

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-15-04-00019-E
Filing No. 351
Filing date: March 30, 2004
Effective date: March 31, 2004

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 to 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 June 27, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Dr. Bruce Akey, MS, DVM, State Veterinarian, Director (Acting), 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.

Banking Department

EMERGENCY RULE MAKING

Licensed Mortgage Bankers and Registered Mortgage Brokers

I.D. No. BNK-15-04-00003-E

Filing No. 338

Filing date: March 26, 2004

Effective date: March 30, 2004

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

Action taken: Amendment of Part 410 of Title 3 NYCRR.

Statutory authority: New York Banking Law, art. 12-D, section 589 *et seq.*

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

Specific reasons underlying the finding of necessity: Article 12-D of the New York Banking Law provides for the licensing and registration of entities engaged in the business of mortgage banking and brokering. Part 410 of the Superintendent's Regulations was adopted pursuant to Article 12-D and is intended to provide uniform regulation of the mortgage banking industry. Recent amendments to Article 12-D require that Part 410 be amended.

Specifically, the amendments to Part 410 include increased surety bond requirements for mortgage bankers based on volume of business, as well as bond requirements for mortgage brokers. The bonding requirements for mortgage bankers and brokers are intended to protect the financial interests of consumers in the event a licensee or registrant ceases to operate and does not have sufficient assets to reimburse money owed to customers. The bond proceeds shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the superintendent to be improperly charged or collected and to pay past due Banking Department examination costs and assessments charged to the licensee or registrant, unpaid penalties, or other obligations of the licensee or registrant. The new bond requirements result from changes to Article 12-D. In addition, the amendments to Part 410 impose additional recordkeeping and reporting requirements on mortgage bankers and brokers. Part 410 is also being amended to include a definition of "consultant." This is to effectuate recent amendments to Article 12-D that authorize the Superintendent to deny an application for or suspend or revoke the license of a mortgage banker or the registration of a mortgage broker if the person or entity maintains a relationship with a "consultant," or a person operating in a similar capacity, who the Superintendent determines, based on certain prescribed conditions, does not possess the necessary character and fitness to be associated with the applicant, licensee or registrant. Accordingly, the amendments to Part 410 establish a significantly broader regulatory scheme pursuant to which applicants, licensees and registrants will be required to conduct the business of residential mortgage lending.

During the drafting of the proposed amendments to Part 410, the Banking Department met with representatives of the Mortgage Bankers Association, the Mortgage Brokers Association and the New York State Governor's Office of Regulatory Reform. These groups were given the

opportunity to comment on the proposed amendments. The representatives were generally pleased with the proposal. To the extent that they had comments or suggestions, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposed amendments to address the suggestions and comments.

It is paramount that applicants for mortgage banking licenses and mortgage broker registrations, as well as current licensees and registrants, be made aware of the expanded regulatory requirements so that their business operations conform to the new statutory and regulatory standards. Accordingly, emergency adoption of this rule is necessary.

Subject: Regulation of licensed mortgage bankers and registered mortgage brokers.

Purpose: To set forth the regulatory requirements and standards of operation for entities licensed and registered under article 12-D of the New York Banking Law.

Substance of emergency rule: Section 410.1(b)(3) is amended to reflect certain changes with regard to the surety bond requirement for mortgage bankers.

Section 410.1(e) is repealed.

Section 410.8(a) is amended to require that mortgage brokers establish and maintain the records required in Section 8 of Part 410.

Section 410.8(4)(1) is amended to require that mortgage bankers and brokers maintain a centralized application log for the principal office and all branch offices, to be updated daily.

Section 410.8(2) is added to require branches to report their activity to the principal office on a daily basis.

Section 410.8(f) is added to require mortgage bankers to maintain loan files containing documents relating to credit underwriting and pricing decisions.

Section 410.8(g) is added to set forth the documentation mortgage bankers are required to establish and maintain with regard to pricing and credit.

Section 410.8(h) is added to set forth additional documentation that mortgage bankers are required to establish and maintain with regard to pricing and credit.

Section 410.8(i) is added to set forth the information to be maintained by mortgage brokers with regard to mortgage loan pipelines.

Section 410.8(j) is added to set forth the information to be maintained by mortgage bankers for mortgage loans subject to a lock-in agreement.

Section 410.8(k) is added to set forth the information to be maintained by mortgage bankers for lines of credit.

Section 410.8(l) is added to require that mortgage bankers maintain a list of their closing agents.

Section 410.8(m) is added to require that mortgage bankers file quarterly reports containing certain information.

Section 410.8(n) is added to require that mortgage bankers employ an in-house compliance officer.

Section 410.8(o) is added to set forth the information that FNMA or FHLMC certified lenders are required to provide to the Department.

Section 410.8(p) is added to require mortgage bankers to provide the Department with third party audit reports.

Section 410.8(q) is added to set forth the requirements for maintenance of mortgage loan data by mortgage bankers exempt from the mortgage data requirements of Section 203.3(2) of Regulation C, issued by the Board of Governors of the Federal Reserve.

Section 410.9 is amended to set forth the corporate surety bond requirements for mortgage bankers.

Section 410.10 is amended to change the value of assets on deposit allowed for mortgage bankers and to provide that mortgage brokers may also deposit assets in lieu of filing a surety bond.

Section 410.11 is amended to include mortgage brokers.

Section 410.13 is amended to include mortgage brokers.

Section 410.14 is amended to include mortgage brokers.

Section 410.15 is amended by deleting the existing paragraph and adding new subdivisions (a) and (b) to set forth the surety bond requirements for mortgage brokers.

Section 410.16 is amended to clarify when a corporate surety bond or deposit of assets will be released.

Section 410.18(a), (b), and (c) are added to define the terms consultant, employee and independent contractor.

Section 410.18(d) is added to require that mortgage bankers and brokers provide the Superintendent with the names of their consultants.

Section 410.18(e) is added to require that undertakings of accountability for independent contractors be filed with the Superintendent and that

notifications of termination of independent contractors also be filed with the Superintendent.

Section 410.19 is added to allow filings under Part 410 to be submitted electronically in a format acceptable to the Superintendent.

Section 410.20 is added to indicate compliance dates.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 23, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Banking Law Section 589 of Article 12-D provides that the activities of lenders and their agents offering financing for residential real property have a direct and immediate impact upon the housing industry, the neighborhoods and communities of this state, its homeowners and potential homeowners. The obligations of lenders and their agents to consumers in connection with making, soliciting, processing, placing or negotiating of mortgage loans are such as to warrant the uniform regulation of the residential mortgage lending process, including the application, solicitation, making and servicing of mortgage loans. Part 410 of the Superintendent's Regulations was adopted pursuant to Article 12-D and is intended to provide uniform regulation of the mortgage banking industry. Recent amendments to Article 12-D require that Part 410 be amended.

