

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Importation of Deer

I.D. No. AAM-42-03-00003-E
Filing No. 1105
Filing date: Oct. 1, 2003
Effective date: Oct. 2, 2003

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

Action taken: Addition of section 62.8 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 72 and 74

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

Specific reasons underlying the finding of necessity: The proposed adoption of section 62.8 of 1 NYCRR will help to prevent the introduction of chronic wasting disease (CWD) into New York State. CWD is an infectious and communicable disease of deer belonging to the Genus Cervus (including elk, red deer and sika deer) and the Genus Odocoileus (including white tailed deer and mule deer). It has been detected in Colorado, Wyoming, Nebraska, Montana, Oklahoma, South Dakota, Wisconsin and, most recently, New Mexico. Initially, it was found to be present in

captive herds of elk and white-tailed and mule deer. It has now been confirmed in free-ranging white tailed deer, elk and mule deer in Colorado, Nebraska, Wisconsin, Saskatchewan and New Mexico.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program.

New York State has over 400 entities engaged in raising approximately 9,424 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule prohibits, with certain exceptions and until further notice, the importation or movement of deer belonging to the Genus Cervus (including elk, red deer and sika deer) or the Genus Odocoileus (including white tailed deer and mule deer), into the State due to the presence of CWD in wild and domestic animals outside the State and the threat this disease poses to the State's domestic animals, specifically captive deer. Deer belonging to the Genus Cervus and Odocoileus are the deer known to be susceptible to CWD.

The promulgation of this regulation on an emergency basis is necessary because the introduction of CWD into New York State would be devastating from both an animal health and economic standpoint given the threat the disease poses to the approximately 9,424 captive deer in the State and the 400 entities which raise them.

Subject: Importation of deer.

Purpose: To prevent the introduction of chronic wasting disease into the State.

Text of emergency rule: Section 62.8 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York (1 NYCRR) is adopted to read as follows:

62.8 Prohibition on the importation of deer. (a) Notwithstanding any other provision of this Title to the contrary and except as provided in subdivision (b) of this section, until further notice, no deer belonging to the Genus Cervus or the Genus Odocoileus shall be imported or moved into this State, due to the presence of chronic wasting disease in wild and domestic animals outside the State and the threat said disease poses to domestic animals within the State. Members of the Genus Cervus include, but are not limited to, red deer, elk, and sika deer. Members of the Genus Odocoileus include, but are not limited to, white tailed deer and mule deer (black tailed deer).

(b) Deer belonging to the Genus Cervus or the Genus Odocoileus may be imported and moved into the State for the following purposes after the issuance of a permit by the Department, in consultation with the New York State Department of Environmental Conservation:

(1) Such deer may be imported and moved from a zoological park accredited by the American Zoo and Aquarium Association to a zoological park in New York State accredited by said Association.

(2) Such deer may be imported and moved into the State for exhibition, provided that they are kept biologically separate from resident captive and wild deer and are in the State for no longer than 30 days.

(c) Deer belonging to the Genus Cervus or the Genus Odocoileus imported pursuant to subdivision (b) of this section must comply with all applicable requirements of the Agriculture and Markets Law and this Title

and the health certificate accompanying such deer must be endorsed with the number of the permit issued by the Department authorizing their importation and movement into the State.

(d) As provided in 1 NYCRR Part 62.1(b)(4)(c), for the purposes of this Part, deer means any member of the family cervidae.

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 December 29, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Jeffrey Huse, DVM, Director, Division of Animal Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-3502

Regulatory Impact Statement

1. Statutory Authority: Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Law also provides that whenever any infectious or communicable disease affecting domestic animals shall exist or have recently existed outside this State, the Commissioner shall take measures to prevent such disease from being brought into the State.

Section 74 of the Law authorizes the Commissioner to adopt rules and regulations relating to the importation of domestic or feral animals into the State. Subdivision (10) of said Section provides that feral animal means an undomesticated or wild animal.

2. Legislative Objectives:

The statutory provisions pursuant to which these regulations are proposed are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State. The Department's proposed adoption of 1 NYCRR section 62.8 will further this goal by preventing the importation of deer which may be infected with chronic wasting disease (CWD).

3. Needs and Benefits:

CWD is an infectious and communicable disease of deer belonging to the Genus Cervus (including elk, red deer and sika deer) and the Genus Odocoileus (including white tailed deer and mule deer). It has been detected in Colorado, Wyoming, Nebraska, Montana, Oklahoma, South Dakota, Wisconsin and, most recently, New Mexico. Initially, it was found to be present in captive herds of elk and white-tailed and mule deer. It has now been confirmed in free-ranging white-tailed deer, elk and mule deer in Colorado, Nebraska, Wisconsin, Saskatchewan and New Mexico.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program.

New York State has over 400 entities engaged in raising approximately 9,424 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule prohibits, with certain exceptions and until further notice, the importation or movement of deer belonging to the Genus Cervus or the Genus Odocoileus into the State due to the presence of CWD in wild and domestic animals outside the State and the threat this disease poses to the State's domestic animals, specifically captive deer and elk. This is an essential disease control measure that will help to prevent the introduction of CWD into New York State.

An exception to the general prohibition against the importation of deer belonging to the Genus Cervus (including elk, red deer and sika deer) and the Genus Odocoileus (including white-tailed deer and mule deer) has been made for deer being imported and moved from a zoological park accredited by the American Zoo and Aquarium Association to a zoological park in New York State accredited by said Association. The reason for this exception is to permit zoological parks to maintain breeding programs that require the introduction of new animals and are necessary to preserve and

perpetuate populations of rare and endangered species. The accreditation of the zoological parks that are the source and destination of such animals will help to ensure that they are free of disease and are cared for in a manner that keeps them healthy.

Another exception to the general prohibition has been made for deer that are imported and moved into the State for exhibition, provided that they are kept biologically separate from wild and captive deer and are in the State for no longer than 30 days. This exception will permit these deer to be exhibited for educational and entertainment purposes. The limited period of time the animals will be in the State and the fact that they are kept biologically separate from resident captive and wild deer will help to ensure that they do not pose a disease risk.

As an added precaution, both deer moved to zoological parks and deer moved into the State for exhibition purposes could only move after a permit for such movement has been issued and the deer have met the health and test requirements of the Agriculture and Markets Law and 1 NYCRR and an animal health certificate attesting to that fact has been issued.

4. Costs:

(a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

(b) Costs to the agency, state and local governments:

None.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Local Government Mandates:

The proposed amendments would not impose any program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The rule would require the endorsement of the health certificate which currently must accompany deer being imported into New York State with the number of the permit required for the importation of deer of the Genus Cervus and Odocoileus being imported to zoological parks and for exhibition. Such permits will be issued by the Department in consultation with the New York State Department of Environmental Conservation after a determination that the deer in question qualify for the exceptions in the rule to the general prohibition against the importation of deer.

7. Duplication:

None.

8. Alternatives:

Various alternatives, from the imposition of a total prohibition against the importation of all cervids, to no additional restriction on their importation were considered.

Due to the spread of CWD in other states and the threat that this disease poses to the State's captive deer population, a prohibition with limited exceptions was determined to be the best method of preventing the introduction of this disease into New York State. It was concluded that no restriction on the importation of deer and broader exceptions were alternatives that posed an unacceptable risk of introducing CWD to the State's herds of captive deer.

9. Federal Standards:

The federal government currently has no standards restricting the interstate movement of cervids due to CWD, but has implemented an indemnity program for elk and is considering a CWD monitoring program for elk.

10. Compliance Schedule:

It is anticipated that regulated parties can immediately comply with the rule.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are approximately 400 small businesses raising a total of approximately 9,424 captive cervidae (the family that includes deer and elk) in New York State. The rule would have no impact on local governments.

2. Compliance Requirements:

Regulated parties will be prohibited, with certain exceptions, from importing deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into New York State. Those importing such deer, as permitted, for zoological parks and exhibition will be required to have the health certificate accompanying the deer endorsed with the number of the permit issued by the Department, in consultation with the New York State Department of Environmental Conservation.

