

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.

Office of Children and Family Services

NOTICE OF ADOPTION

Residential Youth Facilities

I.D. No. CFS-15-07-00010-A
Filing No. 614
Filing date: June 20, 2008
Effective date: July 9, 2008

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

Action taken: Amendment of Part 171 of Title 9 NYCRR.

Statutory authority: Executive Law, art. 19-G, sections 500, 501 and 504; and L. 1997, ch. 436

Subject: Operation of the Office of Children and Family Services youth residential facilities concerning mail, telephone and visitors.

Purpose: To amend the rules relating to the procedures for permitting resident mail, telephone calls and visitors to OCFS residents.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-15-07-00010-P, Issue of April 11, 2007.

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

Revised rule making(s) were previously published in the State Register on April 9, 2008.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received one comment on the proposed revised regulations. The comment was from a member of the OCFS Advisory Board, who indicated support for the regulations. The commenter asked about how the regulations will apply to electronic communications in the future. OCFS will look at that issue at the point in time when the agency has the resources to make electronic communications available to the residents of OCFS-operated facilities.

State Consumer Protection Board

NOTICE OF ADOPTION

Access to Personal Information

I.D. No. CPR-17-08-00003-A
Filing No. 623
Filing date: June 24, 2008
Effective date: July 9, 2008

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

Action taken: Amendment of sections 4601.2, 4601.4 and 4601.8 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 94

Subject: Access to personal information.

Purpose: To amend the address and telephone number for the Consumer Protection Board.

Text or summary was published in the notice of proposed rule making, I.D. No. CPR-17-08-00003-P, Issue of April 23, 2008.

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

Text of rule and any required statements and analyses may be obtained from: Laura Greco, Consumer Protection Board, Five Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-6175, e-mail: Laura.Greco@consumer.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Education, Experience, Examination and Endorsement Provisions for Licensure of Speech-Language Pathologists and Audiologists

I.D. No. EDU-15-08-00004-RP

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

Revised action: Addition of sections 52.36, 52.37, 75.1-75.7, repeal of sections 75.1, 75.2 and 75.3 and renumbering of section 75.4 to 75.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6506(5) and (6), 6507(1), (2)(a) and (4)(a), 8206(2), (3) and (4)

Subject: Education, experience, examination and endorsement provisions for licensure of speech-language pathologists and audiologists.

Purpose: To conform New York State requirements for licensure as a speech pathologist or audiologist to current developments and terminology in the field, align these regulations with Federal Medicaid requirements and expand opportunities for qualified speech-language pathologists and audiologists in other jurisdictions to become licensed in New York State.

Substance of revised rule: The Board of Regents proposes to add sections 52.36, 52.37, 75.1, 75.2, 75.3, 75.4, 75.5, 75.6 and 75.7, repeal sections 75.1, 75.2 and 75.3 and renumber section 75.4 to 75.8 of the Regulations of the Commissioner of Education, effective October 9, 2008.

Sections 52.36(a)(1) and (2) define "acceptable certifying agency" and "supervision" for purposes of this section.

Section 52.36(b) sets forth the requirements for a registered program leading to licensure in speech-language pathology.

Section 52.36(b)(1) requires that a registered program leading to licensure in speech-language pathology be a program in speech-language pathology leading to a master's or higher degree from a college or university acceptable to the department or its equivalent, which includes at least 75 semester hours or the equivalent, provided that at least 36 semester hours of the program have been at the master's or higher degree level.

Section 52.36(b)(2) sets forth the curricular content for a registered program in speech-language pathology.

Section 52.36(b)(3) requires that a registered program leading to licensure in speech-language pathology include a practicum in speech-language pathology of at least 400 clock hours under supervision, at least 375 clock hours of which shall be in direct client contact, at least 25 clock hours of which shall be in clinical observation, and at least 325 clock hours of which shall be at the master's or higher degree level.

Section 52.37(a) defines acceptable certifying agency and supervision for purposes of this section.

Section 52.37(b) sets forth the requirements for a registered program leading to licensure in audiology.

Section 52.37(b)(1) requires that a registered program leading to licensure in audiology be a program in audiology leading to a master's or higher degree from a college or university acceptable to the department, which includes at least 75 semester hours at the graduate level, or its equivalent.

Section 52.37(b)(2) requires that a registered program leading to licensure in audiology contain curricular content that includes, but is not limited to: at least 12 semester hours in human communication processes and sciences, at least 36 semester hours in professional practice areas in audiology, and 27 additional semester hours in the above or related areas.

Section 52.37(b)(3)(i) requires that any student completing a doctoral degree program in audiology complete through the course of such program not less than 1,820 clock hours of graduate clinical experience under supervision, of a scope and nature satisfactory to the State Board for Speech-Language Pathology and Audiology.

Section 52.37(b)(3)(ii) requires that any student completing a master's degree program in audiology, or its equivalent, shall have completed throughout the course of his/her educational program 400 clock hours of practicum under supervision, provided that no more than half of the total semester hours for the program may be advanced standing credit granted for speech-language pathology study at the baccalaureate level.

Section 75.1(a) defines "acceptable accrediting agency".

Section 75.1(b) sets forth the professional education requirements for licensure as a speech-language pathologist in New York State, including completion of a master's or higher degree program in speech-language pathology that is either registered by the department pursuant to Section 52.36, or accredited by an acceptable accrediting agency, or from a program determined by the department to be a speech-language pathology program equivalent to such a registered or accredited program.

Section 75.2(a) and (b) require an applicant seeking licensure as speech-language pathologist to complete 36 weeks of supervised experience within four years following completion of an educational program meeting the requirements of section 75.1 of the Regulations of the Commissioner of Education. Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than 12 hours per week for continuous periods of not less than six months.

Section 75.2(c)(1) and (2) states that supervised experience shall include meeting with and observing the applicant on a regular basis to review and evaluate such supervised experience and to foster professional development. Supervision shall also include regular observation of the applicant while the applicant is providing assessment and intervention services and shall take place at the beginning and periodically throughout treatment.

Section 75.2(c)(3) requires that the supervisor be familiar with the applicant's treatment plans and have ongoing involvement in the care provided, and shall review the need for ongoing services.

Section 75.2(c)(4) requires that the supervision be provided by the organization in which the applicant is working, and by an individual who is licensed in New York State in speech-language pathology, except that supervision of experience acquired outside New York State or in an exempt setting as established in section 8207 of the Education Law may be provided by a person approved for supervision by an acceptable certifying agency as defined in section 52.36 of the Commissioner's Regulations, or by a person holding the Certificate of Clinical Competence of the American Speech-Language Hearing Association.

Section 75.3 is added to define the examination requirement for speech-language pathology licensure as one determined by the department to be acceptable for licensure as a speech-language pathologist.

Section 75.4(a) defines "acceptable accrediting agency" for purposes of this section.

Section 75.4(b) sets forth the professional education requirements for applicants seeking licensure as an audiologist prior to January 1, 2009, including satisfactory evidence of completion of a program in audiology registered by the department or determined by the department to be the equivalent and receipt of a master's degree in audiology, or the equivalent. To be considered the equivalent of a master's degree in audiology, the applicant's educational program must culminate in a graduate degree from a college acceptable to the department and shall include a practicum and 60 semester hours of certain courses, as delineated in this subdivision.

Section 75.4(c) sets forth the professional education requirements for applicants seeking licensure as an audiologist after January 1, 2009, including completion of a master's or higher degree program in audiology, that is either registered by the department pursuant to Section 52.37, or accredited by an acceptable accrediting agency, or from a program determined by the department to be an audiology program equivalent to such a registered or accredited program.

Sections 75.5(a)(1), (2) and (3) set forth the experience requirements for persons applying for licensure as an audiologist prior to January 1, 2009, requiring such applicant to have completed not less than nine months of supervised experience of a scope and nature satisfactory to the State Board for Speech-Language Pathology and Audiology with not more than two employers, within the two-year period following completion of an educational program that meets the requirements of section 75.4 of this Part. Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than two days per week and consisting of not less than 15 hours per week for continuous periods of not less than six months.

Section 75.5(a)(3) defines "supervision".

Sections 75.5(b)(1)(i) and (ii) set forth the experience requirements for persons applying for licensure as an audiologist after January 1, 2009, requiring an applicant who has satisfactorily completed the master's degree program to complete 1,420 hours of supervised experience within four years following completion of the program, or its equivalent and such experience shall be obtained by not more than two employers. Credit toward such experience may be given for part-time employment accumulated at not less than 12 hours per week for continuous periods of not less than six months.

Section 75.5(b)(2) states that no experience shall be required of an applicant seeking licensure as an audiologist who has met the professional educational requirement for licensure by satisfactorily completing the doctoral degree program requirements.

Section 75.5(b)(3) specifies that supervision of the experience requirement for licensure as an audiologist must include meeting with and observing the applicant on a regular basis and must be provided by an individual who is licensed in New York State as an audiologist, except that supervision of experience acquired outside New York State or in an exempt setting may be provided by a person approved for supervision by an acceptable certifying agency, or by a person holding the Certificate of Clinical Competence of the American Speech-Language Hearing Association, or by a person holding Board Certification in Audiology from the American Board of Audiology.

Section 75.6 is added to define the examination requirement for licensure as an audiologist as one determined by the department to be acceptable for licensure as an audiologist.

Section 75.7 is added to provide for licensure by endorsement in speech-language pathology or audiology.

Section 75.7(a) specifies that subdivision (b) describes the process for endorsement of a license in speech-language pathology or audiology issued by another state or territory of the United States and that subdivision (c) lists the requirements for endorsement of a license in speech-language pathology or audiology issued by another country.

Section 75.7(b) lists the requirements for licensure by endorsement of license in speech-language pathology or audiology issued by another state or territory of the United States.

Section 75.7(b)(1) requires an applicant seeking endorsement of a license by another state or territory of the United States to meet the requirements of section 59.6 of this Title.

Section 75.7(b)(2) requires an applicant seeking endorsement of a license by another state or territory of the United States to present evidence acceptable to the department of completion of a satisfactory program in speech-language pathology or audiology that includes a practicum and a minimum of 60 semester hours in speech-language pathology or audiology, as appropriate, or the equivalent.

Section 75.7(b)(3) requires an applicant seeking endorsement of a license by another state or territory to provide evidence satisfactory to the State Board for Speech-Language Pathology and Audiology of at least two years of acceptable professional experience in speech-language pathology or audiology, as appropriate, provided that such experience occurs following licensure in such jurisdiction and within the six years immediately preceding application for licensure by endorsement in New York State.

Section 75.7(b)(4) requires the applicant for endorsement to meet the examination requirements prescribed in section 75.3 or 75.6 of this Part, as applicable.

Section 75.7(b)(5) requires an applicant seeking endorsement of a license from another state or territory of the United States to hold certification from an acceptable certifying agency such as the American Speech and Hearing Association.

Section 75.7(b)(6) requires an applicant seeking endorsement of a license from another state or territory of the United States to present evidence acceptable to the department of good standing as a licensee in each jurisdiction in which the applicant is licensed to practice speech-language pathology or audiology.

Section 75.7(c) lists the requirements for endorsement of a license in speech-language pathology or audiology issued by another country.

Section 75.7(c)(1) requires an applicant seeking endorsement of a foreign license to meet the requirements of section 59.6 of this Title.

Section 75.7(c)(2) requires the applicant for endorsement to present evidence acceptable to the department of completion of a satisfactory program in speech-language pathology or audiology, as appropriate, or the equivalent of such a program.