Subdivision 4 of Section 591 of the Banking Law provides that as a condition for the issuance and retention of a mortgage banker's license, and subject to such regulations as the Superintendent shall prescribe, applicants for a license shall file with the Superintendent a surety bond in form satisfactory to him or her issued by a bonding company or insurance company authorized to do business in this state. Recent amendments to subdivision 4 of Section 591 of the Banking Law provide that the principal amount of such bond shall be in an amount and form prescribed by regulations of the Superintendent. Such regulations provide for a varying bond amount based upon a licensee's volume of business and any other relevant factors as determined by the Superintendent, but in no case may such bond be less than fifty thousand dollars nor more than five hundred thousand dollars; provided, however, that if the Superintendent determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such licensee to post a surety bond, or keep on deposit as provided, twice the amount of such bond or deposit as is required consistent with such regulations.

Amendments to subdivision 3 of Section 591-a require as a condition for the issuance and retention of a mortgage broker's registration, and subject to such regulations as the Superintendent shall prescribe, applicants for a registration to file with the Superintendent a surety bond or make a deposit, as described in subdivision four of section five hundred ninety-one. The amendments require that such regulations provide for a varying bond amount based upon a registrant's volume of business and any other relevant factors as determined by the Superintendent, but in no case may such bond be less than ten thousand dollars nor more than one hundred thousand dollars; provided however that if the Superintendent determines, in his or her sole discretion that a registrant has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such registrant to post a surety bond, or keep on deposit as provided in this subdivision, twice the amount of such bond or deposit as is required consistent with such regulations.

2. Legislative Objectives:

Part 410 is intended to provide uniform regulation of mortgage bankers and brokers and protect consumers by establishing certain requirements to ensure these lenders and brokers operate properly. Part 410 governs the licensing of mortgage bankers, and registration of mortgage brokers and imposes various recordkeeping and reporting requirements for both mortgage bankers and brokers. Recent amendments to Article 12-D require the Superintendent to issue regulations providing for varying bond requirements for mortgage bankers and mortgage brokers based on volume of business. Therefore, Part 410 is being amended to provide the surety bond requirements for mortgage bankers and brokers based on a sliding scale determined by the volume of business.

Amendments to Article 12-D also authorize the Superintendent to deny an application for or suspend or revoke the license of a mortgage banker or the registration of a mortgage broker if the person or entity maintains a

relationship with a "consultant," or a person operating in a similar capacity, who the Superintendent determines, based on certain prescribed conditions, does not possess the necessary character and fitness to be associated with the applicant, licensee or registrant. Therefore Part 410 is being amended to include a definition of "consultant."

Also, Part 410 is being amended to impose additional recordkeeping and reporting requirements on mortgage bankers and brokers.

3. Needs and Benefits:

The bonding requirements for mortgage bankers and brokers will protect consumers' financial interests if a licensee or registrant ceases to operate and does not have sufficient assets to reimburse money owed to customers. The bond proceeds shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the Superintendent to be improperly charged or collected and to pay past due Banking Department examination costs and assessments charged to the licensee or registrant, unpaid penalties, or other obligations of the licensee or registrant. For mortgage bankers the bond requirement in Part 410 is being increased and is based on a sliding scale according to the banker's volume of business. For mortgage brokers, previously the Superintendent could only impose a bonding requirement upon confirmation of misconduct. The amendments to Part 410 establish a bond requirement for all registered brokers according to a sliding scale based on the broker's volume of business. The clarification and expansion of the purposes for which the bond proceeds or designated assets can be used is intended to cover consumer refunds as well as expenses, penalties and other charges incurred by the Department that may arise out of investigation and enforcement actions.

With regard to the amendments concerning "consultants," previously the Superintendent's authority to revoke a license or registration or deny a license or registration application, as a result of a felony conviction or maintaining an inappropriate relationship extended expressly to officer, employees or owners of the licensee, registrant, or potential registrant or licensee. However, in certain instances, individuals who had been removed as officers, employees or owners of a licensee or registrant continued to maintain a relationship with the licensee or registrant as a "consultant." Therefore, the statutory amendment closes the loophole that allows certain persons and licensees or registrants to avoid the criminal record and character standards established by law for mortgage bankers and brokers. Accordingly, Part 410 is being amended to include a definition of "consultant."

The additional recordkeeping and reporting requirements being added to Part 410 will help the Banking Department to better monitor the activities of mortgage bankers and brokers.

4. Costs:

The amendments to Part 410 relating to the bonding requirements will impose additional costs on mortgage bankers and brokers. Previously, mortgage bankers were required to obtain a bond in the amount of \$50,000. The amended bond requirements for mortgage bankers range from \$50,000 to \$500,000. Previously, mortgage brokers were not required to obtain bonds at all. In addition, mortgage bankers and brokers may incur costs in order to comply with the additional recordkeeping and reporting requirements being added to Part 410.

The amendments to Part 410 will require additional work by the Department in order to ensure that mortgage bankers and brokers are complying with the bonding requirements, as well as the additional reporting and recordkeeping requirements.

5. Local Government Mandates:

The amendments to Part 410 do not impose any requirements or burdens upon any units of local government.

6. Paperwork:

The amendments to Part 410 require mortgage bankers to establish and maintain additional reports relating to applications, pricing and credit, mortgage loan pipelines, loans subject to lock-in agreements, lines of credit, and closing agents. Mortgage bankers and brokers will also have to provide evidence of compliance with the surety bond requirements. The Department will be required to monitor compliance with the various reporting, recordkeeping and bonding requirements.

7. Duplication:

None.

8. Alternatives:

(a) Proposal – During the drafting of the proposed amendments to Part 410, the Banking Department met with representatives of the Mortgage Bankers Association, the Mortgage Brokers Association and the New York State Governor's Office of Regulatory Reform. These groups were given the opportunity to comment on the proposed amendments. The

representatives were generally pleased with the proposal. To the extent that they had comments or suggestions, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposed amendments to address the suggestions and comments.

As was previously discussed in the Legislative Objective section contained herein, recent amendments to Article 12-D of New York's Banking Law require the Superintendent to issue regulations providing for varying bond requirements for New York State licensed mortgage bankers and registered mortgage brokers based on volume of business. The bonding requirements for mortgage bankers and brokers will protect consumers' financial interests if a licensee or registrant ceases to operate and does not have sufficient assets to reimburse money owed to customers. The bond proceeds shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the superintendent to be improperly charged or collected and to pay past due Banking Department examination costs and assessments charged to the licensee or registrant, unpaid penalties, or other obligations of the licensee or registrant. Some representatives expressed concern as to the cost of obtaining a bond, or in the alternative, to place assets on deposit. While this issue exists, the requirement to obtain the bond, or place assets on deposit, is not imposed by the rule, but rather is a statutory requirement.

(b) Do not propose the amendments to Part 410.