The rule would have no impact on local governments.

3. Professional Services:

It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

4. Compliance Costs:

(a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive cervidae in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

(b) Costs to the agency, state and local governments:

None.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Economic and Technological Feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed.

The rule is economically feasible. Although the prohibition, with certain exceptions, on the importation of captive deer into New York State will have an economic impact on the approximately 400 entities that imported a total of 360 captive deer into New York State last year, the economic consequences of the infection or exposure to CWD of the approximately 9,424 captive cervids already in the State would be far greater.

The rule is technologically feasible. Captive deer imported into the State are already required to be accompanied by a health certificate. Endorsement of that certificate with the number of the permit issued by the Department pursuant to the limited exceptions to the general prohibition against the importation of deer presents no technological problem.

6. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the types of deer subject to these requirements to those known to be susceptible to Chronic Wasting Disease, members of the Genus *Cervus* (red deer, elk and sika deer) and Genus *Odocoileus* (white-tailed deer and mule deer). Originally consideration was given to subjecting all members of the family cervidae to these requirements. By narrowing the scope of the rule, owners of deer such as fallow deer, which are members of the Genus *Dama*, and are not known to be susceptible to Chronic Wasting Disease will not be subject to the requirements imposed by this rule.

In addition, the exceptions for the importation and movement into the State of deer belonging to the Genus *Cervus* and the Genus *Odocoileus* for zoological parks and exhibition were designed to minimize economic impact by permitting these activities while protecting the health of the State's wild and captive deer.

The provision for issuance of a permit for importation by the endorsement of the permit number issued for such movement on the interstate health certificate already required by State and federal law is designed to minimize reporting requirements and expedite the issuance of such permits. The issuance of a permit number for deer meeting the import requirements can be done by telephone and the number can then be endorsed on the interstate health certificates already required to accompany deer entering the State. This will provide prior notice and approval of the entry of such animals into the State and facilitate the monitoring of such animals after they arrive, without unduly burdening regulated parties.

The rule would have no impact on local governments.

7. Small Business and Local Government Participation:

The Department has advised the owners of captive deer in New York State of the proposed rule by mailings utilizing the list of approximately 400 deer owners known to the Department. In addition, the Department has

notified public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The approximately 400 entities raising captive deer in New York State are located throughout the rural areas of New York. The zoos are located in non-rural areas and the exhibitions take place in both rural and non-rural areas.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Regulated parties in rural areas will be prohibited, with certain exceptions, from importing deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into New York State. Those importing such deer, as permitted, for zoological parks and exhibition will be required to have the health certificate accompanying the deer endorsed with the number of the permit issued by the Department in consultation with the New York State Department of Environmental Conservation. It is not anticipated that regulated parties in rural areas will have to secure any professional services in order to comply with the rule.

3. Costs:

(a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive cervidae (the family that includes deer and elk) in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

(b) Costs to the agency, state and local governments:

None.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

4. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the types of deer subject to these requirements to those known to be susceptible to Chronic Wasting Disease, members of the Genus *Cervus* (red deer, elk and sika deer) and Genus *Odocoileus* (white-tailed deer and mule deer). Originally consideration was given to subjecting all members of the family cervidae to these requirements. By narrowing the scope of the rule, owners of deer such as fallow deer, which are members of the Genus *Dama*, and are not known to be susceptible to Chronic Wasting Disease will not be subject to the requirements imposed by this rule.

In addition, the exceptions for the importation and movement into the State of deer belonging to the Genus *Cervus* and the Genus *Odocoileus* for zoological parks and exhibition were designed to minimize economic impact by permitting these activities while protecting the health of the State's wild and captive deer.

The provision for issuance of a permit for importation by the endorsement of the permit number issued for such movement on the interstate health certificate already required by State and federal law is designed to minimize reporting requirements and expedite the issuance of such permits. The issuance of a permit number for deer meeting the import requirements can be done by telephone and the number can then be endorsed on the interstate health certificates already required to accompany deer entering the State. This will provide prior notice and approval of the entry of such animals into the State and facilitate the monitoring of such animals after they arrive, without unduly burdening regulated parties.

5. Rural Area Participation:

The Department has advised the owners of captive deer in New York State of the proposed rule by mailings utilizing the list of approximately 400 deer owners known to the Department. In addition, the Department has notified public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

Job Impact Statement

1. Nature of Impact:

It is not anticipated that there will be an impact on jobs and employment opportunities.

2. Categories and Numbers Affected:

The number of persons employed by the 400 entities engaged in raising captive deer in New York State is not known.

3. Regions of Adverse Impact:

The 400 entities in New York State engaged in raising captive deer are located throughout the rural areas of the State. The zoos are located in non-rural areas and the exhibitions take place in both rural and non-rural areas.

4. Minimizing Adverse Impact:

By helping to protect the approximately 9,424 captive deer currently raised by approximately 400 New York entities from the introduction of CWD, this rule will help to preserve the jobs of those employed in this agricultural industry.

Office of Children and Family Services

EMERGENCY RULE MAKING

Market Rates for Subsidized Child Care

I.D. No. CFS-42-03-00002-E

Filing No. 1104

Filing date: Oct. 1, 2003

Effective date: Oct. 1, 2003

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

Action taken: Amendment of sections 415.6 and 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410, and 410-x(4)

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

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary for the preservation of the health, safety and welfare of children in need of subsidized child care services in this State. Section 410-x(4) of the Social Services Law require that the market rates be sufficient to ensure equal access to eligible children to comparable day care available to children whose parents are not eligible to receive a subsidy. The current market rates were initially issued in October, 2001 and reflect rate data collected in 2001. Accordingly, the current rates are artificially low. The adjustments to the market rates are needed to address the significantly escalating costs of providing child care services. Social services districts have experienced difficulty in recruiting and retaining providers to care for subsidized children because the actual costs of providing child care are greater than the current market rates.

Continuing to maintain the existing rates could result in subsidized families losing their child care arrangements or being unable to find appropriate child care. As a result, such families could be forced to place their children in child care settings that are inappropriate or unsafe for their children, leave their children unsupervised, or leave their jobs or training programs. If they choose the latter option, the families may remain on public assistance for longer periods of time or return to public assistance. This would directly counter the overriding purpose of welfare reform to encourage families on public assistance to move into employment or training programs. Thus, the increases in the market rates are necessary to maintain and preserve the gains achieved for poor families under welfare reform. As a result of these regulations, public assistance recipients and other low income families will not have to decide between losing their employment income and placing their children in child care that is unsafe or inappropriate.

Delaying the adoption of these regulations would be contrary to the public interest because it could result in children from public assistance or other low income families receiving unhealthy or unsafe child care, or in persons leaving jobs or training programs and returning to public assis-

tance, to the detriment of the public welfare system. Therefore, it is necessary to adopt these regulations on an emergency basis.

Subject: Market rates for subsidized child care.

Purpose: To update the market rates social services districts can pay for subsidized child care.