Section 75.7(c)(3) requires an applicant seeking endorsement of a foreign license to provide evidence satisfactory to the State Board for Speech-Language Pathology and Audiology of at least three years of professional experience, acceptable to such board, in speech-language pathology or audiology, as applicable, provided that such experience occurs following licensure in such jurisdiction and within the six years immediately preceding application for licensure by endorsement in New York State.

Section 75.7(c)(4) requires the applicant for endorsement to meet the examination requirements prescribed in section 75.3 or 75.6 of this Part, as applicable, or pass a written examination for licensure in the country in which the applicant is licensed to practice speech-language pathology or

audiology, as appropriate, which examination is satisfactory to the department.

Section 75.7(c)(5) requires an applicant seeking endorsement of a foreign license to hold certification from an acceptable certifying agency.

Section 75.7(c)(6) requires the applicant for endorsement to present evidence acceptable to the department of good standing as a licensee in each jurisdiction in which the applicant is licensed to practice speech-language pathology or audiology.

Revised rule compared with proposed rule: Substantial revisions were made in sections 52.36(b)(2)(i), (ii) and (iii), 52.37(b)(2)(i), (ii) and (iii), (3)(ii), 75.4(b)(2)(v) and 75.5(b)(1).

Text of revised proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Associate Commissioner, Education Department, Office of the Professions, 2nd Fl., West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3817, e-mail: opopr@mail.nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on April 9, 2008, the following substantial revisions were made to the proposed rule:

Sections 52.36(b)(2)(i) and (ii) are revised to require that curricular content in human communication process and sciences as well as in professional practice areas in speech-language pathology include certain course content instead of the previous version of the proposed rule which indicated that it "may" include certain course content.

Section 52.36(b)(2)(ii) and (iii) have been changed to reflect that course content in multi-cultural issues be included as part of the 36 semester hours in professional practice areas in speech-language pathology as opposed to the 27 additional semester hours in related areas.

Section 52.36(b)(2)(iii) is also revised to require content in infection control as part of the required 27 semester hours in additional semester hours in the above or related areas.

Sections 52.37(b)(2)(i) and (ii) are revised to require that curricular content in human communication process and sciences as well as professional practice areas in audiology include certain course content instead of the previous version of the proposed rule which indicated that it "may" include certain course content.

Sections 52.37(b)(2)(ii) and (iii) are revised to delete infection control as part of the course content for the required 36 semester hours in professional practice areas in audiology and to include infection control as part of the content areas for the 27 additional semester hours in related areas.

Section 52.37(b)(3)(ii) is revised to require a student completing a master's degree program in audiology, or its equivalent, to complete 400 hours of practicum, instead of 300 hours of practicum.

Section 75.4(b)(2)(v) is revised to require that the practicum in audiology include at least 20 but not more than 50 of the 300 hours to be in speech-language pathology.

Section 75.5(b)(1) requires an applicant who has met the professional educational requirement for licensure by satisfactorily completing the master's degree program to complete 1,420 hours of supervised experience instead of the previously required 1,520 hours of supervised experience.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on April 9, 2008, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed regulation concerns requirements that an individual must meet to become licensed in the professions of speech-language pathology and audiology. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on April 9, 2008, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the *State Register* on April 9, 2008, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to the education, examination, experience and endorsement requirements for applicants seeking licensure as a speech-language pathologist and audiologist. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

State Liquor Authority

NOTICE OF ADOPTION

24-Hour Permits

I.D. No. LQR-04-08-00006-A

Filing No. 618

Filing date: June 23, 2008

Effective date: July 9, 2008

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

Action taken: Addition of Part 35 to Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, section 99(3)

Subject: Application processes and review procedures relative to 24 hour permits issued to liquor licensees.

Purpose: To establish application processes and review procedures relative to 24 hour permits issued to liquor licensees.

Text or summary was published in the notice of proposed rule making, I.D. No. LQR-04-08-00006-P, Issue of January 23, 2008.

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

Text of rule and any required statements and analyses may be obtained from: Paul S. Karamanol, Senior Attorney, State Liquor Authority, 80 S. Swan St., Suite 900, Albany, NY 12210, (518) 474-6750, e-mail: pkaramanol@abc.state.ny.us

Summary of Public Comment

The State Liquor Authority contacted the Empire State Restaurant & Tavern Association, the New York City Nightlife Association and the New York State Sheriff's Association for suggestions and/or alternatives regarding this proposed regulation. Those were the only organizations or civic interests of any sort that submitted comments regarding this regulatory initiative.

Analysis of Issues Raised/Alternatives Suggested

The New York State Sheriff's Association said that the proposed regulations seemed reasonable and helpful in enforcing all laws regarding the serving of alcoholic beverages. Additionally, the Sheriff's Association agrees that the minimal administrative burden placed on police forces by receiving and processing the required notification letters from applicants is outweighed by the benefit of ensuring law enforcement of advanced notice of any all-night event in their jurisdiction.

The Empire State Restaurant & Tavern Association ("ERSRTA") said the following: "Overall our response is very positive. We commend the development of this proposed rule and the general guidelines included in the draft proposal." The ESRTA did not agree, however, with the inclusion of pending disciplinary proceedings in the list of factors to be considered by the Authority in determining whether to issue the permit (part 35.4 (b) 1), stating that "Pending proceedings are merely allegations against a licensee that cannot on their face be considered a reason to decline a privilege to a licensee," and suggesting that any pending proceedings ultimately considered be limited to those for which the recommended penalty based on the standard practices of the Authority would be license cancellation or revocation. The ESRTA also suggested that the provision

authorizing one member of the Authority to make a final determination on a request for reconsideration (part 35.5 (d)), could be problematic, suggesting that the potential exists that different members of the Authority exercising their discretion under the proposal could develop different standards.

The New York City Nightlife Association ("NYCNA") applauds the attempt to have written procedures and standards in the application process, but disagrees with the inclusion of pending disciplinary charges as one of the items to be considered by the Members of the Authority when determining whether to approve or disapprove an application. The NYCNA also objects to the inclusion of any record of convictions of disciplinary matters as well, stating that, "When an offer of settlement is made and accepted between Counsel and a licensee on a particular charge, let's say a civil penalty of xxx dollars, no one said, 'this may also result in the denial of a New Year's permit.' The penalty offer was considered and agreed to, that should be the end of it. Perhaps the licensee would not have settled if it knew that it could result in the denial of this permit."

Reasons Why Suggested Alternatives Not Implemented

The State Liquor Authority could have taken no action, but chose to pursue the promulgation of the instant regulation in an effort to forestall issues experienced in past years as a result of the ad-hoc permit issuance process as well as complaints by several applicants of unfair or unequal treatment as a result of same.

The State Liquor Authority could have neglected to include past or pending disciplinary matters as a consideration of the suitability of any applicant pursuant to this part (part 35.4(b)1), preferring instead to analyze each such application in a vacuum and without regard to past experience with an applicant. The State Liquor Authority believes to do so would be an abrogation of its regulatory responsibilities under the Alcoholic Beverage Control Law and would undermine the intent of the instant proposal - ensuring only trustworthy and responsible business owners are hosting these all night events in New York State. Additionally, the Authority believes that failing to take into consideration pending disciplinary matters during this process would encourage applicants with pending disciplinary matters to delay, adjourn, discourage and otherwise frustrate administrative hearing processes, as many already do - for years in some cases - in order to preserve their ability to host large crowds of after hours revelers for holidays and special events.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Southampton Visual Benefits Assessment Charge

I.D. No. LPA-28-08-00008-P

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

Proposed action: The authority is considering a proposal to adopt revisions to its tariff for electric service to amend and add to certain sections of the tariff with regard to a visual benefits assessment with respect to certain customers in the Town of Southampton.

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

Subject: Southampton visual benefits assessment charge.

Purpose: To add and amend LIPA's tariff for electric services with regard to a VBA charge with respect to Southampton customers.

Public hearing(s) will be held at: 10:00 a.m., September 17, 2008 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 3:00 p.m., September 17, 2008 at Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

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 Long Island Power Authority ("Authority") is considering a proposal to its Tariff for Electric Service to create

a Visual Benefits Assessment (“VBA”) affecting certain LIPA customers that recovers LIPA’s incremental costs for burying approximately forty-five percent of the Southampton to Bridgehampton transmission line in connection with a stipulated Settlement with the Town of Southampton. The incremental costs will be recovered on an annual basis from customers in selected areas of the municipality, as designated by the Town of Southampton. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, e-mail: amccabe@lipower.org

Data, views or arguments may be submitted to: Kevin Law, President and CEO, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700

Public comment will be received until: Five days after the last scheduled public hearing required by statute.

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.

Office of Mental Health

EMERGENCY RULE MAKING

Rights of Patients

I.D. No. OMH-20-08-00026-E

Filing No. 621

Filing date: June 23, 2008

Effective date: June 23, 2008

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

Action taken: Amendment of Part 527 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, arts. 7 and 33

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

Specific reasons underlying the finding of necessity: To clarify that persons confined or committed to secure treatment facilities are afforded the same rights to object to care and treatment as those involuntarily committed to hospitals.

Subject: Rights of patients.

Purpose: To make Part 527 applicable to persons confined/committed to secure treatment facilities operated by Office of Mental Health as defined in Mental Health Law 10.03.

Text of emergency rule: 1. Paragraph (1) of Subdivision (a) of Section 527.1 of Title 14 NYCRR is amended as follows:

(1) Except as otherwise indicated by the specific context, and with the exception of sections 527.4 and 527.6, this Part shall apply to all psychiatric hospitals operated by the Office of Mental Health, all residential treatment facilities for children and youth, and to all psychiatric hospital services required to have an operating certificate from the Office of Mental Health, and provided further that section 527.8 shall also apply to all secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law.

2. Subdivision (b) of Section 527.1 of Title 14 NYCRR is amended as follows:

(b) The intent of this Part is to define the rights of patients receiving treatment at psychiatric hospitals and to extend certain rights provided in section 527.8 of this Part to persons confined or committed to secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law.

3. Section 527.2 of Title 14 NYCRR is amended to read as follows:

(a) [Mental Hygiene Law, section 7.07(c),] Section 7.07 of the Mental Hygiene Law gives the Office of Mental Health responsibility for seeing

that the personal and civil rights of mentally ill persons receiving care and treatment are adequately protected.

(b) Section [7.09(c)] 7.09 of the Mental Hygiene Law authorizes the [commissioner] Commissioner to adopt regulations necessary and proper to implement any matter under his jurisdiction. [Section 7.09(i)] Such section also requires the [commissioner] Commissioner to promulgate regulations to address the communications needs of non-English-speaking individuals seeking or receiving services in facilities operated or licensed by the Office of Mental Health.

(c) Sections 10.06 and 10.10 of the Mental Hygiene Law give the Office of Mental Health responsibility for providing care, treatment, and control to sex offenders confined or committed to a secure treatment facility, as defined in Section 10.03 of such law.

[(b)] (d) Article 31 of the Mental Hygiene Law authorizes the commissioner to visit and inspect all services for the mentally ill in the State, and requires providers of certain mental health services to have an operating certificate issued by the Office of Mental Health. Section 31.04 of such law further empowers the [commissioner] Commissioner to issue regulations setting standards for licensed programs for the rendition of services for the mentally ill.

[(c)] (e) Section 33.02 of the Mental Hygiene Law establishes statutory rights of mentally disabled persons and requires the commissioner to publish regulations informing residents of facilities or programs operated or licensed by the Office of Mental Health of their rights under law.

[(d)] (f) Section 33.05 of the Mental Hygiene Law provides that each patient in a facility shall have the right to communicate freely and privately with persons outside the facility as frequently as he wishes, subject to regulations of the commissioner designed to assure the safety and welfare of patients and to avoid serious harassment to others.