If this alternative were considered, failure to amend the regulation would mean that the additional requirements that are being proposed in order to help protect consumers would not exist. From a regulatory and supervisory perspective, it would be irresponsible for the Superintendent of Banks, as the State financial regulator to do this. This is true, particularly, since the new reporting, recordkeeping and bonding requirements were formulated in furtherance of the legislative intent to provide increased consumer protection for consumers in connection with the making, soliciting, processing, placing or negotiating of mortgage loans, as reflected in recent amendments to Article 12-D.

9. Federal Standards:

None.

10. Compliance Schedule:

With regard to the surety bond requirements, the amendments to Article 12-D provide that persons and entities licensed or registered prior to the effective date of any regulations of the Superintendent prescribing the bonding requirements shall file such bond or establish such deposit within six months of the effective date of such regulations.

In addition, compliance with the Amendments to Sections 410.1 and 410.8 shall not be required until six months after the effective date of the amendments.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 410 will not impose any special adverse economic or technological impact upon small businesses beyond those imposed in general as set forth in the Regulatory Impact Statement. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will not impose any special adverse reporting, recordkeeping or compliance requirements on small businesses other than those imposed in general as set forth in the Regulatory Impact Statement. The proposed amendments will not impose any adverse reporting, recordkeeping or compliance requirements on local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the proposed amendments to Part 410 do not result in any hardship to a regulated party in a rural area. Specifically, the proposed amendments contain certain reporting, recordkeeping and compliance requirements currently imposed on licensed mortgage bankers and registered mortgage brokers, as well as new reporting, recordkeeping and compliance requirements due to recent amendments to legislation in this area enacted in response to the need for increased consumer protection for the clients of licensed mortgage bankers and registered mortgage brokers. However, there is nothing about the character and nature of the amendment's requirements that would make it difficult for, or prevent, licensed mortgage bankers or registered mortgage brokers from complying with the rule based on a particular office location. Therefore, it is unlikely that the proposed amendments would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the proposed amendments, if adopted, may have any impact on rural areas, they have the ability to provide increased consumer protection to residents in rural areas who do business with licensed mortgage bankers or registered mortgage brokers.

Job Impact Statement

The purpose of Article 12-D of the New York Banking Law, which provides for the licensing and regulation of mortgage bankers, mortgage brokers and other entities engaged in financing for residential real property, is to ensure that such entities operate in accordance with rigorous standards. Recent amendments to Article 12-D were adopted in connection with the business of brokering, originating and funding of residential mortgage loans in order to increase the regulatory tools available to the Superintendent to properly supervise the mortgage banking industry and increase protections for consumers.

In particular, for mortgage bankers the surety bond requirement in Part 410 has been increased and is based on a sliding scale according to the banker's volume of business. A surety bond requirement has been imposed for all registered mortgage brokers according to a sliding scale based on the broker's volume of business. In addition, mortgage bankers and brokers will have to comply with the additional reporting, recordkeeping and compliance requirements set forth in the proposed amendments.

It is possible that new jobs will be created in New York State if licensed mortgage bankers or registered mortgage brokers hire additional staff to perform the tasks necessary to comply with the additional reporting, recordkeeping and surety bond requirements under the proposed amendments.

Office of Children and Family Services

EMERGENCY RULE MAKING

Market Rates for Subsidized Child Care

I.D. No. CFS-07-04-00004-E

Filing No. 340

Filing date: March 29, 2004

Effective date: March 29, 2004

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 requires 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 assistance, 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 proposed 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, 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

GROUP A COUNTIES: Nassau, Putnam, Rockland, Suffolk, and Westchester

Age of Child:	Under 1½	1½ - 2	3 - 5	6 - 12
DAY CARE CENTER				
Weekly	\$260.00	\$240.00	\$215.00	\$215.00
Exceptions				
Westchester	\$300.00	\$281.00	\$233.00	-----
Daily	\$65.00	\$60.00	\$54.00	\$54.00
Exceptions				
Westchester	\$75.00	\$70.00	\$58.00	-----
Part-Day	\$43.00	\$40.00	\$36.00	\$36.00
Exceptions				
Westchester	\$50.00	\$47.00	\$39.00	-----
Hourly	\$8.00	\$8.50	\$7.50	\$7.00

REGISTERED FAMILY DAY CARE				
Weekly	\$225.00	\$225.00	\$220.00	\$200.00
Daily	\$56.00	\$56.00	\$55.00	\$50.00
Part-Day	\$37.00	\$37.00	\$37.00	\$33.00
Hourly	\$8.00	\$8.00	\$7.00	\$7.00

GROUP FAMILY DAY CARE				
Weekly	\$233.00	\$225.00	\$220.00	\$225.00
Daily	\$58.00	\$56.00	\$55.00	\$56.00
Part-Day	\$39.00	\$37.00	\$37.00	\$37.00

Hourly	\$8.00	\$7.00	\$7.00	\$7.00
SCHOOL AGE CHILD CARE				
Weekly	\$0.00	\$0.00	\$0.00	\$215.00
Daily	\$0.00	\$0.00	\$0.00	\$54.00
Part-Day	\$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				
Columbia	\$140.00	-----	-----	-----
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				
Columbia	\$35.00	-----	-----	-----
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				
Erie	\$25.00	\$25.00	\$23.00	\$23.00
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

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				
Clinton	-----	-----	-----	\$135.00
Sullivan	-----	-----	-----	\$125.00
Daily	\$31.00	\$31.00	\$30.00	\$30.00
Exceptions				
Clinton	-----	-----	-----	\$34.00
Sullivan	-----	-----	-----	\$31.00
Part-Day	\$21.00	\$21.00	\$20.00	\$20.00
Exceptions				
Clinton	-----	-----	-----	\$23.00
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
<i>Exceptions</i>				
Dutchess	-----	\$180.00	\$175.00	\$180.00
Orange	-----	-----	-----	\$175.00
Daily	\$44.00	\$41.00	\$38.00	\$38.00
<i>Exceptions</i>				
Dutchess	-----	\$45.00	\$44.00	\$45.00
Orange	-----	\$44.00	-----	-----
Part-Day	\$29.00	\$27.00	\$25.00	\$25.00
<i>Exceptions</i>				
Dutchess	-----	\$30.00	\$29.00	\$30.00
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				
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 the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. CFS-07-04-00004-P, Issue of February 18, 2004. The emergency rule will expire June 26, 2004.

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, 42 USC 9858c(C)(4)(A), 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 1½, 1½-2, 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 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 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 Procedures 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.

**AMENDED
NOTICE OF ADOPTION**

Subsidized Child Care Services**I.D. No.** CFS-21-03-00011-AA**Filing No.** 345**Filing date:** March 29, 2004**Effective date:** May 15, 2004

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

Action taken: Amendment of Part 415, Subparts 358-2, 358-3, and sections 403.1, 404.1, 404.5, 404.6, 404.8, 405.1, 405.2, 405.3 and 628.3 of Title 18 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on February 13, 2004, to be effective May 15, 2004, File No. 207. The notice of adoption, I.D. No. CFS-21-03-00011-AA, was published in the March 3, 2004 issue of the *State Register*.