Text of emergency rule: Paragraph (1) of subdivision (e) of section 415.6 is amended to read as follows:

(1) Payments do not exceed the actual cost of care. *For purposes of this Part, the actual cost of care is:*

(i) *for care provided pursuant to a contract between the social services district and the provider, the payment rate set forth in the contract;*

(ii) *for care provided other than pursuant to a contract between the social services district and the provider, the amount charged to the general public for equal care in the providing facility or home; provided, however, if the facility or home cares only for subsidized children, then the actual cost of care is the amount the provider currently is receiving from the social services district for such children unless the provider can demonstrate to the social services district that the actual cost of providing care to such children is higher than that amount.*

Subdivision (j) of section 415.9 is amended as follows and a new rate schedule is added to read as follows:

(j) Effective [December 31, 2001] *October 1, 2003*, following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week. The market rates are established in five groupings of social services districts. Except for districts noted *as an exception* [with an asterisk (*)] in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

- GROUP A: Nassau, Putnam, Rockland, Suffolk, and Westchester
 - GROUP B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren
 - GROUP C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates
 - GROUP D: Albany, Dutchess, Orange, Ulster
 - GROUP E: Bronx, Kings, New York, Queens, Richmond
- Section 415.9 Rates.
GROUP A COUNTIES: *Nassau, Putnam, Rockland, Suffolk, and Westchester*

Age of Child:	Under 1½	1½-2	3-5	6-12
DAY CARE CENTER				
<i>Weekly</i>	\$260.00	\$240.00	\$215.00	\$215.00
<i>Exceptions</i>	\$300.00	\$281.00	\$233.00	-----
<i>Westchester</i>				
<i>Daily</i>	\$65.00	\$60.00	\$54.00	\$54.00
<i>Exceptions</i>	\$75.00	\$70.00	\$58.00	-----
<i>Westchester</i>				
<i>Part-Day</i>	\$43.00	\$40.00	\$36.00	\$36.00
<i>Exceptions</i>	\$50.00	\$47.00	\$39.00	-----
<i>Westchester</i>				
<i>Hourly</i>	\$8.00	\$8.50	\$7.50	\$7.00
REGISTERED FAMILY DAY CARE				
<i>Weekly</i>	\$225.00	\$225.00	\$220.00	\$200.00
<i>Daily</i>	\$56.00	\$56.00	\$55.00	\$50.00
<i>Part-Day</i>	\$37.00	\$37.00	\$37.00	\$33.00
<i>Hourly</i>	\$8.00	\$8.00	\$7.00	\$7.00
GROUP FAMILY DAY CARE				
<i>Weekly</i>	\$233.00	\$225.00	\$220.00	\$225.00
<i>Daily</i>	\$58.00	\$56.00	\$55.00	\$56.00
<i>Part-Day</i>	\$39.00	\$37.00	\$37.00	\$37.00
<i>Hourly</i>	\$8.00	\$7.00	\$7.00	\$7.00
SCHOOL AGE CHILD CARE				
<i>Weekly</i>	\$0.00	\$0.00	\$0.00	\$215.00
<i>Daily</i>	\$0.00	\$0.00	\$0.00	\$54.00
<i>Part-Day</i>	\$0.00	\$0.00	\$0.00	\$36.00

Hourly	\$0.00	\$0.00	\$0.00	\$7.00
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE				
Weekly	\$158.00	\$158.00	\$154.00	\$140.00
Daily	\$40.00	\$40.00	\$39.00	\$35.00
Part-Day	\$27.00	\$27.00	\$26.00	\$23.00
Hourly	\$5.60	\$5.60	\$4.90	\$4.90
GROUP B COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren				

Age of Child:	Under 1½	1½-2	3-5	6-12
DAY CARE CENTER				
Weekly	\$178.00	\$170.00	\$157.00	\$150.00
Daily	\$45.00	\$43.00	\$39.00	\$38.00
Part-Day	\$30.00	\$27.00	\$26.00	\$25.00
Hourly	\$7.00	\$7.00	\$6.25	\$7.00

REGISTERED FAMILY DAY CARE				
Weekly	\$135.00	\$130.00	\$125.00	\$125.00
Exceptions	\$140.00	-----	-----	-----
Columbia				
Erie	\$150.00	\$150.00	\$135.00	\$135.00
Saratoga	\$140.00	\$140.00	-----	\$130.00
Warren	-----	-----	-----	\$130.00
Daily	\$34.00	\$33.00	\$31.00	\$31.00
Exceptions	\$35.00	-----	-----	-----
Columbia				
Erie	\$38.00	\$38.00	\$34.00	\$34.00
Saratoga	\$35.00	\$35.00	-----	\$33.00
Warren	-----	-----	-----	\$33.00
Part-Day	\$23.00	\$22.00	\$21.00	\$21.00
Exceptions	\$25.00	\$25.00	\$23.00	\$23.00
Erie				
Saratoga	-----	\$23.00	-----	\$22.00
Warren	-----	-----	-----	\$22.00
Hourly	\$5.00	\$5.00	\$5.00	\$4.00

GROUP FAMILY DAY CARE				
Weekly	\$150.00	\$140.00	\$135.00	\$130.00
Daily	\$38.00	\$35.00	\$34.00	\$33.00
Part-Day	\$25.00	\$23.00	\$23.00	\$22.00
Hourly	\$5.00	\$5.00	\$5.00	\$5.00

SCHOOL AGE CHILD CARE				
Weekly	\$0.00	\$0.00	\$0.00	\$150.00
Daily	\$0.00	\$0.00	\$0.00	\$38.00
Part-Day	\$0.00	\$0.00	\$0.00	\$25.00
Hourly	\$0.00	\$0.00	\$0.00	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE				
Weekly	\$95.00	\$91.00	\$88.00	\$88.00
Daily	\$24.00	\$23.00	\$22.00	\$22.00
Part-Day	\$16.00	\$15.00	\$15.00	\$15.00
Hourly	\$3.50	\$3.50	\$3.50	\$2.80

GROUP C COUNTIES: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates				
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Age of Child:	Under 1½	1½-2	3-5	6-12
DAY CARE CENTER				
Weekly	\$150.00	\$145.00	\$136.00	\$125.00
Daily	\$38.00	\$36.00	\$34.00	\$31.00
Part-Day	\$25.00	\$24.00	\$23.00	\$21.00
Hourly	\$5.00	\$5.00	\$4.50	\$5.00

REGISTERED FAMILY DAY CARE				
Weekly	\$125.00	\$125.00	\$120.00	\$120.00
Exceptions	-----	-----	-----	\$135.00
Clinton				

Sullivan	-----	-----	-----	\$125.00
Daily	\$31.00	\$31.00	\$30.00	\$30.00
Exceptions	-----	-----	-----	\$34.00
Clinton				
Sullivan	-----	-----	-----	\$31.00
Part-Day	\$21.00	\$21.00	\$20.00	\$20.00
Exceptions	-----	-----	-----	\$23.00
Clinton				
Sullivan	-----	-----	-----	\$21.00
Hourly	\$3.00	\$3.00	\$3.00	\$3.00

GROUP FAMILY DAY CARE				
Weekly	\$135.00	\$130.00	\$125.00	\$120.00
Daily	\$34.00	\$33.00	\$31.00	\$30.00
Part-Day	\$23.00	\$22.00	\$21.00	\$20.00
Hourly	\$4.00	\$4.00	\$4.00	\$4.00

SCHOOL AGE CHILD CARE				
Weekly	\$0.00	\$0.00	\$0.00	\$125.00
Daily	\$0.00	\$0.00	\$0.00	\$31.00
Part-Day	\$0.00	\$0.00	\$0.00	\$21.00
Hourly	\$0.00	\$0.00	\$0.00	\$5.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE				
Weekly	\$88.00	\$88.00	\$84.00	\$84.00
Daily	\$22.00	\$22.00	\$21.00	\$21.00
Part-Day	\$15.00	\$15.00	\$14.00	\$14.00
Hourly	\$2.10	\$2.10	\$2.10	\$2.10
GROUP D COUNTIES: Albany, Dutchess, Orange, and Ulster				

Age of Child:	Under 1½	1½-2	3-5	6-12
DAY CARE CENTER				
Weekly	\$195.00	\$177.00	\$165.00	\$176.00
Daily	\$49.00	\$44.00	\$41.00	\$44.00
Part-Day	\$33.00	\$29.00	\$27.00	\$29.00
Hourly	\$6.00	\$6.30	\$6.30	\$6.00

REGISTERED FAMILY DAY CARE				
Weekly	\$175.00	\$165.00	\$150.00	\$150.00
Exceptions	-----	\$180.00	\$175.00	\$180.00
Dutchess				
Orange	-----	-----	-----	\$175.00
Daily	\$44.00	\$41.00	\$38.00	\$38.00
Exceptions	-----	\$45.00	\$44.00	\$45.00
Dutchess				
Orange	-----	-----	-----	\$44.00
Part-Day	\$29.00	\$27.00	\$25.00	\$25.00
Exceptions	-----	\$30.00	\$29.00	\$30.00
Dutchess				
Orange	-----	-----	-----	\$29.00
Hourly	\$6.00	\$5.00	\$5.00	\$5.00

