the Department of State anticipates that this rule will impose no new cost on businesses located in rural areas.

The Department of State anticipates that local governments, including local governments located in rural areas, will be able to use existing staff in their code enforcement offices to fulfill the consulting and cooperation requirements described in Section 2 (Reporting, recordkeeping and other compliance requirements) of this Rural Area Flexibility Analysis. Therefore, the Department of State anticipates that local governments, including local governments located in rural areas, will incur little or no additional costs in complying with this rule.

4. MINIMIZING ADVERSE IMPACT.

For the reasons discussed in Section 3 (Costs) of this Rural Area Flexibility Analysis, the Department of State anticipates that this rule will have little or no adverse impact on any business or local government. In particular, the Department of State anticipates that this rule will have little or no adverse impact on businesses or local governments located in rural areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State has notified local governments and other interested parties throughout the State of the provisions of this rule by publishing a notice of the previous emergency adoption of this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule amends the existing regulation that provides that the State shall be accountable for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority, and adds definitions of new terms. The purpose of this rule is to clarify that the State shall have responsibility for administration and enforcement of the Uniform Code with respect to facilities to be included in the statewide wireless network to be established by the Office for Technology.

This rule will simply clarify the responsibility for administration and enforcement of the Uniform Code with respect to the statewide wireless network. It is anticipated that rule will have no substantial adverse impact on jobs or employment opportunities related to the construction of the statewide wireless network. Rather, by providing that all review and permitting responsibilities will be vested in a single permitting agency, this rule should streamline the construction process, which may have a beneficial impact on jobs and employment opportunities related to the construction of the statewide wireless network.

EMERGENCY RULE MAKING

Notice of Hearing for Disciplinary Action Against a Registered Security Guard

I.D. No. DOS-11-07-00009-E

Filing No. 232

Filing date: Feb. 27, 2007

Effective date: Feb. 27, 2007

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

Action taken: Amendment of section 400.4(a) of Title 19 NYCRR.

Statutory authority: General Business Law, section 89-o

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

Specific reasons underlying the finding of necessity: This rule was adopted on an emergency basis to preserve the public safety and welfare. Security guards are employed for the protection of individuals and property, as well as the prevention and reporting of unlawful or unauthorized activity. Adoption of this rule permits the Department of State to serve the Notice of Hearing and Complaint in administrative proceedings on security guards by certified mail, rather than pursuant to the CPLR as currently provided by 19 NYCRR Part 400. Especially in cases where the department is seeking to revoke or suspend a guard registration where a security guard has been charged with, or convicted of, a serious crime, this expedited service, which is similar to that required by other regulatory statutes, provides a greater measure of safety to the general public.

Subject: Authorization of a method of service of a notice of hearing for disciplinary action against a registered security guard.

Purpose: To expedite hearings involving disciplinary action against registered security guards.

Text of emergency rule: An Amendment to 19 NYCRR Section 400.4(a) is adopted to read as follows:

Section 400.4 Commencement of disciplinary proceedings.

(a) Every adjudicatory proceeding which may result in a determination to revoke or suspend a license or to fine or reprimand a licensee will be commenced by the service of a notice of hearing together with a statement of charges (also known as a complaint), which shall consist of plain and concise statement which shall sufficiently give the administrative law judge and the respondent notice of the alleged misconduct of incompetence. Notice of hearing and statement of charges (or complaint) shall be communicated in any manner permitted by the applicable regulatory statute, or if no specific manner is designated by the applicable statute, by certified mail, or by any manner authorized by the Civil Practice Law and Rules. Respondent may, at his option, serve an answer denying such charges and interposing affirmative defenses, if any. Absent an answer, all charges are deemed denied and all rights are reserved.

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 May 27, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Kenneth L. Golden, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

Regulatory Impact Statement

1. Statutory authority:

Article 7-A (Security Guard Act) of the General Business Law was enacted as Chapter 336 of the Laws of 1992. Section 89-g(1)(a) of Article 7-A prohibits employment of security guards unless it is established that they have obtained a valid registration card issued by the Department of State. Registration cards are issued only after the applicant has undergone an investigation and background check by the Division of Criminal Justice Services. Applicants charged or convicted of crimes are disqualified from

being issued a registration card where the crime "bears a direct relationship to their employment" as a security guard. Applicants are notified of the proposed denial of their application by regular mail, and may request a hearing challenging the Department's determination. Notice of the hearing is served by registered mail or in any manner authorized by the Civil Practice Law and Rules in accordance with General Business Law §§ 89-k and 79(2).