Statutory authority: Social Services Law, sections 20(3)(d), 410(1) and 410-u—410-z

Subject: Subsidized child care services.

Purpose: To establish standards for the provision of subsidized child care services by social services districts.

Substance of amended rule: The regulations revise Part 415 of Title 18 NYCRR to implement Title 5-C of the Social Services Law (SSL), which created the New York State Child Care Block Grant (NYSCCBG). The NYSCCBG is comprised of all the federal funds appropriated for child care under Title IV-A of the federal Social Security Act and under the federal Child Care and Development Fund and any additional funds transferred by the State from the federal Temporary Assistance to Needy Families block grant plus any state funds appropriated for child care assistance. The regulations also implement the federal statutory and regulatory requirements that govern the federal funds included in the NYSCCBG. In addition, the regulations set forth the requirements for the provision of child care services under the Title XX Social Services Block Grant program as well as child care services provided as preventive or as child protective services under certain circumstances. Conforming changes are made to other parts of Title 18 NYCRR.

The following changes are made to Part 415:

Section 415.0 regarding the applicability of the Part is unchanged.

Section 415.1, which sets forth the definitions for the Part, is reordered in a more logical sequence, certain definitions are clarified and obsolete provisions are deleted. A new definition of a Child Care Service Unit (CCSU) replaces the definition of the Services Family Unit (SFU) for child care subsidy purposes. The CCSU will be the basis upon which a district will determine which household and/or family members should be counted in determining family size and countable family income. Creation of the CCSU puts unmarried couples living together and all of their children in the same service unit if they have a child in common. The definition of an "adult" is revised to provide districts with more flexibility in determining when 18, 19 or 20 year olds living at home should be included in the CCSU. New definitions of "engaged in work" and "seeking employment" are added to clarify under what circumstances certain families are eligible for child care services.

A new section 415.2, entitled "Eligibility, guarantees, and priorities for child care", replaces former sections 415.2 regarding programmatic eligibility and 415.3 regarding financial eligibility. Sections 415.7, 415.8, 415.10 and 415.11 of the current regulations, which governed eligibility for the Transitional Child Care, Employment and JOBS-related Child Care, At-Risk Low Income Child Care, and Child Care and Development Block Grant programs are replaced with a new section 415.2(a), regarding the NYSCCBG. This section eliminates the separate programmatic requirements that existed across the five former child care programs. Eligible families are divided into three broad categories: families that must be guaranteed child care; families that are eligible as long as funds are available; and families that are eligible if funds are available and the district has opted to serve such families as indicated in the child care section of its Consolidated Services Plan (CSP) or Integrated County Plan (ICP). Section 415.2 also sets forth the eligibility criteria for child care services provided under the Title XX Social Services Block Grant.

The language in this section provides social services districts with much greater flexibility in determining which families are eligible for subsidies and which families will receive priority for funding. It also allows districts to set aside funds to serve one or more priority populations.

Provisions are included regarding establishing waiting lists, denial of services and case closings. Districts are required to ensure that families have equitable access to child care subsidies.

The new section 415.3 consolidates into one section all of the existing responsibilities of the caretaker of a child who is receiving subsidized child care services. These requirements include providing the social services district with information that might impact on the family's eligibility for child care subsidies, notifying the district of any changes in the family's circumstances, locating child care providers, and contributing a family share toward the costs of child care. It also adds a significant new requirement that the caretaker in a low-income family that is not receiving public assistance must pursue child support as a condition of eligibility for a child care subsidy. This requirement currently applies only to those families receiving subsidized child care services that are also receiving or transitioning off of public assistance.

The new section 415.4 consolidates into one section all of the social services districts' existing administrative, programmatic and monitoring responsibilities regarding the provision of child care services. Included in the section are provisions regarding required district activities relating to determining initial and continuing eligibility, notices to applicants and recipients of their rights and responsibilities, due process for families, enrolling legally-exempt child care providers for payment purposes, recouping overpayments to families and record-keeping and reporting.

A new requirement is added that precludes social services districts from requiring families who are in receipt of a child care subsidy and who are transitioning from public assistance from having to complete a new application for child care services solely because the families' public assistance cases are closing. Another new requirement adds two additional attestation requirements for legally-exempt child care providers. Those providers now will have to attest to whether they have been denied a license or registration to operate a day care program or had such license or registration suspended or revoked. They also will be required to attest to whether they have had their parental rights terminated or had their own children removed from their care based on an Article 10 proceeding under the Family Court Act. Social services districts and caretakers will have to determine whether to enroll a provider with a history of one of these types of situations on a case-by-case basis. New provisions also are included in this section that strengthen the ability of social services districts to recover overpayments from families by making the rules for all families consistent with the rules that had governed child care overpayments for public assistance recipients and for families transitioning off of public assistance.

Section 415.5 of the regulations clarifies the existing methods social services districts may use to make child care payments. Districts must include at least one method of payment under the NYSCCBG that enables payments to be made for child care arranged directly by the families. Obsolete references to the child care earned income disregard and supplements thereto are eliminated.

Section 415.6 sets forth the existing general requirements for State reimbursement to social services districts for child care payments to providers including provisions requiring that payments be made at the actual cost of care up to the applicable market rate. Districts are precluded from making payments for child care services provided by the child's caretaker, another person legally responsible for the child, or by any other member of the family's services unit except the child's siblings. The section also is revised to eliminate obsolete paragraphs. The regulations expand when districts may pay providers of child care services on days that the child is absent from care. The requirement that districts have a contract with a provider in order to pay for children's absences is eliminated. A new provision is added which permits social services districts to pay for up to five additional days per year for program closures due to holidays, extreme weather, or emergencies.

Section 415.7 adds additional requirements governing reimbursement to social services districts under the NYSCCBG program. NYSCCBG funds are available to reimburse social services districts for 75% of the costs of child care services for public assistance recipients and 100% of the costs for other low income families, up to each district's NYSCCBG allocation. Social services districts may spend no more than five percent of their NYSCCBG allocations on administrative activities. Administrative activities include providing information to the public about child care services, conducting public hearings, monitoring program activities, and goods and services required for administering including rental or purchase of equipment, utilities and office supplies. Districts may spend the remainder of their NYSCCBG allocations on other program activities including making eligibility determinations, participating in judicial hearings, monitoring compliance with any additional local child care requirements, train-

ing and establishing computerized child care information systems. In addition, each district is required to maintain the amount of local funds spent for child care services under the NYSCCBG at a level equal to or greater than the amount the district spent for certain child care services programs during Federal fiscal year 1995.

Section 415.8 regarding child care availability is unchanged.

Section 415.9 regarding child care market rates is revised to clarify that a social services district must pay the market rate where the child care is provided when the child is receiving child care in a different district from the district where the child resides.

Section 415.10 adds authority for social services districts to request a waiver of any regulatory provision that is non-statutory.