GROUP FAMILY DAY CARE				
Weekly	\$175.00	\$175.00	\$165.00	\$160.00
Daily	\$44.00	\$44.00	\$41.00	\$40.00
Part-Day	\$29.00	\$29.00	\$27.00	\$27.00
Hourly	\$6.00	\$6.00	\$5.00	\$5.00

SCHOOL AGE CHILD CARE				
Weekly	\$0.00	\$0.00	\$0.00	\$176.00
Daily	\$0.00	\$0.00	\$0.00	\$44.00
Part-Day	\$0.00	\$0.00	\$0.00	\$29.00
Hourly	\$0.00	\$0.00	\$0.00	\$6.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE				
Weekly	\$123.00	\$116.00	\$105.00	\$105.00
Daily	\$31.00	\$29.00	\$26.00	\$26.00
Part-Day	\$21.00	\$19.00	\$17.00	\$17.00
Hourly	\$4.20	\$3.50	\$3.50	\$3.50

GROUP E COUNTIES: Bronx, Kings, New York, Queens, and Richmond				
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Age of Child:	Under 1½	1½-2	3-5	6-12
DAY CARE CENTER				
Weekly	\$267.00	\$255.00	\$180.00	\$177.00
Daily	\$67.00	\$64.00	\$45.00	\$44.00
Part-Day	\$45.00	\$43.00	\$30.00	\$29.00

Hourly	\$13.75	\$17.00	\$13.00	\$11.65
REGISTERED FAMILY DAY CARE				
Weekly	\$135.00	\$130.00	\$125.00	\$125.00
Daily	\$34.00	\$33.00	\$31.00	\$31.00
Part-Day	\$23.00	\$22.00	\$21.00	\$21.00
Hourly	\$15.00	\$10.00	\$11.00	\$11.60
GROUP FAMILY DAY CARE				
Weekly	\$150.00	\$150.00	\$145.00	\$135.00
Daily	\$38.00	\$38.00	\$36.00	\$34.00
Part-Day	\$25.00	\$25.00	\$24.00	\$23.00
Hourly	\$15.00	\$13.00	\$11.00	\$16.00
SCHOOL AGE CHILD CARE				
Weekly	\$0.00	\$0.00	\$0.00	\$177.00
Daily	\$0.00	\$0.00	\$0.00	\$44.00
Part-Day	\$0.00	\$0.00	\$0.00	\$29.00
Hourly	\$0.00	\$0.00	\$0.00	\$11.65
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE				
Weekly	\$95.00	\$91.00	\$88.00	\$88.00
Daily	\$24.00	\$23.00	\$22.00	\$22.00
Part-Day	\$16.00	\$15.00	\$15.00	\$15.00
Hourly	\$10.50	\$7.00	\$7.70	\$8.12

SPECIAL NEEDS

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest applicable market rates in the State are:

Weekly	\$300.00
Daily	\$ 75.00
Part-Day	\$ 50.00
Hourly	\$ 17.00

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 December 29, 2003.

Text of emergency 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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rate that will establish a ceiling for State and federal reimbursement for payments made under the New York Child Care Block Grant. The amount to be paid or allowed for child care assistance funded under the block grant and under Title XX shall be the actual cost of care but no more than the applicable rate established in regulations. Payment rates must be sufficient to ensure equal access for eligible children to comparable child care assistance in the substate area that are provided to children whose parents are not eligible to receive assistance under any federal or State programs. Payment rates must take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional cost of providing child care for children with special needs.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access for eligible children. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a

local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The current State Plan covers the period of October 1, 2003 through September 30, 2005. The market rates that are being replaced were issued in October of 2001 and were based on a survey conducted in 2001.

2. Legislative objectives:

The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

3. Needs and benefits:

The regulations are needed to adjust existing rates that were established based on a survey done in 2001. Since then, child care providers have experienced increased costs in operating their businesses. These costs are reflected in the higher rates that they are charging as compared to the existing rates. The rates need to be updated to reflect the increased rates in order to continue to provide subsidized families with equal access to child care comparable to that received by unsubsidized families as required by federal and State laws.

The methodology used by the Office to establish the payment rates for the regulations meets the federal and State statutory requirements for conducting a local survey of child care providers. Prior to conducting the market rate survey, the Office convened a work group of stakeholders including local department of social services, family advocacy groups and provider organizations. These stakeholders provided input in the development of the market rate methodology and the process used to survey child care providers. Based upon stakeholder recommendations, a letter was mailed to all licensed and registered providers to inform them that they might be among the sample of providers who would be asked to participate in the market rate survey. The Office contracted with a market research firm to conduct the telephone survey in English and Spanish and had resources available to assist providers in other languages. The sample was drawn so that it encompassed the full range of providers within all geographic areas.

The payment rates were established based on approximately 4,000 completed telephone market rate surveys from licensed and registered providers throughout the State. Providers were asked for the rates they charge for full-time and part-time care, if applicable, based on the age of the child.

These rates were analyzed to determine the 75th percentile. The federal Administration of Children and Families has indicated in the preamble to the final rule for the Child Care and Development Fund that it regards the 75th percentile of the actual cost of care as sufficient to provide subsidized parents with equal access to child care providers. The rates that resulted were then clustered into five distinct groupings of social services districts based on rate similarities. Within each group, rates are differentiated by type of provider (*i.e.*, day care center, school-age child care, family day care, group family day care and legally-exempt family child care and in-home child care), age of child (*i.e.*, under 1 =, 1 =-2, 3-5, 6-12), and amount of time in care (*i.e.*, weekly, daily, part-day, and hourly). This data was compiled and analyzed by Eric Petersen, Assistant Director within the Office's Bureau of Budget Management.

The market rates for legally-exempt family child care and in-home child care were established based on a 70 percent differential applied to the market rate established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider.

Revising the existing rates will help subsidized families to avoid losing their child care arrangements or being unable to find appropriate child care. This will help prevent such families from being forced to place their children in child care settings that are inappropriate or unsafe or to leave their children unsupervised. Avoiding such results is important because it can be detrimental to children's development for them to experience disruption in care or to receive substandard or no care at all. The updated rates also will help subsidized families avoid having to choose whether to use their own income to supplement the cost of child care services, thereby enabling the families to use their limited family income for other basic living costs.

Social services districts are required to make payments based on the actual cost of care up to the applicable market rate. The regulations amend the definition of actual cost of care to clarify how that cost should be determined for those providers that only serve subsidized children and that do not have a contract with the applicable social services district. For each of those providers, the actual cost of care is the amount the provider

currently receives from the district for subsidized children unless the provider can demonstrate that the actual cost of providing care to such children is higher than that amount. As a result of this clarification, social services districts will need to review the payments for these providers to determine whether the payments reflect the revised definition of actual cost of care up to applicable market rates.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year. Districts that exceed their Block Grant allocations for a particular year may receive additional reimbursement under the Child Care Reserve Fund provided monies are appropriated for that Fund.

Under the State Budget for SFY 2003-04, social services districts will receive their allocations of \$694,543,234 in federal and State funds under the New York State Child Care Block Grant, an increase of \$38 million from the amount allocated to districts for SFY 2002-03. In addition, districts that are projected to use all of their Block Grant allocations will receive allocations from \$78 million available under the Child Care Reserve Fund for federal fiscal year 2002-2003 and from an amount to be determined under the Child Care Reserve Fund for federal fiscal year 2003-2004. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates as well as to allow for growth in the number of children receiving child care services.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as needed.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The adjustments in rates set forth in the regulations are necessary to implement the federal and State statutory and regulatory mandates.

9. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

10. Compliance schedule:

These provisions must be implemented effective on October 1, 2003.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 29,000 informal providers.