[(e)] (g) Article 29-C of the Public Health Law establishes the right of competent adults to appoint an agent to make health care decisions in the event they lose decision-making capacity. Article 29-C further empowers the Office of Mental Health to establish regulations regarding the creation and use of health care proxies in mental health facilities.

[(f)] (h) The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, sections 4206 and 4751) requires that institutional providers participating in the Medicare or Medical Assistance programs inform patients about their rights, under State law, to express their preferences regarding health care decisions.

5. Paragraphs (3) and (6) of Subdivision (a) of Section 527.8 of Title 14 NYCRR are amended as follows:

(3) Clinical director means the individual in charge of clinical services at the hospital or a secure treatment facility operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law, where the patient is receiving care and treatment, or a physician designated by that individual to carry out the responsibilities of the clinical director described in this section.

(6) Patients on involuntary status for the purposes of this section includes patients retained on an involuntary basis pursuant to article 9 of the Mental Hygiene Law, patients retained pursuant to the Criminal Procedure Law, Family Court Act or Correction Law patients on voluntary status for whom application to a court for involuntary retention has been made, [and] minors, other than those admitted on their own application, for whom consent of a parent or guardian cannot be obtained, and persons confined or committed to a secure treatment facility operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. OMH-20-08-00026-EP, Issue of May 14, 2008. The emergency rule will expire August 21, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Section 7.07 of the Mental Hygiene Law gives the Office of Mental Health responsibility for seeing that the personal and civil rights of mentally ill persons receiving care and treatment are adequately protected.

Section 7.09 authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his jurisdiction.

Article 33 of the Mental Hygiene Law establishes statutory rights of mentally disabled persons. Section 33.02 of such law requires the Com-

missioner to publish regulations informing patients of their rights under law.

Article 29-C of the Public Health Law establishes the right of competent adults to appoint an agent to make health care decisions in the event they lose decision-making capacity. Article 29-C further empowers the Office of Mental Health to establish regulations regarding the creation and use of health care proxies in mental health facilities.

The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, sections 4206 and 4751) requires that institutional providers participating in the Medicare or Medical Assistance programs inform patients about their rights, under State law, to express their preferences regarding health care decisions.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. In 2007, the Legislature enacted Article 10 of the Mental Hygiene Law to provide for the civil management of sex offenders who suffer from a "mental abnormality." Such offenders who are predisposed to engage in repeated sex offenses may be involuntarily confined or committed to secure treatment facilities. Such secure treatment facilities were newly created by this legislation and could not have been contemplated when Section 527.8 of Part 527 of Title 14 NYCRR was promulgated. This emergency amendment clarifies that such persons are afforded the same rights to object to care and treatment as those non-sex offenders who are involuntarily committed to hospitals.

3. Needs and benefits: Section 527.8 of Part 527 of Title 14 was originally promulgated in response to the 1986 Court of Appeals decision in *Rivers v. Katz*, 67 NY2d 485. There, the Court held that, absent an emergency, persons held involuntarily at psychiatric facilities could only be treated with antipsychotic medication over their objection following a judicial finding that, first, the person lacks the mental capacity to make a reasoned decision with respect to proposed treatment, and second, the proposed treatment is narrowly tailored to give substantive effect to the patient's liberty interest. The rights provided by the Court apply with equal force to persons committed to secure treatment facilities under Article 10, as they do to person committed to psychiatric hospitals under Article 9 of the Mental Hygiene Law.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

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

6. Paperwork: This rule should not substantially increase the paperwork requirements of those affected.

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

8. Alternatives: The only alternative considered was not addressing whether persons determined to be detained or dangerous sex offenders who are involuntarily confined or committed to secure treatment facilities are afforded the same rights to object to care and treatment as those non-sex offenders who are involuntarily committed to hospitals. This alternative was necessarily rejected.

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

10. Compliance schedule: The regulatory amendments could be implemented immediately.

Regulatory Flexibility Analysis

Because it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

It is clear from the nature of this regulatory amendment, which simply clarifies the rights of persons who are confined or committed to secure treatment facilities operated by the Office of Mental Health, that there will be no adverse impact on jobs or employment opportunities in New York State.

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-15-08-00007-A

Filing date: June 24, 2008

Effective date: July 1, 2008

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

Action taken: Update service tariffs NP-F1, ST-46, and EP-1, the service tariffs applicable to the Power Authority's replacement power and expansion power customers.

Statutory authority: Public Authorities Law, section 1005(13), and L. 1987, ch. 32

Subject: Rates for the sale of power and energy.

Purpose: Update replacement power and expansion power service tariffs to streamline them and include additional required information.

Substance of final rule: In accordance with the State Administrative Procedure Act, the only party to submit comments on the NOPR was New York State Electric and Gas Corporation ("NYSEG"). Authority staff reviewed NYSEG's written comments and accepted some of their recommendations, as summarized below, revising the tariffs accordingly.

Issue 1: Collection of New York Independent System Operator ("NYISO") Charges Related to Expansion Power Sales under ST-46. NYSEG posits that the proposed provision in ST-46 on the collection of NYISO charges is flawed. Specifically, NYSEG objects that the Authority has not designated in Section III.G. whether the EP customer or NYSEG would be responsible for the NYISO charges arising under ST-46. NYSEG further states that a prior Federal Energy Regulatory Commission ("FERC") ruling does not permit the Authority to pass these charges to NYSEG, and suggests that the Authority can cure the situation by completely deleting subsection G or by clarifying that the EP customer shall compensate the Authority for these NYISO charges.

Staff Analysis: Authority staff agrees that the proposed provision should be changed but does not agree that NYSEG cannot be assessed such NYISO charges. In 2004, the Authority reformed ST-46 by rulemaking under SAPA to pass on NYISO costs that the Authority incurs in providing electric service to EP customers.¹ That tariff reform specified that the utility company would compensate the Authority for NYISO charges incurred unless there were "other arrangements" between the Authority and the individual EP customers, and that, further, the Authority would designate the NYISO charges that would apply to particular EP customers on an "account-by-account basis." Those changes are reflected in the tariff that is applicable today, which has allowed for the recovery of all appropriate NYISO charges.

Accordingly, Authority staff recommends that the existing tariff provision addressing the recovery of NYISO charges be largely retained, because such provision still reflects the sale-for-resale nature of EP sales under ST-46. This moots NYSEG's complaint concerning the handling of NYISO charges under ST-46 because the Authority no longer seeks this particular tariff change. Staff, however, recommends the adoption of other changes it has proposed to update the description of the various NYISO charges that the Authority incurs or could incur in providing electric service to EP customers.

Though no controversy exists in light of the recommendation to retain the existing tariff provision, staff points out that, on the merits, NYSEG's reliance on a 2003 FERC order is misplaced. That order merely established that with respect to EP sales, the Authority was the transmission customer under the NYISO tariff, and that it, rather than NYSEG, needed to compensate the NYISO for its services performed in connection with the EP program. FERC only interpreted the NYISO tariff as requiring the Authority to pay the NYISO in the first instance. The Authority's 2004 tariff revisions did not upset this determination because the Authority has con-

tinued to directly compensate the NYISO for providing such services. Moreover, while FERC has the complete jurisdiction to interpret who is responsible for paying the NYISO for services provided under the NYISO tariff, FERC's reach does not extend to the cost-recovery decisions of the Authority, a non-jurisdictional entity. In fact, the NYISO charges that the Authority incurs are legitimate costs of the EP program and the Authority lawfully modified its tariff to pass on such costs in the 2004 SAPA proceeding noted above. In the course of that proceeding, Authority staff briefed NYSEG on the nature of those tariff modifications, and NYSEG filed no comments.

The Authority also notes that the above analysis renders moot NYSEG's contention that the imposition of NYISO charges on NYSEG under ST-46 would conflict with the "Contract for the Sale and Resale of Expansion Power" between the Authority and NYSEG dated December 19, 1988 ("Resale Agreement"). There is no conflict. The Authority abides by the 2003 FERC order and directly compensates the NYISO. Thus, it is appropriate for the Authority to be able to require reimbursement for such NYISO charges from the utility companies that purchase EP from the Authority for resale to EP customers.

Issue 2: Collection of NYISO Charges under EP-1 and NP-F1. NYSEG also comments that the proposed provision on the collection of NYISO charges in these two tariffs needs to be reformed on the subject of which party is responsible for the NYISO charges.

Staff Analysis: The Authority agrees with NYSEG's observation with respect to EP-1. Because that tariff only concerns the Authority's direct sales of EP to EP customers, Section IV.E.2 (Original Leaf No. 6) of EP-1 should be reformed to state that the EP customer shall compensate the Authority for the NYISO charges. Of course, the Authority still directly compensates the NYISO for these charges. As part of the cost of the EP service that it provides, however, the Authority's sales under EP-1 require reimbursement by the EP customers for such NYISO charges.

With respect to NP-F1, NYSEG raises similar concerns but also notes that it will not be a party to any sales for resale of RP. NYSEG is correct that all RP sales in the NYSEG service territory will be direct sales by the Authority to the RP customers. (The Authority continues to use NP-F1 to make RP sales to NIMO for resale to RP customers.) Thus, it is appropriate for the Authority to reform proposed Section III.G. of NP-F1 (Original Leaf No. 6) to indicate that either the "Contractor" (the term proposed to be used for a utility company in NP-F1) or the RP customer, depending on the contractual relationship with the Authority, shall compensate the Authority for the NYISO charges. Staff also notes that the pass-through of NYISO costs in NP-F1 was previously approved by the Trustees in the same 2004 SAPA proceeding that made related changes to ST-46. Staff recommends largely retaining the form of the existing provision on NYISO charges in NP-F1, but including improvements to make clear that either the utility company or the RP customer, as the case may be, will be assigned NYISO charges that the Authority incurs in providing RP service. The new provision will also include the appropriate updates of the descriptions of the various NYISO charges that the Authority incurs or could incur.

Issue 3: Consistency with Supplemental Agreement: NYSEG requests that the Authority insert clauses in EP-1 and NP-F1 to ensure that the Authority's direct sales to customers of EP and RP, respectively, adhere to the provisions of the "Supplemental Agreement for the Delivery of Power Allocations Between [the Authority] and [NYSEG]" dated July 18, 2007 ("Supplemental Agreement"). NYSEG states that such changes are needed to "avoid confusion and disputes" and to provide "clarity and guidance" to EP and RP customers, respectively.

Staff Analysis: The tariff modifications that NYSEG suggests are unnecessary. The Authority's agreements for direct sales to EP and RP customers in the NYSEG service territory already contain a provision which states that the applicable agreement between the Authority and NYSEG for the delivery of the allocation shall be incorporated into the customer's sales agreement, and that the customer is required to pay NYSEG for transmission and delivery service in accordance with that Authority/NYSEG agreement.² Furthermore, each sales agreement states that any conflict between a sales agreement and EP-1 shall be resolved in favor of the sales agreement. The Supplemental Agreement's incorporation into the sales agreement establishes that the Supplemental Agreement shall have priority over EP-1 were a conflict to exist.

In addition, NYSEG has not explained why there would be customer confusion with this arrangement. By all indications, the customers understand, and the sales agreements make clear, that the delivery of EP and RP in NYSEG's service territory with respect to the Authority's sales made under EP-1 and NP-F1 is governed by the Supplemental Agreement.

Finally, the provisions that NYSEG has recommended are impractical because they are too specific to NYSEG. EP-1 and NP-F1 are tariffs of general applicability, and it would not make sense to highlight a "Delivery Agreement" that is specific to the Authority/NYSEG relationship. For instance, there is no similar delivery agreement applicable to all sales made into NIMO's service territory under the tariffs EP-1 and NP-F1. As discussed above, the Authority's sales agreements with customers served in the NYSEG service territory make adequate reference to the required delivery provisions, and it would not make sense to reference the specific delivery service of NYSEG in EP-1 and NP-F1.