Section 415.11 sets forth the effective date of the regulations. The regulations are effective immediately except for the provisions related to the CCSU and the new child support requirements. Districts will have the option to implement these changes immediately once the regulations are adopted or districts may decide to implement these changes on a case-by-case basis as each individual's case comes up for recertification or when there is a change in case circumstances that requires a case action.

Revisions are made to Sections 358-2 and 358-3 of the regulations regarding Fair Hearings for recipients of assistance and services. Technical amendments are made to reflect the establishment of the NYSCCBG. The existing regulations also are amended to extend to all families that apply for or receive child care services the existing provisions that require timely and adequate notice of the denial of, or certain changes to, child care services and the ability to have aid continue until a fair hearing is held and the decision is rendered. These rights currently apply only to those families transitioning off of public assistance that apply for or are receiving child care services.

Various provisions in Part 403 are revised to conform the regulations regarding the mandated and optional provision of services by social services districts to the new requirements in section 415.2. In addition, several revisions are made to Part 404 regarding eligibility for services, Part 405 regarding the purchase of services, and section 628.3 regarding State reimbursement to make them consistent with the changes being made to Part 415.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in sections 358-3.3(a)(2), 403.1(d)(2), 415.3(f)(8), 415.4(b)(3) and 628.3(f)(1)(iv).

Text of amended 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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Although non-substantive changes were made to the proposed regulations concerning subsidized child care, those changes do not require changes to the Regulatory Impact Statement or Summary, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as originally published.

Department of Correctional Services

NOTICE OF ADOPTION

Inmate Grievance Program

I.D. No. COR-05-04-00001-A

Filing No. 343

Filing date: March 30, 2004

Effective date: April 14, 2004

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

Action taken: Amendment of sections 701.2(e), 701.6(a), 701.7(a)(1), (4) and (5), 701.7(c)(5), 701.11(b)(1), (2) and (8) and 701.12(a) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 139

Subject: Inmate Grievance Program.

Purpose: To make minor amendments and clarifications.

Text of final rule: Section 701.2(e) is amended as follows:

(e) Harassment grievances. [Allegations of] *Those grievances that allege employee misconduct meant to annoy, intimidate or harm an inmate.*

Subdivision (a) of section 701.6 is amended as follows:

(a) The CORC shall consist of the deputy commissioners or designees expressly authorized to act for them. [The assistant commissioner of affirmative action, or a representative thereof] *A representative of the Office of Diversity Management* will also attend CORC meetings as a nonvoting member, and shall have input on grievances alleging discrimination. The CORC provides dispositions on grievances appealed or passed through to the commissioner by determining how they affect departmental and/or institutional policy. The CORC is to render decisions which are in the best interests of the department as well as of the grievants.

Paragraph (1) of subdivision (a) of section 701.7 is amended as follows:

(1) Filing the complaint. An inmate must submit a complaint to the Grievance Clerk within 14 calendar days of an alleged occurrence on Inmate Grievance Complaint Form #2131. If this form is not readily available, a complaint may be submitted on plain paper. *The complaint may only be filed at the facility where the inmate is housed even if it pertains to another facility.*

Note: Exceptions to this time limit or any appeal time limits may be approved by the IGP supervisor based on mitigating circumstances (e.g., attempts to resolve informally by the inmate[, referrals back to the IGP by the courts], etc.). *An inmate may pursue a complaint that an exception to the time limit was denied by filing a separate grievance.*

(i) Content. In addition to the grievant's name, department identification number, housing unit, program assignment, etc., the grievance [must] *should* contain a concise, specific description of the problem and the action requested and indicate what actions the grievant has taken to resolve the complaint, i.e., specific persons/areas contacted and responses received. *The IGP Supervisor shall review the grievance complaint and designate the grievance code and title. If the IGP Supervisor determines that the grievance may be a harassment or discrimination grievance, it shall be processed in accordance with the respective expedited procedure (section 701.11 or 701.12).*

(ii) *The clerk* [Grievances] shall [be] consecutively number[ed] and log[ged] *each grievance* at the time of receipt.

Subparagraph (ii) of paragraph (4) of subdivision (a) of section 701.7 is amended as follows:

(ii) Any inmate whose confinement status precludes his/her attendance at an IGRC hearing and who will be released within 30 *calendar* days should be given the option of having the hearing held in his absence or postponed until his release from confinement. The grievant's decision shall be obtained in writing. If the grievant is not scheduled for release from confinement within 30 *calendar* days, the hearing shall be held in his absence.

Subparagraph (iv) of paragraph (5) of subdivision (a) of section 701.7 is amended as follows:

(iv) If the grievant believes that a dismissal in his case is not authorized by this directive, he may apply directly to the facility IGP supervisor for review *within seven (7) calendar days after receipt of the committee's decision dismissing the grievance.* If the IGP supervisor determines that the grievance does not fall into one of the categories cited in subparagraph (i) of this paragraph, then the grievance will be returned to the IGRC for a hearing and recommendation. *The supervisor's written response shall be forwarded to the grievant within seven (7) calendar days of receipt. An inmate may pursue a complaint that the IGP supervisor failed to reinstate an improperly dismissed grievance by filing a separate grievance.*

Paragraph (5) of subdivision (c) of section 701.7 is amended as follows:

(3) The IGP central office staff shall date stamp all appeals upon receipt, and shall notify facility IGP staff, in writing, that the grievance was received. *The facility IGP staff shall forward a copy of the written notice of receipt to the grievant of record.*

Paragraphs (1) and (2) of subdivision (b) of section 701.11 are amended and restructured as follows:

(1) *An inmate who wishes to file a grievance complaint that alleges employee harassment shall follow the procedures set forth in section 701.7(a)(1) above.*

Note: An inmate who feels that s(he) has been the victim of employee misconduct or harassment should [first] report such occurrences to the immediate supervisor of that employee. *However, this is not a prerequisite for filing a grievance with the IGP.* [This does not preclude submission of a formal grievance.]

(2) All *grievances alleging* [allegations of] employee misconduct shall be given a grievance calendar number and recorded in sequence. All documents submitted with the allegation must be forwarded to the superintendent by close of business that day.

Paragraph (8) of subdivision (b) of section 701.11 is amended as follows:

(8) *Unless otherwise stipulated in this section, [A]ll procedures, rights, and duties required in the processing of any other grievance as set forth in section 701.7[(c) of this Part] above shall be followed.*

Subdivision (a) of section 701.12 is amended and restructured as follows:

(a) *An inmate who wishes to file a grievance complaint that alleges discrimination by an employee shall follow the procedures set forth in section 701.7(a)(1) above.*

Note: An inmate who feels that he/she is being unlawfully discriminated against by an employee, program, policy or procedure shall report such incident to the immediate supervisor of the employee or supervisor/administrator of such program. However, this is not a prerequisite for filing a grievance with the IGP.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 701.7(a)(1), (a)(1)(i) and 701.11(b)(1).