2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to the new market rates. Payment adjustments will have to be made, as needed.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income fami-

lies. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year. Districts that exceed their Block Grant allocations for a particular year may receive additional reimbursement under the Child Care Reserve Fund provided monies are appropriated for that Fund.

Under the State Budget for SFY 2003-04, social services districts will receive their allocations of \$694,543,234 in federal and State funds under the New York State Child Care Block Grant, an increase of \$38 million from the amount allocated to districts for SFY 2002-03. In addition, districts that are projected to use all of their Block Grant allocations will receive allocations from the \$78 million available under the Child Care Reserve Fund for federal fiscal year 2002-2003 and from an amount to be determined under the Child Care Reserve Fund for federal fiscal year 2003-2004. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates as well as to allow for growth in the number of children receiving child care services.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. Prior to conducting the market rate survey the Office convened a work group of stakeholders including local department of social services, family advocacy groups and provider organizations. These stakeholders provided input in the development of the market rate methodology and the process used to survey child care providers.

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,000 licensed and registered child care providers throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care within the counties.

Social services districts will benefit from the increases in the rates. The increases will enable districts to provide public assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more public assistance and low-income families to work, thereby reducing the number of families in need of public assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,000 providers and that information formed the basis for the updated market rates.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

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

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the new market rates. Payment adjustments will have to be made, as needed.

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

3. Costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year. Districts that exceed their Block Grant allocations for a particular year may receive additional reimbursement under the Child Care Reserve Fund provided monies are appropriated for that Fund.

Under the State Budget for SFY 2003-04, social services districts will receive their allocations of \$694,543,234 in federal and State funds under the New York State Child Care Block Grant, an increase of \$38 million from the amount allocated to districts for SFY 2002-03. In addition, districts that are projected to use all of their Block Grant allocations will receive allocations from \$78 million available under the Child Care Reserve Fund for federal fiscal year 2002-2003 and from an amount to be determined under the Child Care Reserve Fund for federal fiscal year 2003-2004. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates as well as to allow for growth in the number of children receiving child care services.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,000 completed surveys from licensed and registered child care providers throughout the State. The rates were analyzed to establish market rates at the 75th percentile of the amounts charged. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for rural counties are based on the actual costs of care within the counties.

Social services districts in rural areas will benefit from the increases in the rates. The increases will enable districts to provide public assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more public assistance and low-income families to work, thereby reducing the number of families in need of public assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers in rural areas also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. Prior to conducting the market rate survey the Office convened a work group of stakeholders including local departments of social services, family advocacy groups and provider organizations. Several rural departments of social services districts and the New York State Public Welfare Association were invited to attend. The Family Day Care Association of New York State, which has a strong representation from rural areas in its membership, participated in the workgroup. The workgroup provided input in the development of the market rate methodology and the process used to survey child care providers.

In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,000 providers and that information formed the basis for the updated market rates.

Job Impact Statement

Section 201-a of the State Administrative Procedure Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

These regulations will have a positive impact on jobs or employment opportunities as the increased rates will allow child care providers to hire additional staff or improve the compensation they pay existing staff. Individuals who may have been discouraged from starting up new child care programs in low-income communities because the existing rates would not have been sufficient to support their operational costs may be encouraged by the new rates to establish such programs. In addition, by making child care more available and affordable for low-income working families, the regulations will improve the ability of employers to attract and retain employees and the ability of low-income workers to obtain and maintain jobs.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Telephone Calls

I.D. No. COR-42-03-00004-P

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

Proposed action: Amendment of sections 723.2, 723.3, 723.4 and 723.5 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate telephone calls.

Purpose: To insert minor textual and procedural changes.

Text of proposed rule: Subdivision (a) of section 723.2 is amended as follows:

(a) The department operates a telephone system for inmates as one of the modes by which they may maintain contact with family and friends at home. This system provides a controlled list of up to 15 phone numbers accessible to each inmate which, at most locations, can be self-dialed at telephones in housing units. Employee assisted dialing is used for calls outside of the continental United States, Canada, U.S. Virgin Islands, [and] Puerto Rico, Guam and Central Northern Marianna Islands, and for emergency calls.

Subdivisions (a), (b) and (c) of section 723.3 are amended as follows:

(a) Collect calls. Calls will be made collect, except for calls outside of the continental United States, Canada, U.S. Virgin Islands, Puerto Rico, Guam and Central Northern Marianna Islands and some emergency telephone calls.

(b) Facility telephone schedule. "Call-home" program operations shall be permitted everyday, including holidays within the hours of 7:00 a.m. to 11:00 p.m. *Calls started at 11:00 p.m. or earlier will be allowed a full 30-minute call. Calls attempted after 11:00 p.m. will not be processed.* Each superintendent will determine suitable time frames for calling within those hours, and a schedule for calls will be established. Every effort will be made to maintain this schedule.

(c) Monitoring notice. The following notice shall be posted adjacent to any telephone to be used by inmates advising them that their telephone calls may be monitored. This notice shall be in both English and Spanish and shall state:

NOTICE
ALL INMATE TELEPHONE CONVERSATIONS ARE SUBJECT TO
ELECTRONIC MONITORING AND/OR RECORDING
BY DEPARTMENT PERSONNEL.
AVISO
TODAS LAS LLAMADAS TELEFONICAS DE LOS RECLUSOS
PUEDEN SER
ESCUCHADAS POR MEDIOS ELECTRONICOS Y PUEDEN SER
GRAVADAS FOR EL
PERSONAL DEL DEPARTAMENTO.

Paragraphs (2) and (3) of subdivision (d) of section 723.3 are amended as follows:

(2) When a facility is advised *in writing* that someone does not wish to receive telephone calls from an inmate, the name of this person shall be entered on the inmate's negative correspondence and telephone list. The inmate will be immediately notified in writing that the person has been removed from his/her "telephone list" and that disciplinary action may be taken if the telephone is used in any manner to contact the person. In addition, the person's telephone number will be removed from the telephone system.

(3) If the facility is later advised *in writing* that telephone calls from the inmate are no longer objectionable, the superintendent or his designee may, but need not, direct that the name of that person be removed from the inmate's negative correspondence and telephone list.

Paragraph (6) of subdivision (e) of section 723.3 is amended as follows:

(6) Inmates are prohibited from making telephone calls to inmates in other New York State, Federal, other state, county or local correctional facilities. Exception: In special situations, subject to the approval of the superintendents of the two facilities, inmate-to-inmate telephone calls between immediate family members or the parents of a child may, but need not be authorized once a month. Such telephone calls, when permitted shall be *employee assisted and monitored*.

Paragraphs (9), (10) and (11) of subdivision (e) of section 723.3 are amended as follows:

(9) Inmates are prohibited from making telephone calls to Operator Information. [Telephone operators handling the self-dial systems have been instructed not to accept such calls.]

(10) Inmates are prohibited from making telephone calls to unrelated minor persons under 18 years of age without the written approval of the minor's parent or legal guardian.

(i) The parent or legal guardian must forward a letter to the superintendent granting such approval before such telephone calls may take place.

(ii) A copy of the letter from the parent or legal guardian granting such approval will be retained in the inmate's guidance and counseling unit case folder [file].

(11) Inmate telephone calls and telephone conversations shall be restricted to the telephone number dialed or otherwise placed by or for the inmate, *and shall terminate at the billing address of the called party*. Telephone call forwarding or third-party phone calls are prohibited.

A new paragraph (12) is added to subdivision (e) of section 723.3, as follows, and existing paragraph 12 re-numbered 13:

(12) *Inmates are prohibited from placing calls to wireless communications devices, e.g., cellular or PCS telephones, pagers, etc.*

Subparagraph (i) of paragraph (1) of subdivision (f) of section 723.3 is amended as follows:

(i) Exception. This procedure does not apply to an inmate in "transit status" or temporarily at a transit facility overnight or for a weekend during transfer, but it does apply to inmates in holding units *in Auburn* [such as Coxsackie, Great Meadow,] and Sing Sing.