Issue 4: Other Requested Changes. NYSEG requests the addition or deletion of certain defined terms, confirmation as to the correctness of certain passages and other clarifications to the tariffs. Staff's analysis below will both describe NYSEG's issues and explain the recommended disposition of those issues.

NYSEG states that ST-46 should be reformed to include the defined term "Allocation and Service Agreement," or "ASA," which is a three-party agreement between NYSEG, the Authority and the EP customer, and to delete the proposed tariff's references to the Authority's two-party agreements. The Authority declines to include the requested defined term because it is no longer universally used for all EP sales that arise under ST-46.³

However, because ST-46 is used only for sales for resale, it is appropriate to accept NYSEG's request regarding Section II.F. (Original Leaf No. 3) and to clarify that the Authority is referring to the three-party agreements between the Authority, the utility company (i.e. "Company" under the terms of ST-46) and the EP customer. This should ensure that the definition of "Firm Power" is consistent with those three-party agreements. NYSEG is also correct to point out (Comments at 7) that the hierarchy of which instrument governs in the event of a conflict should be clarified in Section IV.B.4 ("Rules and Regulations") (Original Leaf No. 8), so that there is no conflict with the Resale Agreement. Authority staff recommends removing language that discusses other agreements, which should ensure that this "conflicts" provision is consistent with the Resale Agreement. Instead, the provision will simply indicate that the Authority's rules apply to this service tariff, and that any conflict between the Authority's rules and ST-46 shall be resolved in favor of ST-46.

Regarding ST-46, NYSEG further requests that the Authority confirm that the reference to "St. Lawrence - FDR" used to describe the monthly base rates is correct. NYSEG Comments at 5. That provision, Section III.A (Original Leaf No. 5), states that the rates shall be the higher of either Niagara and St. Lawrence-FDR hydroelectricity rates for rural and domestic customers, or the base rates stated in ST-46. The Authority confirms that the reference to St. Lawrence/FDR is correct because that pricing provision is not describing the source of EP, but a pricing methodology that looks to the rates charged to rural and domestic customers, which is based on a cost-of-service that combines both the Niagara and St. Lawrence/FDR project costs.

With respect to EP-1, NYSEG asks the Authority to ensure that its terms are consistent with the Supplemental Agreement, and in particular raises the concern that EP-1 refers to a "load splitter percentage" in Section IV.F.1 (Original Leaf No. 7), which does not appear in the Supplemental Agreement. There is no inconsistency with the Supplemental Agreement. Load-splitting methodology issues are set forth in the Authority's sales agreement with the EP customers in the NYSEG service territory, which must be in accordance with the delivery agreement between the Authority and NYSEG. The sales agreements also say that no changes in the load-splitting methodology can be effectuated without NYSEG's consent. As for the Supplemental Agreement, it permits changes in the billing ratio methodology provided that the parties give their mutual consent, which is how a load-splitter percentage would be implemented, if at all. The Authority believes that all other terms of EP-1 are consistent with other agreements.

With respect to NP-F1, NYSEG repeats its concern that all of its terms be consistent with the Supplemental Agreement, and asks the Authority to eliminate the new term "Contractor" because it is not used in the other tariffs and may cause customer confusion. The Authority is sympathetic to NYSEG's concern that there not be too many unfamiliar terms. Although the term "Contractor" is new to NP-F1, it is a term that has been used to designate the utility purchaser in resale contracts with NIMO since 1961. Longstanding RP customers in the NIMO service territory are familiar with this term. The original wording of NP-F1 did not specify which entities could be purchasers. Because it is appropriate to include this information in these tariff reforms, for purposes of continuity it makes sense to carry forward the term "Contractor" in NP-F1. On balance, there

is little reason to believe this term will create customer confusion. The definition of "Contractor" is clear on its face and the prospect of confusion due to the use of a different term in the EP tariffs seems remote.

Finally, the Authority believes that NYSEG's criticism of the "conflicts" provision (i.e. "Rules and Regulations") in ST-46 merits similar changes to both EP-1 and NP-F1. Namely, those tariffs should simply state that the Authority's rules apply to service provided thereunder, and that any conflict between the Authority's rules and the tariffs shall be resolved in favor of the tariffs. There should be no reference to other agreements. Because the types of agreements are too numerous to describe in the tariff, and because the "conflicts" provisions of those other agreements speak for themselves, it is preferable not to attempt to describe the conflict resolution hierarchies in these tariffs.

Conclusion: Staff recommends the adoption of the proposed tariffs, with changes conforming to the analysis discussed above. Staff further recommends that these proposed service tariffs become effective at the start of the first billing period subsequent to Trustee approval, which is July 1, 2008.

The newly revised service tariffs for the Authority's Expansion Power and Replacement Power customers will go into effect on July 1, 2008.

- ¹ Notice of Adoption, I.D. No. PAS-52-03-00027-A, *New York State Register* (April 14, 2004) at 29-30.
- ² The Authority made a general reference to an Authority/NYSEG delivery agreement in its sales agreements that it offered customers in early 2007, because the Supplemental Agreement had not yet been finalized. Authority staff is willing to make this reference more specific in subsequent sales agreements, and explicitly identify the Supplemental Agreement.
- ³ For example, due to NIMO's view of itself as a "wires-only" company, recent three-party EP contracts involving NIMO are now known as "Allocation and Sales Agreements" (emphasis added) which reflects the fact that NIMO's transmission services are separate from its resale of Authority electricity, and thus such resale contracts no longer include any transmission provisions.

Final rule as compared with last published rule: Substantial revisions were made in Replacement Power NP-F1, sections II.F, III.G and IV.B.7; Expansion Power ST 46, sections II.F, II.H, III.G and IV.B.4; and Expansion Power EP-1, sections II.E, IV.E.2 and IV.J.4.

Text of rule and any required statements and analyses may be obtained from: Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

Assessment of Public Comment

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

Public Service Commission

NOTICE OF ADOPTION

Energy Efficiency Portfolio Standard

I.D. No. PSC-24-07-00014-A
Filing date: June 23, 2008
Effective date: June 23, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order establishing an energy efficiency portfolio standard and approving programs.

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

Subject: Energy efficiency portfolio standard.

Purpose: To establish an energy efficiency portfolio standard.

Substance of final rule: The Commission, on June 18, 2008, adopted an order establishing an Energy Efficiency Portfolio Standard and approving programs, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (07-M-0548SA2)

NOTICE OF ADOPTION

Restoration of Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-28-07-00008-A
Filing date: June 19, 2008
Effective date: June 19, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order finding Consolidated Edison Company of New York, Inc.'s efforts to restore service after the September 2006 storm outage were not unreasonable.

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

Subject: Consolidated Edison Company of New York, Inc.'s efforts to restore service.

Purpose: To find Consolidated Edison Company of New York, Inc.'s efforts to restore service were not unreasonable.

Substance of final rule: The Commission, on June 18, 2008, adopted an order finding Consolidated Edison Company of New York, Inc.'s reimbursement tariff for the spoilage of food and medicine have not been met, and requiring the company to address its storm restoration in the Self-Assessment Reports, required by 16 NYCRR Part 105(4)(c), 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.
 (07-E-0742SA1)

NOTICE OF ADOPTION

Lightened Regulation by Marble River, LLC

I.D. No. PSC-49-07-00007-A
Filing date: June 19, 2008
Effective date: June 19, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving Marble River, LLC's request for lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1) and 110

Subject: Lightened regulation as an electric corporation.

Purpose: To approve the petition in connection with the development of the Marble River Project, a wind-powered generating facility.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving Marble River, LLC's petition for an order granting lightened regulation in connection with its wind energy project in the Towns of Clinton and Ellenburg, Clinton County, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS

employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-1343SA1)

NOTICE OF ADOPTION

Temporary Rates and Charges by Four Seasons Water Corp.

I.D. No. PSC-07-08-00014-A

Filing date: June 19, 2008

Effective date: June 19, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order directing Four Seasons Water Corp. to reduce its tariff rates to result in a decrease in annual revenues of \$20,152 or 20.7 percent in P.S.C. No. 1 — Water, effective July 1, 2008.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10), 89(j), 113 and 114

Subject: To set the appropriate level of permanent rates.

Purpose: To direct Four Seasons Water Corp. to reduce its tariff rates to result in a decrease in annual revenues.

Substance of final rule: The Commission, on June 18, 2008, adopted an order directing Four Seasons Water Corp. to reduce its tariff rates to result in a decrease in annual revenues of \$20,152 or 20.7%, in PSC 1 — Water, effective July 1, 2008, 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. (98-W-0857SA2)

NOTICE OF ADOPTION

Rural Telephone Bank Proceeds

I.D. No. PSC-14-08-00003-A

Filing date: June 24, 2008

Effective date: June 24, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving companies with a sufficient competitive presence to use rural telephone bank funds without restriction and that companies without competitive presence use the funds for traditional purposes only.

Statutory authority: Public Service Law, sections 91, 92 and 97

Subject: Granting incumbent local exchange companies rural telephone bank proceeds.

Purpose: To approve the disposition of rural telephone bank proceeds as related to competitive presence.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving companies with a sufficient competitive presence to use Rural Telephone Bank Funds without restriction, and that companies without sufficient competitive presence use Rural Telephone Bank funds for traditional purposes only, subject 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-C-0314SA2)

NOTICE OF ADOPTION

Disposition of Tax Refund by Verizon New York Inc.

I.D. No. PSC-14-08-00004-A

Filing date: June 18, 2008

Effective date: June 18, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving Verizon New York Inc.'s petition to retain \$3.6 million of a property tax refund received from the City of New York.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of tax refund.

Purpose: To approve how the tax refund should be retained by Verizon New York Inc.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving Verizon New York Inc.'s petition to retain \$3.6 million, the intrastate portion of a \$5.7 million property tax refund received from the City of New York, for the first half of the 2007-2008 tax year along with credits for the same amount for the second half of 2007-2008 tax year assessment.

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. (08-C-0193SA1)

NOTICE OF ADOPTION

Definition of "Major Outage" by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-14-08-00006-A

Filing date: June 19, 2008

Effective date: June 19, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving the revision of the definition of a major outage under Consolidated Edison Company of New York, Inc.'s reliability performance mechanism (RPM).

Statutory authority: Public Service Law, sections 65(1) and 66(1)

Subject: Definition of "major outage."

Purpose: To adopt revision of the definition of major outage under Consolidated Edison Company of New York's RPM.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving a new definition of Major Outage on a network under Consolidated Edison Company of New York, Inc.'s Reliability Performance Mechanism, 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.
(07-E-0523SA2)

NOTICE OF ADOPTION

Property Tax Refund of Approximately \$13.0 Million by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-16-08-00009-A
Filing date: June 23, 2008
Effective date: June 23, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving the petition of Consolidated Edison Company of New York, Inc. for deferral of property tax refund obtained from the City of New York, NY.

Statutory authority: Public Service Law, sections 5, 65(1) and 66(1)

Subject: Petition for the allocation of a property tax refund.

Purpose: To defer a portion of a property tax refund to benefit ratepayers.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. to defer \$318,645, a portion of the property tax refund obtained from the City of New York for the Arthur Kill electric generating facility, to benefit ratepayers, 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.
(07-E-0927SA1)

NOTICE OF ADOPTION

Pole Attachment Rates by Central Hudson Gas & Electric Corporation

I.D. No. PSC-16-08-00010-A
Filing date: June 19, 2008
Effective date: June 19, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving Central Hudson Gas & Electric Corporation's request to make various changes contained in its schedule for electric service, P.S.C. No. 15—Electricity, effective July 1, 2008.