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, 1220 Washington Ave., Albany, NY 12226-2050, (518) 485-9613

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

Revised statements are not needed because these non-substantive changes to the text of the last published rule merely correct one typographic error, two errors in the marking of the proposed amendments, as published, and make one minor clarifying word change. These non-substantive changes are as follows:

701.7(a)(1) - at the "Note"; the words "or any appeal time limits" are to be identified as newly added. In response to comments received, the proposed last sentence in that note has been changed from "An inmate may pursue a complaint that an exception to the time limit was denied through the grievance mechanism" to "An inmate may pursue a complaint that an exception to the time limit was denied by filing a separate grievance."

701.7(a)(1)(i) - first sentence; the word "should" is to be identified as replacing the word "must".

701.11(b)(1) - (typo); the citation of 707.1(a)(1) should read 701.7(a)(1)

Assessment of Public Comment

Two prisoner legal service agencies offered specific comments concerning the proposed amendments and general criticism about the grievance program.

Comment

The proposed amendments do not address sources of confusion in connection with "harassment grievances;" do not address the unrealistic time frames; create a more burdensome mechanism for inmates who mistakenly file grievances at the wrong facility, or file an untimely complaint; do not address the lack of confidentiality that inhibits prisoners where they perceive a risk of retaliation; and do not provide a clear complaint mechanism which inmates will be able to understand. The Department should abandon this piecemeal tinkering and start over.

Response

The comments address overall issues that have been the subject of litigation interpreting the regulation in the context of the Prison Litigation Reform Act (PLRA), including a number of consolidated appeals pending before the Second Circuit Court of Appeals. They address federal exhaustion issues and do not consider the Department's programmatic and management needs. The Department's proposal preserves the existing IGP structure, which has been in effect for many years. Inmates are aware of the exhaustion requirement through a number of sources including published decisions and advisories issued by Prisoners' Legal Services, which are available in all facility law libraries. IGP statistics show that the total number of grievances filed has remained more or less the same despite a population decrease. Furthermore, between 1999 and 2002, the percentage of grievances appealed to CORC has increased each year from 20.8% to

27.9%. Specific issues are addressed below in response to the detailed comments.

Comment

The regulations should be amended to provide that if a prisoner files a grievance in the wrong prison, DOCS should accept it, log it, and send it to the IGP clerk at the right prison, with a copy to the prisoner.

Response

The Department believes that the proposed amendment at section 701.7(a)(1) will reduce confusion. The Department can always determine where the inmate was housed on a specific date. This proposal will reduce the risk of lost grievances and delayed investigations; it will not change the procedure for review to determine if dismissal is warranted. The commenter's suggestion would duplicate work, create records that suggest a grievance was filed and never appealed, and increase the likelihood of lost grievances.

Comment

The proposal is unclear; it could mean file a new grievance, appeal, or attempt to resolve informally. It fails to address procedural questions. There should be one simple way of complaining about a facility grievance decision, and that should be by appeal. All grievances without exception should be logged so they can be appealed and a record is made of prisoners' attempts to exhaust an issue that often becomes important when DOCS seeks dismissal for non-exhaustion.

Response

The additional language at the section 701.7(a)(1) "note" does not change the current practice whereby the IGP Supervisor determines whether an untimely grievance should be filed. An appeal is not an appropriate mechanism to review the decision not to allow a late grievance to be filed because there is no grievance, nor has the IGRC had the opportunity to investigate the circumstances surrounding the request to file a late grievance. However, for clarity's sake, the note is revised to mirror the language of 701.7(a)(5)(iv): "An inmate may pursue a complaint that an exception to the time limit was denied by filing a separate grievance."

Comment

The 14-day time limit is too short. It is suggested that 180 days is an appropriate deadline for grievances now that failure to exhaust may be used by DOCS forever to preclude otherwise valid claims of substantial injury and violation of civil rights. If DOCS is not prepared to extend the deadline to that extent, it should nevertheless extend it for a period of several months, long enough to allow prisoners to recover from physically or psychologically traumatic experiences, and to allow them to educate themselves about their legal rights, including obtaining advice from agencies that do not have the staff and resources to provide immediate responses to all complaints.

Response

The Department does not believe changing the IGP timeframes is warranted at this time. The current time limit ensures that grievances are filed in a timely manner. Many grievances involve mundane matters that can best be investigated while memories are fresh and while records are readily available. By the same token, it is important that matters like harassment grievances in particular are filed and forwarded to the Superintendent in a timely fashion. In any event, exceptions to the time limit are routinely granted for short delays and also for longer delays when circumstances warrant. While the Department may consider changing this time limit in the future, any revision will take these factors into account.

Comment

DOCS should promulgate guidelines to determine whether "mitigating circumstances" exist. Fear of retaliation, transfer, or placement in SHU, complexity of the problem, lack of knowledge of legal rights and obligations including the exhaustion requirement, or failure to understand the grievance process should be identified as mitigating circumstances. We urge DOCS to require the decision-maker to give a clear statement of the reason for denying the request (not just "no mitigating circumstances"), and to make clear that such extensions should be liberally granted.

Response

Guidelines are not possible because such decisions are fact-specific and based on the totality of the circumstances. Nevertheless, the inmate's ability to file a separate grievance regarding a denial of permission to file a late grievance and the ability to appeal that grievance to CORC will provide precedential guidance based upon the factual circumstances presented by the grievant.

Comment

The provisions concerning appeal when the prisoner receives no decision should be revised to provide that an appeal from the lack of a decision can be made at any time after the decision is due.

Response

To the extent that the comment refers to an appeal after receipt of a late decision, it correctly sets forth the current rule, i.e. the inmate may appeal within 4 working days after receipt. However, in most cases when the inmate claims he/she did not receive any decision, Department records indicate a decision was sent. Therefore, such a rule would not be conducive to a fair, orderly problem resolution process and results in a lack of finality. Rather, the inmate should contact the IGP Supervisor if he/she does not receive a timely response and, if no decision has been issued, appeal in a timely fashion.

Comment

It should also be made clear that the obligation to appeal in order to complete the process only arises when there is a decision on the merits. A "decision" simply stating that the matter is being investigated (whether by the facility, the Inspector General, or anyone else) is not such a decision, and the prisoner should be able to wait until there is a decision on the merits before any appeal obligation arises.

Response

These comments focus upon the ultimate determination as to the existence of wrongdoing. However, they ignore the importance of the appeal to CORC with respect to the administration's reliance upon the grievance mechanism. The program is an essential managerial resource both for the fair and proper administration of the prison system and for the invaluable feedback it can generate about day-to-day departmental operations. An appeal to CORC ensures uniform application of departmental policy and provides representatives of the Department's executive staff the opportunity to review the inmate's grievance. Thus, although the inmate may not receive a detailed response in the resolution of a harassment grievance, the process provides an essential tool for ensuring uniformity and monitoring facility-wide or systemic problems. This process on occasion helps identify issues that require policy revision or system-wide change.