General Business Law § 89-l provides that current holders of a registration card who are charged or convicted of a crime are subject to disciplinary action, such as revocation, suspension, or the imposition of a fine, but only after being afforded a hearing held pursuant to the State Administrative Procedure Act. In accordance with rules adopted by the Secretary of State for the adjudication of disciplinary hearings, notice of the hearing may be served "in any manner permitted by the applicable statute or the Civil Practice Law and Rules." Since no specific method of service is provided by § 89-l of the General Business Law, service must be made pursuant to the methods provided by the Civil Practice Law and Rules, resulting in delay and/or additional costs. General Business Law § 89-o authorizes the Secretary of State in consultation with the security guard advisory council to adopt rules and regulations implementing the provisions of Article 7-A. Accordingly, the Secretary of State has express authority to adopt this rule.

2. Legislative objectives:

In enacting Article 7-A of the General Business Law, the legislature described the increasing role of security guards in protecting individuals and property from "harm, theft and/or unlawful activity", and found that the "proper screening, hiring and training of security guards is a matter of state concern and compelling state interest . . ." and in the aftermath of the events of September 11, 2001, reinstated a federal fingerprint check on registered security guards to provide an additional measure of protection against potential harm from registrants who may have committed federal crimes or crimes in other jurisdictions that did not appear on the New York State records.² As a result, background checks have revealed an even greater number of holders of security guard registration cards who may be subject to disciplinary action for crimes committed in other jurisdictions, and who are entitled to hearings to determine whether they should continue to perform security guard functions. This rule re-enforces the stated objectives of the Legislature when it enacted Article 7-A.

3. Needs and benefits:

General Business Law § 89-l provides that current holders of a registration card who are charged or convicted of a crime which "bears a direct relationship to their employment" are subject to disciplinary action, such as revocation, suspension, or the imposition of a fine, but only after being afforded a hearing held pursuant to the State Administrative Procedure Act. Notice of the hearing may be served "in any manner permitted by the applicable statute or the Civil Practice Law and Rules." Since no specific method of service is provided by § 89-l of the General Business Law, service must be made pursuant to the requirements of the Civil Practice Law and Rules, resulting in delay and/or additional costs. The public benefits from a timely and expedited determination of whether registered security guards charged or convicted of crimes pose an additional risk of harm to their safety or property.

4. Costs:

a. Costs to regulated parties:

The Department of State does not anticipate any additional costs to holders of registration cards by enactment of this rule.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation and continued administration of this rule will be accomplished using existing resources.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The rule does not require the securing, preparation, filing or maintenance of any additional papers or documents.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The current alternative to this rule requires that a holder of a registration card receive notice of a hearing seeking disciplinary action in any

manner authorized by the Civil Practice Law and Rules. Those requirements necessitate either personal service or delivery and mailing of duplicate notices, which involves additional delays and costs in reaching a determination concerning the registrant's fitness to continue performing the functions of a security guard. This rule expedites the procedure for reaching that determination while affording the registrant notice and an opportunity to be heard on any proposed disciplinary measures.

9. Federal standards:

This rule meets all federal and constitutional standards for due process.

10. Compliance schedule:

The Department of State anticipates that the Division of Licensing Services will be able to comply immediately with this rule.

¹ McKinney's 1992 Session Laws of New York, Chapter 336, p. 1073

² McKinney's 2004 Sessions Laws of New York, Chapter 699, p. 2147

Regulatory Flexibility Analysis

1. Effect of rule:

The rule affects security guard companies, and those persons wishing to become registered as security guards, to the extent that they are subject to the enforcement provisions contained in Article 7-A of the General Business Law. However, it does not place any financial or additional burdens on such businesses who are already required to exercise "due diligence" in determining whether employees have been convicted of any offense that "bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment . . ."

The rule does not apply to local governments.

2. Compliance requirements:

The reporting and recordkeeping requirements are currently mandated by General Business Law § 89-g, and are not altered by this rule.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule. The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

It is not anticipated that small businesses will incur any additional costs of compliance as a result of this rule.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

It is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

The rule does not affect local governments.

6. Minimizing adverse economic impact:

It is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule, requiring the adoption of alternative practices.

The rule does not affect local governments.

7. Small business and local government participation:

Since the impact on small businesses will be minimal, and the rule would not affect local governments, the Department did not solicit comment prior to the adoption of this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies equally to holders of security guard registration cards in all areas of the state—urban, suburban and rural.