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

Subject: Pole attachment rates.

Purpose: To approve the updated pole attachment rate for cable system operators and telecommunications carriers.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving Central Hudson Gas & Electric Corporation's tariff amendments to reflect a new annual pole attachment rate applicable to cable system operators and telecommunication carriers that would increase its current annual pole attachment charge from \$12.47 to \$14.36.

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.
(08-E-0330SA1)

NOTICE OF ADOPTION

Low Income AffordAbility Program by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-16-08-00011-A
Filing date: June 23, 2008
Effective date: June 23, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving the petition of Niagara Mohawk Power Corporation d/b/a National Grid for modification to the Low Income AffordAbility Program.

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

Subject: Modifications to the Low Income AffordAbility Program.

Purpose: To approve the modification to the Low Income AffordAbility Program.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving the petition of Niagara Mohawk Power Corporation d/b/a National Grid for three modifications to the Low Income AffordAbility Program; for changes to a monthly, instead of annual arrears forgiveness credit, eliminate the portion of the deferral to participants' arrears balances attributable to energy efficiency measures, and limit participation in the program to 24 months.

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.
(01-M-0075SA41)

NOTICE OF ADOPTION

Property Tax Refund of Approximately \$1.46 Million by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-16-08-00012-A
Filing date: June 23, 2008
Effective date: June 23, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving the petition of Consolidated Edison Company of New York, Inc. for deferral of property tax refund obtained from the Town of Stony Point.

Statutory authority: Public Service Law, sections 5, 65(1) and 66(1)

Subject: Petition for the allocation of a property tax refund.

Purpose: To defer a portion of a property tax refund to benefit ratepayers.

Substance of final rule: The Public Service Commission adopted an order approving the petition of Consolidated Edison Company of New York, Inc., to defer \$1.42 million, a portion of a property tax refund obtained from the Town of Stony Point for a 345 KV transmission facility that extends from the Ramapo Substation to the Buchanan Substation in Westchester County to benefit ratepayers, 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.
(08-M-0281SA1)

NOTICE OF ADOPTION**Electric Meter Access by Rochester Gas and Electric Corporation**

I.D. No. PSC-17-08-00025-A

Filing date: June 18, 2008

Effective date: June 18, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving Rochester Gas and Electric Corporation's request to make various changes contained in its schedules, P.S.C. No. 19—Electricity, effective July 1, 2008.

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

Subject: Meter access.

Purpose: To approve revisions to its meter access notification process.

Substance of final rule: The Commission, on June 18, 2008, adopted an order modifying Rochester Gas and Electric's tariff filing PSC No. 19—Electricity, effective July 1, 2008, to conform to 16 NYCRR, Section 11 Home Energy Fair Practices Act and Energy Consumer Protection Act provisions regarding notification of meter access, in compliance with the Commission's order issued March 24, 2008 in Cases 07-E-1373 and 07-G-1379.

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.
(08-E-0350SA1)

NOTICE OF ADOPTION**Promotional Restrictions on the Save Bundle Order to Protect the Uniformity Rule Established in the Competition III Order Case**

I.D. No. PSC-17-08-00026-A

Filing date: June 23, 2008

Effective date: June 23, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving Verizon New York Inc.'s petition for relief from promotional restrictions.

Statutory authority: Public Service Law, section 92(3) and (5)

Subject: Relief from promotional restrictions.

Purpose: To approve Verizon New York Inc.'s petition for relief from promotional restrictions.

Substance of final rule: The Commission, on June 18, 2008, adopted an order approving Verizon New York Inc.'s petition for relief from promotional restrictions, based upon the increase in competitive alternatives available to residential customers, 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.
(08-C-0353SA1)

NOTICE OF ADOPTION**Gas Meter Access by Rochester Gas and Electric Corporation**

I.D. No. PSC-17-08-00027-A

Filing date: June 18, 2008

Effective date: June 18, 2008

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

Action taken: On June 18, 2008, the Public Service Commission adopted an order approving Rochester Gas and Electric Corporation's request to make various changes contained in its schedules, P.S.C. No. 16—Gas, effective July 1, 2008.

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

Subject: Meter access.

Purpose: To approve revisions to its meter access notification process.

Substance of final rule: The Commission, on June 18, 2008, adopted an order modifying Rochester Gas and Electric's tariff filing PSC No. 16—Gas, effective July 1, 2008, to conform to 16 NYCRR, Section 11 Home Energy Fair Practices Act and Energy Consumer Protection Act provisions regarding notification of meter access, in compliance with the Commission's order issued March 24, 2008 in Cases 07-E-1373 and 07-G-1379.

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.
(08-G-0351SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Con Edison's Procedure for Providing Customers Access to their Account Information**

I.D. No. PSC-28-08-00004-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 whether, and to what extent, it should accept the implementation plan and timetable submitted by Consolidated Edison Company of New York, Inc., (Con Edison) for providing customers access to their account information.

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

Subject: Con Edison's procedure for providing customers access to their account information.

Purpose: To consider Con Edison's implementation plan and timetable for providing customers access to their account information.

Substance of proposed rule: The Commission is considering whether and to what extent it should accept the implementation plan and timetable submitted by Consolidated Edison Company of New York, Inc. (Con Edison or Company) for providing customers access to their account information, equivalent to that provided ESCOS. In making its determination, the Commission may take into consideration the report regarding access to the Retail Access Information System for non-ESCOs submitted by Con Edison on May 9, 2008 in accordance with the Commission's March 25, 2008 Order in Case 07-E-0523, any amendments to the report, any comments made by other parties, the record in this proceeding and such other information as the Commission may deem appropriate. The Commission may accept, reject, or modify, in whole or in part, any proposals made by the Company in its implementation plan and timetable, or any proposals or recommendations that may be developed there from, and it may consider 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.

(07-E-0523SA4)

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

Intercarrier Agreement to Interconnect Telephone Networks for the Provisioning of Local Exchange Service

I.D. No. PSC-28-08-00005-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Crossroads Wireless Holding, LLC to revise the interconnection agreement effective on April 25, 2008.

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

Subject: Intercarrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Crossroads Wireless Holding, LLC interconnection agreement.

Substance of proposed rule: The Public Service Commission approved an Interconnection Agreement between Verizon New York Inc. and Crossroads Wireless Holding, LLC in April 2008. The companies subsequently have jointly filed amendments to clarify the provisions regarding reciprocal compensation rates. The Commission is considering these changes.

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.

(08-C-0064SA2)

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

Interconnection of the Networks between Windstream and Finger Lakes for Local Exchange Service and Exchange Access

I.D. No. PSC-28-08-00006-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 whether to approve or reject, in whole or in part, a proposal filed by Windstream New York, Inc. (Windstream) and Finger Lakes Technologies Group, Inc. (Finger Lakes) for approval of an interconnection agreement.

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

Subject: Interconnection of the networks between Windstream and Finger Lakes for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Windstream and Finger Lakes.

Substance of proposed rule: Windstream New York, Inc. and Finger Lakes Technologies Group, Inc. have reached a negotiated agreement whereby Windstream New York, Inc. and Finger Lakes Technologies Group, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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.

(08-C-0630SA1)

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

Interconnection of the Networks between Verizon and PNG for Local Exchange Service and Exchange Access

I.D. No. PSC-28-08-00007-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 whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. (Verizon) and PNG Telecommunications, Inc. (PNG) for approval of an interconnection agreement.

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

Subject: Interconnection of the networks between Verizon and PNG for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Verizon and PNG.

Substance of proposed rule: Verizon New York Inc. and PNG Telecommunications, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and PNG Telecommunications, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until April 13, 2010, or as extended.

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.

(08-C-0634SA1)

Office of Real Property Services

NOTICE OF ADOPTION

Minimum Qualifications Standard for the Appointment of Directors of County Real Property Tax Services

I.D. No. RPS-13-08-00008-A

Filing No. 622

Filing date: June 24, 2008

Effective date: July 9, 2008

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

Action taken: Repeal of section 188-4.2 and amendment of section 188-4.3 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l) and 1530(3)

Subject: Minimum qualifications standard for the appointment of Directors of County Real Property Tax Services.

Purpose: To enhance the required minimum qualification standards.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-13-08-00008-P, Issue of March 26, 2008.

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

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

Assessment of Public Comment

The agency received no public comment.

[(v)] (iv) children residing in agency boarding homes, group homes, or institutions who are in receipt of payments pursuant to title IV-E of the Social Security Act or article 6 of the Social Services Law;

[(vi)] (v) persons living temporarily in cars, vans, or recreational vehicles;

[(vii)] (vi) individuals who live on military bases in government-provided housing with no utility or heating bills in their names;

[(viii)] (vii) individuals who have no responsibility for any heating costs and do not make undesignated payments for heat in the form of rent; and

[ix] (viii) individuals who are migrant or seasonal farm workers provided room and board and with no heating expenses.

A new paragraph (4) is added to subdivision (c) of section 393.4 as follows:

(4) (i) Notwithstanding the provisions of subparagraph (iii) of paragraph (3) of this subdivision, categorical and income tested households in the following living arrangements that make undesignated payments for heat in the form of rent are eligible for a maximum annual HEAP regular benefit of \$1.00:

(a) government subsidized housing with heat included in the rent;

(b) publicly operated or State-certified private nonprofit residential drug or alcoholic treatment facilities;

(c) private nonprofit residential drug or alcoholic treatment facilities that are authorized as a food stamp retailer by the United States Department of Agriculture or are in receipt of a letter from the certifying State agency stating that the facility operates to further the goals of Title XIX;

(d) publicly operated or State-certified private nonprofit enriched housing;

(e) publicly operated or State-certified private nonprofit residential group living facilities serving no more than 16 residents;

(f) publicly operated or State-certified private nonprofit supervised or supportive living arrangements; and

(g) State-Operated Community Residences.

(ii) Otherwise eligible households in the living arrangements defined in subparagraph (i) of this paragraph are only eligible for a maximum annual HEAP regular benefit of \$1.00 and are not eligible for emergency HEAP or any other benefit under HEAP, except that eligible households in government subsidized housing with heat included in the rent that pay a supplier directly for heat-related utility service may be eligible for a HEAP emergency benefit if such benefit is necessary to resolve the heat-related energy crisis of the household.

Paragraph (4) of subdivision (c) of section 393.4 is renumbered paragraph (5) and amended to read as follows:

[(4)] (5) Notwithstanding paragraphs (1), (2), [and] (3) and (4) of this subdivision, an individual is not eligible for HEAP unless he or she is a United States citizen, a national or a qualified alien as defined by the Federal government. The Federal government considers the following to be qualified aliens:

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

The Low-Income Home Energy Assistance Program (LIHEAP) set forth in Chapter 94 of Title 42 of the United States Code (USC) authorizes the federal Secretary of Health and Human Services (Secretary) to provide grants to States to assist low-income households with their home energy needs. Pursuant to 42 USC ' 8624 (c), the chief executive officer of each State is required to provide the Secretary an annual State Plan which describes, in part, the eligibility requirements and the benefit levels to be used by the State in its Home Energy Assistance Program (HEAP).