Comment

Instead of requiring an inmate to file yet another grievance about whether his initial grievance was properly dismissed (per the proposed amendment to section 701.7(a)(5)(iv)), the inmate should be permitted to appeal the decision to the Superintendent and then to Central Office.

Response

The current mechanism develops a full record concerning the issue of whether the grievance was properly dismissed. Furthermore, permitting an appeal from a dismissal would negate the purpose of the dismissal procedure which is to encourage the inmate to attempt to resolve issues on his/her own, or to prevent the processing of grievances that do not personally affect the grievant, no longer affect the grievant, or are beyond the scope of the grievance mechanism. It is noted that during 2002, 608 grievances were filed regarding the Inmate Grievance Program and 270 of those were appealed to CORC.

Comment

Referring to sections 701.7(a)(5)(i)(a) and 701.3(a), if DOCS is going to argue that the only valid way to meet the PLRA exhaustion requirement is through the formal grievance process, it should not dismiss grievances because the prisoner failed to use some other procedure. Many complaints that now must be grieved under the PLRA are, in practical terms, inappropriate for informal resolution such as claims of assault by a staff member, or by another inmate through the malfeasance of a staff member, or sexual abuse by a staff member.

The comments suggest a procedure whereby the IGRC may adjourn the grievance proceedings for one week if it believes that a grievance can be resolved informally. However, the grievance would not be dismissed.

Response

A grievance alleging staff harassment as defined by 701.2(e) is not subject to dismissal by the IGRC for failure to attempt an informal resolution. Such grievances bypass the IGRC hearing stage and are subject to expedited review under 701.11.

Comment

Referring to section 701.11, this entire aspect of the DOCS grievance policy is misguided and must be drastically reformed. The proposed revision does nothing to address its serious deficiencies. Prisoners who have been subjected to serious misconduct by staff very frequently do not file grievances; instead, they write to the Inspector General, the Superintendent, or to other officials whom they think may have authority to address their problems. Thus the requirement that, for exhaustion purposes, all harassment complaints be filed as grievances serves no useful substantive purpose either for DOCS or the inmate; it serves only to create a procedural requirement for prisoners to miss and thereby lose their rights.

Response

The filing of harassment grievances serves a number of important administrative functions. First and foremost, the appeal mechanism provides an essential tool for the Department's Central Office to monitor facility-wide or systemic problems and can help identify issues that require policy revision or system-wide change. It ensures that: the grievance complaint is logged and accounted for in the IGP semi-annual and annual reports; that the Superintendent receives the complaint in a timely manner; and that the complaint is forwarded to the appropriate investigative branch. It also provides the inmate with documentation that he/she complained about the matter. The Department does not want to discourage inmates from utilizing the other problem resolution methods mentioned in the comments. However, it is important that these methods are used in addition to the filing of a grievance for the previously stated reasons and also because the Department has no other formal means of tracking statistical information in connection with such issues. Unlike the grievance process, letters to the Superintendent or the Inspector General result only in consideration of an individual complaint. In contrast, the grievance system provides for tracking such complaints on a facility-wide and system-wide basis and therefore enables administrators to look beyond the individual case to ensure uniformity and determine if systemic changes are warranted. More detailed comments cannot be addressed because they pertain to specific issues in pending litigation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of Restraints in Special Housing Units

I.D. No. COR-15-04-00006-P

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

Proposed action: Amendment of section 305.3 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Use of restraints in special housing units.

Purpose: To establish a uniform procedure for application of restraints on inmates assigned to special housing units during movement outside their cells.

Text of proposed rule: Subdivision (a) of section 305.3 is hereby amended as follows:

(a) Definition. For the purposes of this section, mechanically restrained means either:

(1) handcuffed in front with a waist chain; or

(2) handcuffed in back with or without a waist chain.[]; or

(3) handcuffed in front with a leather restraint belt with a metal "D" ring. Note: The leather restraint belt may be considered only for inside facility movement when the inmate will be under constant, direct supervision of a correction officer.]

Subdivisions (b), (c), (d) and (e) of section 305.3 are hereby repealed and a new subdivisions (b) and (c) added as follows:

(b) *Application of restraints. An inmate assigned to SHU will be placed in mechanical restraints as described herein prior to exiting his or her cell. If the inmate is to remain under escort, the inmate shall be handcuffed in back without a waist chain. If the inmate is not to remain under escort, the inmate shall be handcuffed in front with a waist chain. In order to accommodate the restraint procedure, the inmate will be required to place his or her hands through the feed-up port, if available, or the partially opened cell door.*

(c) *Temporary Removal of Restraints*

(1) *Once outside the cell, restraints shall be removed to accommodate the following:*

(i) *a request of a physician or a physician's assistant (P.A.) when removal is necessary to permit medical treatment;*

(ii) *a request of the Parole Board at a parole hearing;*

(iii) *a request of a judge or magistrate; or*

(iv) *an order of the deputy superintendent for security services or higher ranking authority.*

(2) *Once outside the cell, restraints shall also be removed to accommodate the following unless otherwise specified in a restraint order pursuant to section 305.4:*

(i) *a scheduled shower, when the inmate can be secured in a shower room;*

(ii) *a scheduled period of exercise when the inmate can be secured in an exercise area; however, an inmate at Southport Correctional Facility will remain restrained (handcuffed in front with waist chain) in the exercise area unless he is in post adjustment status; or*

(iii) a visit; however, an inmate at Southport Correctional Facility or any double celled SHU facility will remain restrained (handcuffed in front with waist chain) in the visiting area unless he is in post adjustment status.

(3) If mechanical restraints have been removed, they will be reapplied prior to return to the SHU cell.

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 grants to the commissioner of correction the superintendence, management and control of the correctional facilities in the department and of the inmates confined therein. This section also assigns to the commissioner of correction the power to make rules and regulations for the officers and other employees of the department and the duties to be performed by them.

Section 137 of the Correction Law grants to the commissioner the authority to provide for such measures as he may deem necessary or appropriate for the safety, security and control of correctional facilities and the maintenance of order therein and permits an inmate to be confined in a cell apart from the accommodations provided for inmates who are participating in programs for such period as may be necessary for the maintenance of order or discipline.

Legislative Objective:

By vesting the department and the commissioner with this rulemaking authority, the legislature intended the department to create a procedure for safely moving inmates confined in special housing units to and from exercise, visiting and shower areas and necessary appointments.

Needs and Benefits:

Inmates subject to the provisions of Part 305 have been placed in special housing units for disciplinary or security reasons pursuant to the provisions of Chapters V and VI of Title 7. As a group, they generally include the most violence prone and uncooperative inmates in the department's custody and account for a significant percentage of assaults on staff and disruptions of good order.

Section 305.3(a)(3) and the following "Note" have been amended to remove references to the "leather restraint belt" which is now considered inadequate for secure movement of inmates within and from special housing units.