2. Reporting, recordkeeping and other compliance requirements:

Reporting and recordkeeping requirements are set forth fully in Section 2 of the Regulatory Flexibility Analysis for Small Business and Local Governments.

Holders of security guard registration cards in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance as a result of this rule.

4. Minimizing adverse impact:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance requiring the adoption of alternative practices, as a result of this rule.

5. Rural area participation:

Since the impact on small businesses will be minimal and will apply equally throughout all areas of the state, whether urban, suburban or rural, the Department did not solicit comment prior to adoption of this rule.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. Under existing law, applicants and current holders of a registration card charged or convicted of crimes are disqualified from being employed as security guards, where the crime "bears a direct relationship to their employment" as a security guard, and continued employment constitutes a danger to the health, safety or well-being of the public. Inasmuch as this rule affects only the method of notification of persons disqualified from employment as a security guard, or subject to disciplinary action, it promotes employment opportunities by ensuring that only those qualified for registration are employed in the protection of persons and their property.

Department of Transportation

NOTICE OF ADOPTION

Nondivisible Load Permit Insurance Compliance Requirements

I.D. No. TRN-52-06-00009-A

Filing No. 222

Filing date: Feb. 22, 2007

Effective date: March 14, 2007

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

Action taken: Amendment of sections 154-1.1, 154-1.2 and 154-1.18; repeal of sections 154-1.5, 154-1.6 and 154-1.11(b)(10); and addition of new section 154-1.5 to Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 285.15(a); Transportation Law, section 14.18

Subject: Nondivisible load permit insurance compliance requirements.

Purpose: To set forth motor vehicle insurance requirements for issuance of nondivisible load permits and eliminate requirements for separate protective liability insurance coverage.

Text or summary was published in the notice of proposed rule making, I.D. No. TRN-52-06-00009-P, Issue of December 27, 2006.

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

Text of rule and any required statements and analyses may be obtained from: David Rudinger, Department of Transportation, Registration and Permitting Bureau, 50 Wolf Rd., POD 53, Albany, NY 12232, (518) 485-2448, e-mail: drudinger@dot.state.ny.us

Assessment of Public Comment

One written comment was received on the proposed regulation. The commentator was concerned with the following:

a) the ability of the Department to impose higher than normal limits of financial responsibility when special conditions warrant;

b) uncertainty as to what minimum insurance coverage will be required;

c) the requirement that all individual trip permit holders procure and maintain specified levels of liability insurance coverage and the elimination of the current ability of most individual trip permit holders to satisfy the Department's financial responsibility requirements by payment of a \$4.00 per trip fee; and

d) the potentially burdensome requirement of periodically submitting proof of insurance as a routine part of the application process for individual trip permits.

In response to these concerns, the Department makes the following points:

a) The language allowing the Department to impose higher than specified limits of financial responsibility is intended to cover unusually heavy or wide loads or the transportation of hazardous material in situations where the Department already imposes additional financial responsibility requirements;

b) The Department believes that wording of the regulation as it specifies actual minimum coverage limits is unambiguous;

c) Currently the Department requires separate protective liability insurance coverage naming the People of the State of New York as named insured. In almost all cases for individual trip permits, this requirement can be satisfied by the payment of a \$4.00 per trip fee, which defrays the cost

of the insurance that the Department has already purchased to protect the Department in the event that the State is sued for damages arising out the issuance of a permit; the existing \$4.00 fee does not actually purchase any additional insurance coverage for the permit holder. The new regulation eliminates the protective liability coverage requirement for the People of the State of New York and replaces it with the requirement that each permit holder maintain a specified level of motor vehicle insurance. The Department believes, based on previous outreach efforts, that most individual trip permit holders already have insurance coverage that meets the minimum insurance requirements specified in the regulation and would, therefore, not need to purchase additional insurance. The effect of this change would be to relieve those individual trip permit holders from paying the existing \$4.00 fee for which they receive no additional liability coverage.

d) The new regulation is intended to allow permit applicants to self-certify that they meet the minimum insurance requirements without the need of filing insurance certificates for each permit. In general, there will be no requirement that each applicant submit a certificate of insurance with each permit application.

The manager of the Department's Overweight/Oversize Permit Program communicated this information to the individual who made these comments. In response, the commentator responded, in writing, thanking the manager for taking the time to discuss and explain the regulation and stating that the commentator now understood the new regulation as a "useful and positive change from the perspective of the permit applicant".

As a result of the comment and the ensuing discussion, no change has been made in the final regulation.