Section 97 (1) of the Social Services Law (SSL) authorizes the Office of Temporary and Disability Assistance (OTDA) to develop and submit to the Governor New York's annual LIHEAP State Plan. Pursuant to this section, OTDA is authorized to take whatever action may be necessary with respect to the HEAP State Plan, including making such arrangements and taking such action, not inconsistent with law, as may be required to submit, implement, administer and operate such plan and to secure for the State the benefits available under LIHEAP. Pursuant to this authority,

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Home Energy Assistance Program

I.D. No. TDA-28-08-00002-P

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

Proposed action: Amendment of section 393.4(c)(3), (5); renumbering of section 393.4(c)(4) to 393.4(c)(5) and addition of new section 393.4(c)(4) to Title 18 NYCRR.

Statutory authority: United States Code, title 42, ch. 94, section 8624; Social Services Law, section 97

Subject: Home Energy Assistance Program.

Purpose: Establish a new Home Energy Assistance Program benefit level for low-income households in certain living arrangements.

Text of proposed rule: Paragraph (3) of subdivision (c) of section 393.4 is amended to read as follows:

(3) For purposes of the annual HEAP State Plan, notwithstanding paragraphs (1) and (2) of this subdivision, categorical and income tested households in the following living arrangements are ineligible to receive benefits under HEAP:

[(i) tenants of government subsidized housing with heat included in their rent;]

[(ii)] (i) individual(s) paying room only or room and board and not residing in a commercial enterprise;

[(iii)] (ii) individual(s) temporarily housed in a hotel/motel;

[(iv)] (iii) residents of licensed or unlicensed congregate care facilities, including title XIX facilities, and dormitories;

OTDA is authorized to promulgate State regulations to implement, administer and operate the HEAP State Plan.

The draft HEAP State Plan for the 2008-2009 HEAP season would establish a new HEAP benefit level of \$1.00 for low-income households in specified living arrangements. Pursuant to 42 USC ' 8624 (b) (12), OTDA will continue to provide timely and meaningful public participation in the development of this HEAP State Plan.

Section 97 (2) of the SSL requires each social services district (district) to participate in federal LIHEAP and to assist eligible households found in their districts to obtain LIHEAP. The districts may only find households eligible for LIHEAP if those persons qualify in accordance with federal and State requirements and the standards promulgated by OTDA.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that eligible households may obtain low-income home energy assistance in accordance with federal and State requirements and standards.

3. Needs and benefits:

The proposed amendments would enhance participation and benefits for certain Food Stamp (FS) applicants and recipients. These amendments establish a new Home Energy Assistance Program (HEAP) benefit level for low-income households in specified living arrangements. The newly HEAP-eligible households would be eligible for a maximum annual HEAP regular benefit of \$1.00. By Federal regulation, receipt of a HEAP benefit, regardless of the amount of the HEAP benefit, enables FS applicants or recipients to maximize the FS Standard Utility Allowance (SUA). Households receiving the \$1.00 HEAP benefit who are also applicants or recipients of FS would receive the highest FS SUA. Using the highest allowable SUA in the FS benefit calculation may make an applicant eligible for FS who would not otherwise be eligible and may significantly increase FS benefits for many households. The annual \$1.00 HEAP benefit would qualify the household for the maximum FS SUA for twelve months.

These amendments would increase the FS SUA for approximately 114,182 current FS households in New York State (89,426 in New York City and 24,756 in the rest of the State [ROS]), and the number of households that will benefit from these changes is expected to increase as a result of the implementation of the Working Families Food Stamp Initiative. These amendments would increase the food buying power of low income households at a time of high food prices and provide an economic stimulus at a time of an economic slowdown. These amendments would also mitigate an unintended effect of the recent increase in the shelter standard for those in the New York City Housing Authority or in similar public housing outside of New York City which may have reduced FS benefits for some households. These amendments are also expected to improve New York State's Food Stamp error rate by reducing SUA calculation errors.

4. Costs:

This initiative will bring approximately \$150 million in new federal Food Stamp dollars into New York each year. The proposed amendments would require \$114,182 of OTDA's annual allocation of federal LIHEAP block grant funds to be spent to fund the cost of providing the annual \$1.00 HEAP benefit to the projected 114,182 New York households in receipt of Food Stamps that would receive a higher FS SUA as a result of receiving the annual \$1.00 HEAP benefit. In addition, OTDA would incur an estimated cost of \$53,360 annually to issue the \$1.00 HEAP benefits through the Electronic Benefit Transfer (EBT) system to approximately 72,109 FS households that are not also receiving Public Assistance. These costs would increase to the extent that additional households become eligible for Food Stamps as a result of the Working Families Food Stamp Initiative. Also the cost to the LIHEAP block grant would increase to the extent that households in the newly eligible living arrangements who are not currently in receipt of Food Stamps apply for and receive the \$1.00 HEAP benefit.

The workload of districts would increase to the extent that households that cannot be automatically enrolled in HEAP apply for the \$1.00 HEAP benefit. In these situations, districts would be required to process such applications and issue \$1.00 checks to eligible households that do not receive their benefits through the EBT system. In addition, since New York City has a separate HEAP eligibility determination and payment system for HEAP applicants and recipients who are not also in receipt of public assistance and/or food stamp benefits, New York City would incur some costs in implementing the necessary systems changes to automatically enroll these eligible households and to process applications for the new HEAP benefit level.

5. Local government mandates:

OTDA would minimize the burden on districts by modifying the State's Welfare Management System (WMS) to automate the payment of the \$1.00 HEAP benefit to as many eligible households as possible and to recalculate Food Stamp benefits for households now in receipt of HEAP to reflect the higher FS SUA. OTDA would also revise relevant client notices and local district forms.

The proposed amendments would require districts to process applications for households that cannot be automatically enrolled for the \$1.00 HEAP benefit, and to issue \$1.00 checks to eligible households that do not receive their benefits through the EBT system. In addition, since New York City has a separate HEAP eligibility determination and payment system for HEAP applicants and recipients who are not also in receipt of public assistance and/or food stamp benefits, New York City would be required to implement the necessary systems changes to automatically enroll these eligible households, process applications for the new HEAP benefit level and provide adequate notice to such clients. However, it is noted that eligible recipients in New York City who are in receipt of public assistance and/or food stamp benefits would receive the automated \$1.00 HEAP payment through the EBT system.

6. Paperwork:

The proposed amendments would only minimally increase paperwork requirements, as it is expected that most of the \$1.00 HEAP benefits would be made in an automated fashion. The proposed amendments would require changes to the HEAP application form, which would be made by OTDA. In addition, OTDA would print and distribute the revised HEAP application forms to all districts (including New York City). HEAP applicants will also be able to download the revised HEAP application from OTDA's website (www.otda.state.ny.us) and may also electronically file for regular HEAP benefits in certain counties.

7. Duplication:

These proposed amendments do not duplicate, overlap or conflict with any existing State or federal regulations.

8. Alternatives:

The alternative is to not implement the new HEAP benefit level. However, this would prevent certain FS applicant households who would be eligible for FS benefits if they received the full FS SUA from becoming eligible, and it would prevent certain FS recipient households from receiving an increased FS benefit. This would also prevent New York State from mitigating an unintended effect of the recent increase in the shelter standard for those in the New York City Housing Authority or in similar public housing outside of New York City which may have reduced FS benefits for some households.

9. Federal standards:

These proposed amendments do not conflict with federal standards for HEAP and are similar to Food Stamp maximization efforts through HEAP that are currently in place in four other states. Massachusetts, Maine, Vermont and Washington State all provide nominal HEAP benefits to enable households to potentially receive additional FS benefits.

10. Compliance schedule:

All districts would be required to be in compliance by the opening of the 2008-09 HEAP season. OTDA would minimize the burden on the ROS districts by modifying the State's WMS to automate the payment of the \$1.00 HEAP benefit to as many eligible households as possible and to recalculate Food Stamp benefits for households now in receipt of HEAP to reflect the higher FS SUA. OTDA would also revise relevant client notices and local district forms.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendments would not have an adverse effect on local governments or small businesses.

2. Compliance requirements:

The proposed amendments would not impose additional compliance requirements on small businesses. The proposed amendments would require local districts to process applications for households that cannot be automatically enrolled for the \$1.00 HEAP benefit. Districts would be required to issue \$1.00 checks to eligible households that do not receive their benefits through the EBT system. In addition, since New York City has a separate HEAP eligibility determination and payment system for HEAP applicants and recipients who are not also in receipt of public assistance and/or food stamp benefits, New York City would be required to implement the necessary systems changes to automatically enroll these eligible households, process applications for the new HEAP benefit level and provide notices to such clients. However, it is noted that eligible recipients in New York City who are in receipt of public assistance and/or

food stamp benefits would receive the automated \$1.00 HEAP payment through the EBT system.

3. Professional services:

The proposed amendments would not require small businesses or local districts to hire additional professional services.

4. Compliance costs:

Local district workload would increase to the extent that households that cannot be automatically enrolled apply for the \$1.00 HEAP benefit. Local districts would be required to process such applications and issue \$1.00 checks to eligible households that do not receive their benefits through the EBT system. In addition, since New York City has a separate HEAP eligibility determination and payment system for HEAP applicants and recipients who are not also in receipt of public assistance and/or food stamp benefits, New York City would incur costs in implementing the necessary systems changes to automatically enroll these eligible households and to process applications for the new HEAP benefit level.

5. Economic and technological feasibility:

All small businesses and districts have the economic and technological ability to comply with these proposed regulations. OTDA would minimize the burden on local social services districts by modifying the State's Welfare Management System (WMS) to automate the payment of the \$1.00 HEAP benefit to as many eligible households as possible and to recalculate Food Stamp benefits for households now in receipt of HEAP to reflect the higher FS SUA. OTDA would also revise relevant client notices and local district forms.

6. Minimizing adverse impact:

There will be no economic impact on small businesses and no significant economic impact on local districts. The cost of the additional HEAP benefits would be funded entirely through federal LIHEAP funds, and OTDA would fund the cost of issuing the \$1.00 HEAP benefits through EBT.

7. Small business and local government participation:

All HEAP benefit changes, including the changes to be promulgated through these regulatory amendments, are vetted through the annual HEAP State Plan process. Local districts and small businesses are provided with numerous opportunities to submit oral and/or written testimony during the annual needs assessment process and on the annual draft HEAP State Plan, which is posted on OTDA's website (www.otda.state.ny.us/main/heap).

The concept for these changes to the HEAP State Plan and the State regulations originated at the Empire State Payment Rate Improvement Team (ESPRIT) conference of 2006. The concept was discussed again at the ESPRIT conference of 2007. Representatives from the districts, various State agencies and the United States Department of Agriculture participated in both conferences. The concept for the \$1.00 HEAP benefit and the resulting increase in FS benefits and improvements to FS program payment accuracy were supported at each conference.

In addition, the New York City Human Resources Administration fully supports this proposal which ultimately would increase federally funded FS benefits. The proposal would benefit approximately 89,426 FS households in New York City, and it would help offset the loss of FS benefits experienced by persons residing in housing operated by the New York City Housing Authority.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendments would not negatively affect the 44 rural social services districts in the State.

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

The proposed amendments would not increase reporting or recordkeeping requirements on rural districts.

3. Costs:

The rural district workload would increase to the extent that households that cannot be automatically enrolled apply for the \$1.00 HEAP benefit. Rural districts would be required to process such applications and issue \$1.00 checks to eligible households that do not receive their benefits through the EBT system.

4. Minimizing adverse impact:

The proposed amendments would not have an adverse impact on the rural districts.

5. Rural area participation:

All HEAP benefit changes, including the changes to be promulgated through these regulatory amendments, are vetted through the annual HEAP State Plan process. All districts, including rural districts, are provided with numerous opportunities to submit oral and/or written testimony

during the annual needs assessment process and on the annual draft HEAP State Plan, which is posted on OTDA's website (www.otda.state.ny.us/main/heap).