Paragraph (4) of subdivision (g) of section 723.3 is amended as follows:

(4) When a person receiving the emergency call is unable and/or unwilling to accept a collect call, the cost of the call will be charged to the inmate. The assisting employee shall contact the operator *prior to the call and ask that the call be placed as a "Time and Charges" call. The operator will then be able to call the facility back and provide* [after the call has been completed and request] the amount of the toll. A disbursement form authorizing payment for the call will then be completed, signed by the inmate and forwarded to the fiscal office for posting. Any charge

from the telephone company related to securing this information will be borne by the facility.

The opening text of subdivision (h) of section 723.3 is amended as follows:

(h) Calls outside the continental United States, *Canada, U.S. Virgin Islands, Puerto Rico, Guam and Central Northern Marianna Islands*. Telephone calls outside of the continental United States, *Canada, U.S. Virgin Islands, Puerto Rico, Guam and Central Northern Marianna Islands* will be employee-assisted pursuant to section 723.4 of this Part, with the following additional specifications:

Paragraph (3) of subdivision (h) of section 723.3 is amended as follows:

(3) All toll costs will be charged to the inmate. The assisting employee shall contact the operator *prior to the call and ask that the call be placed as a "Time and Charges" call. The operator will then be able to call the facility back after the call and provide* [after the call has been completed and request] the amount of the toll. A disbursement form authorizing payment for the call will then be completed, signed by the inmate, and forwarded to the fiscal office for posting. Any charge from the telephone company related to securing toll information will be borne by the facility.

Paragraph (2) of subdivision (a) of section 723.4 is amended as follows:

(2) Completing call. Once the employee has made initial contact with the recipient of a telephone call and collect charges have been accepted, the employee will signal the inmate to start the conversation. *Note: Calls to locations outside the continental United States, Canada, U.S. Virgin Islands, Puerto Rico, Guam and Central Northern Marianna Islands will not be made "collect" but will be paid for as specified in section 723.3(h) above.*

Subdivision (b) of section 723.4 is amended as follows:

(b) Telephone calls involving *calls to the hearing impaired*. Inmates may place *collect* telephone calls to hearing impaired persons through the assistance of a chaplain or family services staff person, provided the hearing impaired persons possess the necessary telecommunications device.

(1) The inmate must submit a written request to the appropriate staff person for such a telephone call. The request must include the most opportune times for the call to be placed, the number to be called, and the name of the individual to be called. The time of the call may not coincide with the inmate's program hours.

(2) The staff person will arrange for the inmate to place the *collect* telephone call and, as necessary, assist the inmate in doing so. *A local telephone directory provides instructions for placing a collect call through the New York Relay Center for a non-TTY (voice) user to a TTY user.*

(3) Telephone calls to the hearing impaired may be time and/or frequency limited. However, each inmate who has not lost telephone privileges is entitled to a minimum of one such call each calendar month for a minimum duration of 10 minutes, provided (s)he submits a request and the party called accepts the charges.

(4) *For inmates with sensorial disabilities, please refer to the departmental directive on inmates with sensorial disabilities.*

Subdivision (a) of section 723.5 is amended as follows:

(a) Description. Self-dial telephones will only handle outgoing collect telephone calls within the continental United States, *Canada, U.S. Virgin Islands, Puerto Rico, Guam and Central Northern Marianna*. No credit card calls may be made nor incoming calls received.

(1) The self-dial system is the property of the department which is responsible for its installation and maintenance. System abuse or failure to follow established rules and procedures may result in its removal or the imposition of restrictions or limitations. Damaged hardware will be replaced or repaired at the discretion of the superintendent. In cases where the damage is the result of vandalism, other repairs will be considered a higher priority.

[(2) Telephone operators are aware that self-dial calls are being placed by inmates.]

(2) [(3)] System changes (*moves, additions or deletions*) must be discussed with the Division of Management Information Services.

Subdivision (c) of section 723.5 is amended as follows:

(c) Telephone *number registration* list.

Subparagraphs (i) and (ii) of paragraph (2) of subdivision (c) of section 723.5 are amended as follows:

(i) Each inmate shall be limited to 15 approved *names and* phone numbers which will be maintained as his/her "telephone list." Except for immediate family members, revisions to the telephone list will only be

made when the inmate is due a quarterly review. Phone number changes for immediate family members already on the list will be permitted.

(ii) If the inmate's telephone list contains the allotted 15 *names and* numbers, deletions must occur before the new *names and* numbers may be added. If deletions are not provided by the inmate, the new *names and* telephone numbers will not be added to the telephone list.

The opening text of paragraph (3) of subdivision (c) of section 723.5 is amended as follows:

(3) A computer generated record *including, but not limited to,* [containing] the following information *shall* [may] be maintained in the central office management information services' data base:

Subdivision (d) of section 723.5 is hereby repealed and a new subdivision (d) added as follows:

(d) Calling procedure. The inmate shall access the system by utilization of an individual PIN number which is the inmate DIN number modified so that the alpha letter is converted to the corresponding numeral. *The detailed procedures for inmate self-dial calling are set forth in the departmental directive on inmate telephone calls.*

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

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

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to establish and publish rules and procedures to manage the telephone system whereby inmates maintain contact with family and friends.

Needs and Benefits:

The proposed changes to Part 723, Inmate Telephone Calls, are, for the most part, minor clarifications of text and technical changes attributable to the telephone contractor.

The U.S. Virgin Islands, Guam and Central Northern Marianna Islands have been added to the area (continental U.S., Canada and Puerto Rico) that can be called without staff assistance.

The changes at section 723.3(e), paragraphs (11) and (12), clarify the existing restriction by specifying that calls must terminate at the billing address of the called party and prohibit calls to wireless communication devices for security reasons. The department must ensure, that inmates do not have access to instantaneous communication with unknown or untraceable parties.

Lastly, there are minor changes to telephone procedures at 723.3(g)(4) and 723.3(h)(3) to assess toll charges to inmates making emergency or out-of-collect calling area calls, and at 723.4(b) regarding calls to the hearing impaired.

Costs:

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

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

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

Local Government Mandates:

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

Duplication:

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

Alternatives:

The alternative of making no change was rejected due to the need to clarify text and provide public notice of enhancements related to security policies and the expansion of the telephone contractor's capabilities.

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely inserts minor textual and procedural changes affecting inmate telephone calls.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely inserts minor textual and procedural changes affecting inmate telephone calls.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely inserts minor textual and procedural changes affecting inmate telephone calls.

Long Island Power Authority

NOTICE OF ADOPTION

Charitable Contributions Program

I.D. No. LPA-13-03-00003-A

Filing date: Oct. 6, 2003

Effective date: Oct. 6, 2003

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

Action taken: The Long Island Power Authority (authority) approved the continuation of a charitable contributions program.

Statutory authority: Public Authorities Law, section 1020-f(z)

Subject: Charitable Contributions Program.

Purpose: To continue the program.

Text or summary was published in the notice of proposed rule making, I.D. No. LPA-13-03-00003-P, Issue of April 2, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Richard M. Kessel, Chairman, Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY 11553, (516) 222-7700

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

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

Assessment of Public Comment:

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

Office of Mental Health

EMERGENCY RULE MAKING

Operation of Residential Treatment Facilities for Children and Youth

I.D. No. OMH-42-03-00001-E

Filing No. 1103

Filing date: Oct. 1, 2003

Effective date: Oct. 1, 2003

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

Action taken: Amendment of section 584.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

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

Specific reasons underlying the finding of necessity: To address the immediate needs of children being served in residential treatment facilities for children and youth (RTF) it is necessary to continue to temporarily expand the capacity of certain RTF's.

Subject: Operation of residential treatment facilities for children and youth.

Purpose: To continue the temporary increase in the capacity of certain RTF's to serve the needs of emotionally disturbed children and youth.