The concept for these changes to the HEAP State Plan and the State regulations originated at the Empire State Payment Rate Improvement Team (ESPRIT) conference of 2006. The concept was discussed again at the ESPRIT conference of 2007. Representatives from the districts, various State agencies and the United States Department of Agriculture participated in both conferences. The concept for the \$1.00 HEAP benefit and the resulting increase in FS benefits and improvements to FS program payment accuracy were supported at each conference.

Job Impact Statement

A Job Impact Statement is not required for the proposed amendments. It is apparent from the nature and the purpose of the proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities. The proposed amendments will not affect in any real way the jobs of the workers in the social services districts and will not have any adverse impact on jobs and employment opportunities in the State.

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

Food Stamp Program

I.D. No. TDA-28-08-00003-P

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

Proposed action: Amendment of section 387.16(e) and (f) and addition of section 387.16(e)(1)-(2) and (f)(1)-(2) to Title 18 NYCRR.

Statutory authority: United States Code, title 7, ch. 51, sections 2011 and 2013; Social Services Law, sections 95 and 95-a

Subject: Food Stamp Program.

Purpose: Establish a new food stamp budgeting methodology for certain residents in group living arrangements.

Text of proposed rule: Subdivision (e) of section 387.16 is amended to read as follows:

(e) Residents of *Food Stamp (FS) eligible* drug or alcoholic treatment centers. [are subject to the same provisions that apply to all other applicant households except that] *The FS certification of residents of FS eligible drug or alcoholic treatment centers, as defined in section 387.1 of this Part, must be made through an authorized representative. Such residents must have their eligibility determined as a one-person household except when children live with their parent or parents in a drug or alcoholic treatment center. Residents of FS eligible drug or alcoholic treatment centers will have their FS benefits calculated in accordance with this Part and as set forth below:*

New paragraphs (1) and (2) are added to subdivision (e) of section 387.16 to read as follows:

(1) *Residents receiving care in drug or alcoholic treatment facilities or Congregate Care Level 2 facilities*

(i) *Public Assistance (PA) recipients receiving care, but not residing in Congregate Care Level 2 facilities. The income of Family Assistance (FA) or Safety Net Assistance (SNA) recipients receiving care and residing in drug or alcoholic treatment facilities who are in receipt of FA or SNA, but are not "receiving residential care" as defined in section 209 (3) (d) of the Social Services Law will be treated as follows:*

(a) *Countable income will be equal to the district's maximum monthly FA or SNA grant for basic needs, the Home Energy Allowance (HEA), the Supplemental Home Energy Allowance (SHEA) and the appropriate shelter allowance for a household of the equivalent size with no income, as set forth in section 352.3 (a) (1) of this Title; provided, however, that if applicable and a lower amount, countable income will be the sum of the room and board allowance set forth in section 352.8 (b) (1) plus the personal needs allowance (PNA) as set forth in section 352.8 (c) (1) (i).*

(b) *Shelter cost will be equal to the amount determined in clause (a) of this subparagraph less for each person in the FS household a PNA, as set forth in section 352.8 (c) (1) (i) of this Title, if applicable, and the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.*

(ii) *Non-PA recipients receiving care, but not residing in Congregate Care Level 2 facilities. The income of households receiving care and residing in drug or alcoholic treatment facilities who are not in receipt of FA or SNA and are not "receiving residential care" as defined in section 209 (3) (d) of the Social Services Law will be treated as follows:*

(a) Countable income will be equal to the sum of each individual's earned and unearned income, as set forth in this Part.

(b) Shelter cost will be equal to the amount determined in clause (a) of this subparagraph less for each person in the FS household a PNA, as set forth in section 352.8(c)(1)(i) of this Title, if applicable, and the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

(iii) Residents of Congregate Care Level 2 facilities.

The income of individuals residing in drug or alcoholic treatment facilities that are Congregate Care Level 2 facilities and "receiving residential care" as defined in section 209 (3) (d) of the Social Services Law will be treated as follows:

(a) Countable income will be equal to the sum of the following:

(1) Supplemental Security Income (SSI) Living with Others rate, as set forth in section 209 (2) (b) of the Social Services Law or the actual unearned income received by the resident, whichever is less;

(2) The amount by which unearned income exceeds the SSI Congregate Care Level 2 rate, as set forth in section 209 (2) (d) of the Social Services Law; and

(3) All earned income.

(b) Shelter cost will be equal to the SSI Living with Others rate, as set forth in section 209 (2) (b) of the Social Services Law or the actual unearned income received by the resident, whichever is less, less for each person in the FS household the SSI Level 2 PNA, as set forth in section 131-o (1) (b) of the Social Services Law, if applicable, and less the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

(2) Persons residing in drug or alcoholic treatment facilities or Congregate Care Level 2 facilities, but not receiving care. The income of persons residing in drug or alcoholic treatment facilities or Congregate Care Level 2 facilities, but not receiving care in these facilities, will be treated as follows:

(i) Countable income will be equal to the sum of each individual's earned and unearned income as set forth in this Part.

(ii) Shelter cost

(a) Shelter cost for a PA recipient receiving a room and board allowance, as set forth in section 352.8 (b) (1) of this Title, will be equal to the countable income in subparagraph (i) of this paragraph less for each person in the FS household a PNA, as set forth in section 352.8 (c) (1) (i) of this Title, if applicable, and the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

(b) Shelter cost for a PA recipient receiving a shelter allowance will be equal to the actual shelter allowance paid.

(c) Shelter cost for a non-PA recipient will be equal to the amount determined in subparagraph (i) of this paragraph less for each person in the FS household a PNA, as set forth in section 352.8 (c) (1) (i) of this Title, if applicable, and the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

Subdivision (f) of section 387.16 is amended to read as follows:

(f) Disabled or blind [residents of a] persons and household members residing in group living [arrangement] facilities, enriched housing, or supervised or supportive living arrangements. [shall be subject to the same provisions that apply to all other households except that] The FS certification of disabled or blind residents may be made by authorized representatives. When [they] residents receiving treatment and care in a group living facility use the facility's authorized representative, they [shall] will be considered a one-person household. If applying on their own behalf, the resident must meet the definition of household as contained in section 387.1 of this Part. Residents of eligible facilities shall have their FS benefits calculated in accordance with this Part and as set forth below:

New paragraphs (1) and (2) are added to subdivision (f) of section 387.16 to read as follows:

(1) Individuals in State Operated Community Residences will be budgeted in the following manner:

(i) Countable income will be equal to the sum of each individual's earned and unearned income, as set forth in this Part.

(ii) Shelter cost will be equal to the countable income in subparagraph (i) of this paragraph less the current SSI Level 2 PNA, as set forth in section 131-o (1) (b) of the Social Services Law and less the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

(2) Disabled or blind persons and household members residing in all other group living facilities, enriched housing, or supervised or supportive living arrangements will be budgeted in the following manner:

(i) Disabled or blind residents receiving care:

(a) Countable income will be equal to the sum of the following:

(1) SSI Living with Others rate, as set forth in section 209 (2) (b) of the Social Services Law or the actual unearned income received by the resident, whichever is less;

(2) The amount by which unearned income exceeds the applicable SSI Congregate Care Level rate, set forth in section 209 (2) (c), (d) or (e) of the Social Services Law; and

(3) all earned income.

(b) Shelter cost will be equal to the SSI Living with Others rate, as set forth in section 209 (2) (b) of the Social Services Law or the actual unearned income received by the resident, whichever is less, less for each person in the FS household the SSI Level 2 PNA, as set forth in section 131-o (1) (b) of the Social Services Law, if applicable, and less the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

(ii) Residents not receiving care

(a) Countable income will be equal to the sum of each individual's earned and unearned income as set forth in this Part.

(b) Shelter cost

(1) Shelter cost for a PA recipient receiving a room and board allowance, as set forth in section 352.8 (b) (1) of this Title, will be equal to the countable income in clause (a) of this subparagraph less for each person in the FS household the PNA, as set forth in section 352.8 (c) (1) (i) of this Title, if applicable, and the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

(2) Shelter cost for a PA recipient receiving a shelter allowance will be equal to the actual shelter allowance paid.

(3) Shelter cost for a non-PA recipient will be equal to the amount determined in clause (a) of this subparagraph less for each person in the FS household a PNA, as set forth in section 352.8 (c) (1) (i) of this Title, if applicable, and the amount of a one-person thrifty food plan, as defined in section 387.1 of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

The federal food stamp program is authorized by Chapter 51 of Title 7 of the United States Code (USC). Pursuant to 7 USC ' 2011, the federal food stamp program will promote the general welfare and safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households. The federal food stamp program will help to alleviate hunger and malnutrition by permitting low-income households to obtain a more nutritious diet by increasing food purchasing power for all eligible households who apply for participation.

Pursuant to 7 USC ' 2013, the federal Secretary of Agriculture is authorized to administer the federal food stamp program under which, at the request of the State agency, eligible households within the State will be provided an opportunity to obtain a more nutritious diet through the issuance of food stamp benefits.

Part 271 of Title 7 of the Code of Federal Regulations (CFR) sets forth general information and definitions concerning the federal food stamp program. Pursuant to 7 CFR ' 271.2 and 271.4, the State agency, which is responsible for the administration of the federally aided public assistance programs within the State, will be responsible for the administration of the federal food stamp program within the State. These administrative responsibilities include, but are not limited to, the following: (a) issuance, control and accountability of food stamp benefits; (b) developing and maintaining complaint procedures; (c) conducting performance reporting reviews; (d) keeping records necessary to determine whether the food stamp program is being conducted in compliance with federal regulations; and (e) submitting accurate and timely financial and program reports.

Section 95 of the Social Services Law (SSL) governs the administration of the food stamp program in New York State. Pursuant to SSL ' 95 (1) (b), the Office of Temporary and Disability Assistance (OTDA) is authorized to be the designated agency to make food stamp benefits available for needy families and individuals in New York State. Furthermore, the OTDA is authorized to perform such functions as may be appropriate, permitted or required by or pursuant to such law.

Section 95-a of the SSL authorizes the OTDA to develop and implement an outreach plan for the food stamp program. The OTDA's outreach plan must inform low-income households potentially eligible to receive food stamps in New York State of the availability and benefits of the

program and to encourage the participation of eligible households that wish to participate.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that the OTDA establish rules, regulations and policies to allow food stamp applicants and recipients to receive the benefits for which they are eligible in an efficient, streamlined manner.

3. Needs and benefits:

From the 1980s through December 2004, the methodology used to calculate food stamp benefits for residents of group living facilities and drug abuse and alcoholic treatment and rehabilitation facilities was extremely complex. Districts found it difficult and extremely time-consuming to do these calculations. In order to simplify and improve the accuracy of the process of calculating food stamp benefits, the OTDA developed and submitted to the United States Department of Agriculture (USDA) a waiver request asking for permission to conduct a demonstration project to provide standardized benefit amounts to "group home" residents.

Beginning in January 2005, under an approved waiver from USDA, the OTDA began to issue standard food stamp benefit amounts to these group home residents. The demonstration project under which these standard benefits are issued is known as the "Group Home Standard Benefit" Project or GHSB. By "standard" benefits we mean that the benefit amounts received by residents of these group home and drug and alcohol treatment facilities are not based on each food stamp household's individual circumstances. Instead, the standard benefit amounts have been derived from weighted averages of the food stamp benefit amounts received by residents of group homes prior to the implementation of the GHSB. In other words, the GHSB benefits were based on the benefit amount recipients had received when the prior methodology was used. A condition of all federal demonstration projects is that the project be "cost neutral", meaning that it will not result in a major increase in per household benefit expenditures. A second condition is that no group would be unduly negatively impacted by the project, meaning that no group within the affected population would have their benefits substantially reduced. The OTDA's methodology of using weighted averages of 100% of the caseload to develop those averages assured this outcome.

These average amounts were separated into categories based upon the household's source of income (public assistance [PA] or supplemental security income [SSI]), geographic location and the type of facility or group living arrangement. It is these categories, rather than specific individual circumstances, that determine the standard benefit amount. (It is worth noting that, because of the similarity in circumstances among the households in any given category, there was little variation within the benefit amounts received by such households, if correctly budgeted, even before the advent of the GHSB.)

As part of the ongoing litigation in *Graves v. Doar*, the OTDA recently was ordered to discontinue the GHSB method of determining food stamp benefit amounts for residents of these institutions. Although both the GHSB budgeting methodology and the old group home methodology were in compliance with federal requirements, the court ruled that the GHSB violated the State Administrative Procedures Act (SAPA) because its method of determining food stamp benefit amounts for residents of these institutions is not specifically supported by State regulation. The OTDA filed an appeal of the order, resulting in an automatic stay. In *Graves* the plaintiffs also challenged the calculation of food stamp benefit amounts because the benefits issued to similarly-situated group home residents are different depending on whether the resident is a PA recipient or an SSI recipient. This difference resulted from the yearly federal cost of living adjustments (COLA) (see below) and is based on the utilization of a State option to exclude certain PA benefits authorized by the federal food stamp regulations. The difference had to be continued in the GHSB project because it existed in the old methodology used prior to the GHSB project and the USDA mandated that the pilot be cost neutral meaning that there could be no major change in food stamp benefit expenditures.

As stated above, the pre-GHSB budgeting methodology for this population originally was developed in the 1980s. At that time, there was little difference between the normal "maximum" PA grant and the SSI "Living with Others" (LWO) grant upon which the food stamp benefit calculations of similarly-situated group home residents were based, and, as a result, there was little or no difference in the amount of food stamp benefits received. However, over time, the SSI LWO grant continued to increase due to the yearly COLA while the normal "maximum" PA grant amount changed very little. It was this growing difference in these two amounts, embedded in complex food stamp budget calculations, that led to the growing difference in the amount of food stamp benefits received by group

home residents in receipt of PA payments and group home residents in receipt of SSI payments. In order to meet the federal cost neutrality requirement for the GHSB demonstration project, it was necessary to continue this difference in the standard benefits currently in use. If the OTDA had sought to eliminate the difference, the project would not have met the federal cost neutrality requirement.

Because of legal challenges to the GHSB demonstration project and the OTDA's desire to equalize benefits for group home residents in receipt of PA and SSI, the OTDA is not able to continue to operate the GHSB project. This has led the OTDA to devise a new budgeting methodology for residents of group homes.

The proposed amendments to 18 NYCRR ' 387.16 (e)(1)(i) and (ii) address the budgeting methodology that will be used for non-Congregate Care Level 2 drug or alcoholic treatment facilities. Rates paid to operators of these facilities are not based on SSI payment rates. The rates paid to the operators for residents who receive PA are negotiated by the facility operator and the district and therefore can vary. For this small subset of the group home population, the budgeting methodology is based on PA benefit rates.

The proposed amendments to 18 NYCRR ' 387.16 (e) (2) and (f) (2) (ii) address the budgeting methodology that will be used to calculate the food stamp benefit amounts of group home residents not receiving care. Almost always, these individuals are the children of residents who are receiving care. The PA rates paid to providers for these individuals is a negotiated rate and can vary. Countable income for these individuals for the purposes of food stamp budgeting is the sum of earned and unearned income as set forth elsewhere in Part 387. Shelter costs depend on if a PA allowance is paid to the facility operator, and, if so, the type of allowance received.

The general goals of the proposed amendments to 18 NYCRR ' 387.16 (e)(1)(iii) and (f) seek to establish a new, equitable method of calculating the food stamp benefits for residents of group living facilities and drug or alcoholic treatment facilities. It eliminates the differences between the food stamp benefit calculations done for residents who receive PA and those who receive SSI by basing the calculations on the pertinent SSI rates. Since the group home providers are paid an amount equal to the SSI Congregate Care Level 2 Residential Care Rate, regardless of whether the resident is in receipt of PA benefits or SSI benefits, it makes sense to base the new budgeting methodology on the pertinent SSI rates. Additionally, since the SSI rates change annually, basing the benefit calculations on those rates will prevent any future difference between the amount of food stamp benefits received by group home residents who receive SSI and those who receive PA.

The proposed effective date of this regulation, October 1, 2008, is timed to coincide with the establishment of a new Home Energy Assistance Program (HEAP) annual regular benefit level for the 2008-09 HEAP season for low-income households in certain living arrangements. Food stamp recipient households that receive HEAP benefits automatically are entitled to receive the full food stamp standard utility allowance for heating and cooling (Heating/AC SUA) when having their food stamp benefits calculated. Currently, most residents of group homes do not qualify for the Heating/AC SUA. Receipt of the Heating/AC SUA substantially raises the household's deductible shelter expenses. The effect of this is to increase the amount of food stamp benefits received by the household, often substantially, if the household does not already receive the maximum food stamp benefit.

This is important in the context of this proposed amendment because, independent of the establishment of the new HEAP annual regular benefit level, the likely effect of the budgeting methodology described in this proposed rule at 18 NYCRR ' 387.16 (e) (1) (iii) and (f) (2) (i) would be to lower the food stamp benefit amounts received by group home residents who receive PA to the same amounts received by those group home residents who receive SSI. This effect would be more than offset once almost all group home residents become eligible to receive the Heating/AC SUA. The effect of receipt of the Heating/AC SUA would be to raise the food stamp benefit received by most group home residents who do not already receive the maximum food stamp benefit to an amount at or near to the maximum food stamp benefit level for the household size.

4. Costs:

Federal food stamp benefits are funded 100% by the federal government. Administrative costs for the food stamp program are funded in equal portions by the federal and State government. While initial implementation of the regulation will require some initial additional administrative costs, the OTDA does not anticipate a significant increase to either current or ongoing food stamp program administrative costs as a result of the pro-

posed regulation. It should be noted that implementing any other method of budgeting for group home residents would have comparable costs.

5. Local government mandates:

The proposed amendments will require the districts to gather some additional information and to enter some new data into the welfare management system (WMS) in order to generate updated food stamp budgets for the affected applicants and recipients. The OTDA will update WMS so that the new budgeting methodology is applied, and the updated food stamp budgets are then generated. The OTDA also plans to issue an Administrative Directive to the districts explaining the regulatory changes and providing contact information in case the districts should have any questions.

6. Paperwork:

The proposed amendments will impose minimal paperwork requirements for the OTDA.

7. Duplication:

Pursuant to section 8 (f) of the Food Stamp Act, the OTDA was given approval to waive the requirements set forth in 7 CFR ' 273.10 (a) (4), (c), (d) and (e); 7 CFR ' 273.21 (g). Consequently, these proposed amendments do not duplicate, overlap or conflict with any existing State or federal requirements.

8. Alternatives:

There is no alternative but to amend 18 NYCRR ' 387.16. It is not a viable option to return to the budgeting methodology as currently provided in 18 NYCRR ' 387.16 for residents of group homes because the 58 districts would be required to manually budget over 33,000 individuals receiving food stamp benefits that reside in congregate care or group home settings. Such a task would place an enormous administrative burden on local governments and could impact the delivery of food stamp benefits to the neediest of New York State's residents. This proposed rule will provide a simpler, more equitable method for calculation food stamp benefits for residents of group homes.

9. Federal standards:

The proposed amendments will not exceed any minimum standards of the federal government.

10. Compliance schedule:

It is anticipated that the districts will be able to implement the new budgeting methodology on its effective date of October 1, 2008. For applicants, the new budgeting methodology will apply to all applications received on or after the effective date. For recipients, the new budgeting methodology will apply to all food stamp budgets for benefits received for the month of October 2008 and thereafter.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments will have no impact on small businesses, but they will have an impact on the social services districts (districts).

2. Compliance Requirements:

The proposed amendments will require the districts to gather some additional information and to enter some new data into the welfare management system (WMS) in order to generate updated food stamp budgets for the affected applicants and recipients. The Office of Temporary and Disability Assistance (OTDA) will update WMS so that the new budgeting methodology is applied, and the updated food stamp budgets are then generated. The OTDA also plans to issue an Administrative Directive to the districts explaining the regulatory changes and providing contact information in case the districts should have any questions.

3. Professional Services:

The proposed amendments will not require districts to hire additional professional services. The OTDA plans to assist the districts by issuing an Administrative Directive to address the regulatory changes and by updating WMS so that districts can enter the appropriate information, and updated food stamp budgets will automatically be generated.

4. Compliance Costs:

Federal food stamp benefits are funded 100% by the federal government. Administrative costs for the food stamp program are funded in equal portions by the federal and State government. While initial implementation of the regulation will require some initial additional administrative costs, the OTDA does not anticipate a significant increase to either current or ongoing food stamp program administrative costs as a result of the proposed regulation. It should be noted that implementing any other method of budgeting for group home residents would have comparable costs.

5. Economic and Technological Feasibility:

All districts will have the electronic and technological ability to comply with these regulations.

6. Minimizing Adverse Impact:

There will be minimal adverse impact on districts because the OTDA is planning to assist them in the upcoming transition by issuing an Administrative Directive to explain the changes, by updating WMS to generate the appropriate food stamp budgets and by providing contact information in case the districts should have any questions or concerns.

7. Small Business and Local Government Participation:

Several districts were informed of the proposed rule, and they expressed no objections to the proposed amendments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendments will impact the rural social services districts (districts) in the State.

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

The proposed amendments will require the rural districts to gather some additional information and to enter some new data into the welfare management system (WMS) in order to generate updated food stamp budgets for the affected applicants and recipients. The Office of Temporary and Disability Assistance (OTDA) will update WMS so that the new budgeting methodology is applied, and the updated food stamp budgets are then generated. The OTDA also plans to issue an Administrative Directive to all districts explaining the regulatory changes and providing contact information in case the districts should have questions.

3. Costs:

Federal food stamp benefits are funded 100% by the federal government. Administrative costs for the food stamp program are funded in equal portions by the federal and State government. While initial implementation of the regulation will require some initial additional administrative costs, the OTDA does not anticipate a significant increase to either current or ongoing food stamp program administrative costs as a result of the proposed regulation. It should be noted that implementing any other method of budgeting for group home residents would have comparable costs.

4. Minimizing adverse impact:

There will be minimal adverse impact on rural districts because the OTDA is planning to assist them in the upcoming transition by issuing an Administrative Directive to explain the changes, by updating WMS to generate the appropriate food stamp budgets and by providing contact information in case the districts have any questions or concerns.

5. Rural area participation:

Several rural districts were informed of the proposed rule, and they expressed no objections to the proposed changes.

Job Impact Statement

A Job Impact Statement is not required for the proposed amendments. It is apparent from the nature and the purpose of the proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities. The proposed amendments will not affect in any real way the jobs of the workers in the social services districts. Thus the changes will not have any adverse impact on jobs and employment opportunities in the State.

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations (IMEs)

I.D. No. WCB-28-08-00001-E

Filing No. 619

Filing date: June 23, 2008

Effective date: June 23, 2008

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Worker's Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: Decisions of board panels have held the current regulation requires reports of independent medical examinations (IMEs) be received by the board within ten calendar days of the exam. This is not enough time to timely file preventing proper defense of claim.

Subject: Filing written reports of independent medical examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the board and furnished to all others.

Terms of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 20, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: regulations@wcb.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some

to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and Technological Feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.