Text of emergency rule: Subdivision 584.5(e) of Part 584 of 14 NYCRR is amended to read as follows:

(e) An operating certificate shall be issued for a residential treatment facility for a resident capacity of no less than 14 and no more than 56; provided, however, that for the period commencing April 1, 2000 through [September 30, 2003,] *September 30, 2004*, bed capacity for facilities primarily serving New York City residents may be temporarily increased up to an additional ten beds over the maximum certified capacity with the prior approval of the Commissioner. In order to receive such approval, the residential treatment facility must demonstrate that the additional capacity will be used to serve those children and youth deemed most in need of RTF services by the New York City Preadmission Certification Committee as set forth in Section 583.8.

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 December 29, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Sections 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

2. Legislative Objectives: NYCRR Part 584 sets forth standards for the operation of Residential Treatment Facilities for Children and Youth. This amendment to Part 584 allows for the temporary increase of capacity of certain facilities to allow additional children and youth to be served in the program.

3. Needs and Benefits: The Office of Mental Health has determined that it is necessary to continue the existing capacity of these Residential Treatment Facilities for Children and Youth (RTFs) which serve seriously emotionally disturbed children and youth who are residents of New York City. Under the existing regulation, (14 NYCRR Section 584.5(e)), RTF bed capacity serving primarily New York City residents may be temporarily increased until September 30, 2003 by up to 10 additional beds over the permitted maximum of 56 per facility.

There are a number of initiatives underway that focus on improving the use of the current RTF resources by decreasing the length of stay. These

initiatives include focused development of supervised community residences, family based treatment programs, case management and family support to assist the youth discharged from an RTF to successfully reintegrate into the community.

To expand capacity, a total of 21 temporary beds were added to 5 existing RTF facilities serving New York City residents. These beds were added on a voluntary basis with the cooperation of the facilities and the support of the New York City Department of Mental Health. Three of the facilities that were not at the 56 bed maximum had their capacity increased administratively by a total of 13, without going over the maximum. One of the facilities, St. Christopher Oillie, was at 56 beds and another, Linden Hill, was at 55 beds. St. Christopher Oillie added 5 beds. Linden Hill added 3 beds. Therefore, 7 beds are permitted to be added under 14 NYCRR Section 584.5(e) as it currently exists. That permission expires on September 30, 2003. Although significant improvements in development of residential alternatives, such as the supervised community residences and the family based treatment beds, have been made in the last year, the expiration date must be changed to September 30, 2004, in order to permit the continued necessary increase in RTF capacity.

4. Costs:

(a) Costs to private regulated parties: There will be no mandated costs to the regulated parties associated with allowing an increase in capacity to the RTF program.

(b) Cost to state and local government: The annual state cost for the 7 beds is estimated to be \$438,000. These additional funds will be covered by the State share of Medicaid appropriation. There is no local share for the RTF program.

(c) The cost projection was calculated by applying the per bed projected Medicaid rate to the 7 additional beds.

5. Local Government Mandates: There will be no additional mandates to local government.

6. Paperwork: There are no new paperwork requirements associated with this amendment.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may effect this rule.

8. Alternatives: The only alternative would be to allow the temporary additional capacity authority to expire, which is not acceptable given the critical need for these services.

9. Federal Standards: The rule does not exceed any Federal standards.

10. Compliance Schedule: Providers will be able to comply with this rule immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules will not impose any adverse economic impact on small businesses, or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules impact only Residential Treatment Facilities for Children and Youth serving children who are New York City residents.

Job Impact Statement

Because this amendment will impact only 2 providers of Residential Treatment Facilities for Children and Youth, and only permits these 2 providers to continue the temporary operation of a total of 7 beds until September 30, 2004, it will not have any impact on jobs and employment activities.

Department of Motor Vehicles

ERRATUM

A Notice of Adoption, I.D. No. MTV-29-03-00011-A, published in the October 1, 2003 issue of the *State Register* pertaining to Notification of Motorcyclists contained the incorrect section in the Action Taken. The correct section is 34.11(d).

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

Public Service Commission

NOTICE OF ADOPTION

Rental Charges for Attachments by Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc.

I.D. No. PSC-02-03-00007-A

Filing date: Oct. 1, 2003

Effective date: Oct. 1, 2003

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

Action taken: The commission, on Sept. 17, 2003, adopted an order in Case 01-E-0428, approving in part a petition by Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc. for rehearing of the commission's Nov. 22, 2002 order.

Statutory authority: Public Service Law, section 66(1)

Subject: Petition for rehearing.

Purpose: To modify rental charges for attachments by cable television and competitive local exchange companies.

Substance of final rule: The Commission granted in part Consolidated Edison Company of New York, Inc.'s (Con Edison) and Orange & Rockland Utilities, Inc.'s petition for rehearing of the Commission's November 22, 2002 Order authorizing Con Edison to revise its pole attachment rental rate to \$15.20, 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. (01-E-0428SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interest Rate by the Bath Electric, Gas & Water Systems

I.D. No. PSC-42-03-00005-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 a petition filed by the Bath Electric, Gas & Water Systems seeking permission to use an interest rate other than the other customer capital rate, when calculating the interest due customers on a refund being returned through the purchased power adjustment clause.

Statutory authority: Public Service Law, sections 66(12) and 113(2)

Subject: Request for the use of an interest rate other than the other customer capital rate.

Purpose: To allow the Bath Electric, Gas & Water Systems to use an interest rate other than the other customer capital rate for the calculation of interest on customer refunds.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Bath Electric, Gas & Water Systems requesting permission to use an interest rate other than the Other Customer Capital Rate, when calculating the interest due customers. The Bath Electric, Gas & Water Systems seeks permission to use the actual interest rate earned on the funds held for refund rather than the Other Customer Capital Rate.

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

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

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

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

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

(03-E-1362SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Non-Core Transportation Service for Electric Generation by The Brooklyn Union Gas Company

I.D. No. PSC-42-03-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery New York to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: S.C. No. 20—non-core transportation service for electric generation.

Purpose: To revise the methodology used for calculating the value-added charge for S.C. No. 20.

Substance of proposed rule: The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery New York proposes changes to its Schedule P.S.C. No. 12—Gas to simplify the methodology for calculating the value-added charge for S.C. No. 2—Non-Core Transportation Service for Electric Generation in a manner that places all S.C. No. 20 customers on an equal footing.

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

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

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

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

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

(03-G-1392SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Non-Core Transportation Service for Electric Generation by KeySpan Gas East Corporation

I.D. No. PSC-42-03-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: S.C. No. 14—non-core transportation service for electric generation.

Purpose: To revise the methodology used for calculating the value-added charge for S.C. No. 14 customers.

Substance of proposed rule: KeySpan Gas East Corporation, d/b/a Brooklyn Union of Long Island proposes changes to its Schedule P.S.C. No. 1 — Gas to simplify the methodology for calculating the value-added charge for S.C. No. 14—Non-Core Transportation Service for Electric

Generation in a manner that places all S.C. No. 14 customers on an equal footing.

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

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

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

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

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

(03-G-1395SA1)

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

Distributed Generation by St. Lawrence Gas Company

I.D. No. PSC-42-03-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by St. Lawrence Gas Company, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 2.

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

Subject: S.C. No. 10—distributed generation – non-residential to P.S.C. No. 2—Gas.

Purpose: To comply with the commission's April 24, 2003 order to file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.

Substance of proposed rule: St. Lawrence Gas Company, Inc. proposes to establish Service Classification No. 10—Distributed Generation – Non-Residential to its P.S.C. No. 2—Gas which will institute firm delivery service for its commercial and industrial distributed generation customers in compliance with the Commission's April 24, 2003 Order Providing for Distributed Generation Gas Service Classifications in Case 02-M-0515.

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

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

(02-M-0515SA12)

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

Services for KeySpan Corporation by Jefferson Wells International

I.D. No. PSC-42-03-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the application of Jefferson Wells International, for authority pursuant to article I, paragraph B(4) of the "Contract for Consultant to be retained pursuant to Commission Orders of Aug. 2, 2002 and Dec. 18, 2002, Case 02-M-0953" to allow it or its affiliates to provide services for New York utilities or their affiliates under four circumstances.

Statutory authority: Public Service Law, sections 4(1), 66(19)

Subject: Authorizing Jefferson Wells International to perform services for KeySpan Corporation.

Purpose: To perform services for KeySpan Corporation.

Substance of proposed rule: By "Order Approving Selection of Consultants to Perform Evaluations of Utility Cyber and Physical Security Systems", issued December 18, 2002, the Commission approved the selection of Jefferson Wells International as the Consultant to evaluate utility physical security systems and adopted contract provisions that *inter alia*, prohibited Jefferson Wells International and affiliates from performing services for the New York utilities or its affiliates, subject to the contract, for a period of at least two (2) years after the obligations under the contract are fulfilled, without the Commission's written permission. Jefferson Wells International requested authorization for it and/or its affiliates to perform services for New York utilities or their affiliates under four possible circumstances. The Commission may approve or reject, in whole or in part, or modify the request of Jefferson Wells International for permission to perform services for KeySpan.

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

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

(02-M-0953SA2)

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

Rider X Tariff by Consolidated Edison of New York, Inc.

I.D. No. PSC-42-03-00010-P

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

Proposed action: The commission is considering whether to amend Consolidated Edison Company of New York, Inc.'s Rider X tariff.

Statutory authority: Public Service Law, section 66

Subject: Rider X tariff.

Purpose: To consider actions regarding the tariff.

Substance of proposed rule: The Commission has commenced a proceeding (Case No. 03-M-0789) to review the terms and conditions of Consolidated Edison Company of New York, Inc.'s Rider X Tariff. The Commission is considering whether to amend the Rider X Tariff.

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

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

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

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

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

(03-M-0789SA1)

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

Property Transfer by Niagara Mohawk Power Corporation

I.D. No. PSC-42-03-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the Sept. 24, 2003 petition filed by Niagara Mohawk Power Corporation seeking authorization, pursuant to Public Service Law, section 70, to transfer certain land, improvements, and personal property to 1304 Buckley Road Associates, LLC.

Statutory authority: Public Service Law, section 70

Subject: Property transfer by Niagara Mohawk Power Corporation.

Purpose: To transfer property to 1304 Buckley Road Associates, LLC.

Substance of proposed rule: On September 24, 2003, Niagara Mohawk Power Corporation (the company), filed a petition requesting authorization for the transfer of the James A. O'Neil office building and underlying realty (O'Neil Building) to 1304 Buckley Road Associates, LLC, for the sum of \$1.4 Million. The O'Neil Building is located at 1304 Buckley Road, in the City of Syracuse, Onondaga County, New York. The company purchased the O'Neil Building in April 1991 for \$4.7 Million and as a result of several capital improvements, the gross book value less depreciation reserve produces a present net book value for the O'Neil Building of approximately \$9.1 Million. Pursuant to the terms of its current Rate Plan, the company filed this petition because the original cost of the building and the land exceeds \$3.0 Million. Due to the estimated net loss arising from the sale of the O'Neil Building, the Commission will also address the appropriate ratemaking treatment.

The PSC is considering whether to grant or to reject, in whole or in part, the company's petition.

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

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

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

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

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

(03-M-1374SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wireless Attachments by Niagara Mohawk Power Corporation and National Grid Communications, Inc.

I.D. No. PSC-42-02-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Niagara Mohawk Power Corporation (Niagara Mohawk) and National Grid Communications, Inc. (National Grid) for approval under Public Service Law, section 70, authorizing National Grid to allow wireless facilities of AT&T Wireless PCS, LLC to attach to Niagara Mohawk's transmission facilities in the Town of DeWitt.

Statutory authority: Public Service Law, section 70

Subject: Attachment of wireless facilities to Niagara Mohawk's transmission tower.

Purpose: To request approval of wireless attachments to Niagara Mohawk's transmission facilities.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the petition of Niagara Mohawk Power Corporation (Niagara Mohawk) and National Grid Communications, Inc. (National Grid) for approval under Public Service Law § 70

authorizing National Grid to allow wireless facilities of AT&T Wireless PCS, LLC to attach to Niagara Mohawk's transmission facilities in the Town of DeWitt.

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

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

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

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

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

(03-M-1403SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Forest Park Water Company, Inc.

I.D. No. PSC-42-03-00013-P

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

Proposed action: The Public Service Commission is considering a request filed by Forest Park Water Company, Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 2—Water, to become effective Jan. 1, 2004.

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

Subject: Water rates and charges.

Purpose: To increase Forest Park Water Company, Inc.'s annual revenues by about \$243,913 or 78.9 percent and increase in the funding level of the current escrow account from \$25,000 to \$50,000.

Substance of proposed rule: On July 9, 2003, Forest Park Water Company, Inc. (Forest Park or the company) filed to become effective January 1, 2004, Leaf 12, Revision 1 and Escrow Account Statement No. 2 to its tariff schedule, P.S.C. No. 2—Water. The company currently provides water service to 970 customers in Putnam County and the Town of Lewisboro in Westchester County. The proposed filing would increase rates by 78.9% and annual revenues by \$243,913 and increase its escrow account level funding from \$25,000 to \$50,000 or 100%. Currently, the quarterly metered rates are \$36 minimum for 9,000 gallons and \$4.00 per thousand gallons for all usage above 9,000 gallons. The company is proposing a \$45 quarterly service charge with no minimum allowance and \$5.75 per thousand gallons for all usage. The average residential customer's bill is about \$352, and under the company's proposal would increase to about \$630 per year. The Commission may approve or reject, in whole or in part, or modify, Forest Park's request.

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

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

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

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

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

(03-W-0979SA2)

Department of Taxation and Finance

NOTICE OF ADOPTION

Eligible Business Facility for Corporation Taxes

I.D. No. TAF-32-03-00004-A

Filing No. 1108

Filing date: Oct. 2, 2003

Effective date: Oct. 22, 2003*

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

Action taken: Repeal of Subparts 5-1, 20-1, 32-3, and Appendix 1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First and 1096(a)

Subject: Eligible business facility credit for corporation taxes.

Purpose: To eliminate unnecessary regulations that are obsolete due to the termination of the availability of the eligible business facility credit by L. 1988, ch. 165.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-32-03-00004-P, Issue of August 13, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Assessment of Public Comment

The agency received no public comment.

* This rule shall take effect on the date this notice is published in the *State Register*, provided, however, that the repeal of provisions by this rule shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

NOTICE OF ADOPTION

New York State and City of Yonkers Withholding Tables

I.D. No. TAF-32-03-00005-A

Filing No. 1106

Filing date: Oct. 2, 2003

Effective date: Oct. 22, 2003

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

Action taken: Amendment of sections 171.4(b)(1) and 251.1(b); repeal of Appendixes 10 and 10-A; and addition of new Appendixes 10 and 10-A to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 671(a)(1); 697(a); 1329(a); 1332(a); and section 7 of the Model Local Law found in section 1340(c); Codes and Ordinances of the City of Yonkers, sections 15-105; 15-108(a); 15-121; and 15-130

Subject: New York State and City of Yonkers withholding tables and other methods.

Purpose: To provide New York State and City of Yonkers withholding tables and other methods and reflect the revision of certain tax rates and the tax table benefit recapture for wages and compensation paid on or after July 1, 2003.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-32-03-00005-P, Issue of August 13, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

City of New York Withholding Tables

I.D. No. TAF-32-03-00007-A

Filing No. 1107

Filing date: Oct. 2, 2003

Effective date: Oct. 22, 2003

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

Action taken: Amendment of section 291.1(b); repeal of Appendix 10-C and addition of new Appendix 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 671(a)(1); 697(a); 1309; and 1312(a); Administrative Code of City of New York; sections 11-1771(a); 11-1797(a); 11-1909; and 11-1943

Subject: City of New York withholding tables and other methods.

Purpose: To provide City of New York withholding tables and other methods and reflect the revision of certain tax rates and the new tax table benefit recapture, for wages and compensation paid on or after July 1, 2003.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-32-03-00007-P, Issue of August 13, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Assessment of Public Comment

The agency received no public comment.