Section 305.3, as currently written, only requires application of restraints whenever an inmate is escorted off the special housing unit and gives the superintendent discretion over application of restraints in medium security facilities and an escorting supervisor discretion to keep an inmate in restraints upon arrival at his destination if the inmate is deemed a threat to safety and security. Experience has indicated that it is prudent to apply restraints to all inmates who are confined to special housing units prior to removal from their cells, not just when they are being escorted off the unit, eliminating discretion and avoiding the potential hazards which unrestrained inmates represent once beyond the confines of their cells.

Other than this establishment of a uniform procedure, no other substantive changes have been made. The material in existing subdivisions (b), (c), (d) and (e) has been reorganized into a simpler format as new subdivisions (b) and (c). New subdivision (c) is divided into two paragraphs, the first listing circumstances under which specific authorities may request removal of restraints, and the second respecting procedures for showers, exercise and visiting — all of which may be subject to deprivation orders under section 305.2 and which may vary by facility because of physical layout or the incentive programs in place at Southport Correctional Facility and double-celled SHU's. At Southport, where the exercise area is not directly accessible from inmate cells, inmates remain in restraints during the exercise period until they attain post-adjustment status which is based upon positive institutional adjustment. Likewise, inmates at Southport and any double-celled SHU facility will remain restrained in the visiting area until they attain post-adjustment status.

This amendment is expected to reduce assaults on staff and enhance safety and security.

Costs:

a. To State government: None.

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

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

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

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

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

c. New or addition 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:

No alternatives are considered feasible. Doing nothing would leave staff in a vulnerable position whenever inmates SHU are outside their cells. This change is expected to reduce assaults on staff.

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 establishes a uniform procedure for application of restraints on inmates assigned to special housing units during movement outside their cells.

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 establishes a uniform procedure for application of restraints on inmates assigned to special housing units during movement outside their cells.

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 establishes a uniform procedure for application of restraints on inmates assigned to special housing units during movement outside their cells.

Education Department

EMERGENCY RULE MAKING

Certification in the Classroom Teaching Service

I.D. No. EDU-12-04-00013-E

Filing No. 349

Filing date: March 30, 2004

Effective date: March 30, 2004

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

Action taken: Amendment of sections 80-1.2, 80-2.12, 80-2.13, 80-3.1, 80-3.5, 80-4.3, 80-5.6 and 80-5.13 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1) and 3010

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004. Specifically, the amendment

will clarify the applicability of the new requirements, update the names of examinations necessary for certification as teaching assistants and for the extension in bilingual education, remove unnecessary requirements relating to the transitional A certificate and the career and awareness extension, clarify requirements for the general science extension, and provide the route to continued certification for candidates in alternative certification programs.

Extensive new requirements for certification in the classroom teaching service went into effect on February 2, 2004. The proposed changes are needed immediately to make necessary adjustments in the new requirements and permit the certification of classroom teachers to proceed without delay. The recommended action is proposed as an emergency measure because such action is necessary for the preservation of the general welfare in order to clarify and correct omissions in the new certification requirements affecting classroom teachers to ensure that there are no interruptions in the ongoing certification process and that the public schools of the State are adequately staffed.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its May 17-18, 2004 meeting.

Subject: Certification in the classroom teaching service.

Purpose: To clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

Text of emergency rule: Pursuant to sections 207, 305, 3001, 3004, 3006, 3009, and 3010 of the Education Law.

1. Subdivision (c) of section 80-1.2 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(c) The commissioner shall not issue provisional certificates valid for the classroom teaching service with an effective date that begins after February 1, 2004, [except that the] *unless otherwise specifically prescribed in this Part. The commissioner may extend the effective date of a provisional certificate after February 1, 2004, pursuant to the requirements of section 80-1.6 of this Subpart.*

2. Subdivision (d) of section 80-1.2 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(d) The commissioner shall issue initial and professional teachers' certificates valid for the classroom teaching service beginning with an effective date of September 1, 2004, *except that the commissioner may continue to issue provisional and permanent teachers' certificates valid for classroom teaching service as specifically prescribed in this Part.*

3. Subdivision (f) of section 80-2.12 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(f) This section shall apply to individuals applying for a provisional certificate on or after September 2, 1993, [and who apply prior to February 2, 2004] and upon such application qualify for such provisional certificate, *provided that the requirements of this Subpart apply to such candidates.*

4. Subdivision (e) of section 80-2.13 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(e) This section shall apply to individuals qualifying for a provisional certificate on or after September 2, 1993, [and who apply prior to February 2, 2004] and upon such application qualify for such provisional certificate, *provided that the requirements of this Subpart apply to such candidates.*

5. Subdivision (a) of section 80-3.1 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(a) Application of this Subpart.

(1) Candidates who apply on or after February 2, 2004 for teachers' certificates valid for classroom teaching service shall be subject to the requirements of this Subpart, *unless otherwise specifically prescribed in this Part, and except as prescribed in paragraph (2) of this subdivision.*

(2) Candidates who apply for permanent teachers' certificates in the classroom teaching service shall be subject to the requirements of Subpart 80-2 of this Part, provided that they have been issued a provisional teacher's certificate in the title for which the permanent certificate is sought [with an effective date that begins on or before February 1, 2004].

(3) . . .

6. Paragraph (2) of subdivision (a) of section 80-3.5 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(2) Limitations. The transitional A certificate shall authorize a candidate to teach only in a school district for which a commitment for employment has been made. [In addition, it shall only be valid as long as the candidate is matriculated in good standing in a teacher education program leading to the professional certificate, unless the candidate has completed such program.]

7. Subparagraph (ii) of paragraph (2) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004 as follows:

(ii) The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination [language proficiency test in English and the target language] *bilingual extension assessment.*

8. Subparagraph (iii) of paragraph (3) of subdivision (d) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(iii) Applications for the statement of continued eligibility must be filed with the department [on or before February 1, 2004].

9. Paragraph (2) of subdivision (e) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(2) The candidate shall meet the requirements in each of the following [paragraphs] *subparagraphs:*

[(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in classroom teaching services authorizing instruction in career and technical education.]

[(ii) (i) . . .

[(iii) (ii) . . .

10. Subparagraph (iii) of paragraph (2) of subdivision (h) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(iii) Applications for the statement of continued eligibility must be filed with the department [on or before February 1, 2004].

11. Paragraph (2) of subdivision (j) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(2) The candidate shall satisfactorily complete 18 semester hours in *at least two additional sciences.*

12. Item (ii) of subclause (1) of clause (a) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills.*

13. Item (ii) of subclause (1) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills.*

14. Item (ii) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills.*

15. Item (ii) of subclause (1) of clause (d) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State [Teacher Certification Examination Test of Communication and Quantitative Skills] *assessment of teaching assistant skills.*

16. Paragraph (2) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(2) [A provisional certificate shall be issued for candidates who apply for the provisional teacher's certificate valid for classroom service on or before February 1, 2004, and who upon such application qualify for such provisional certificate effective on or before February 1, 2004.] *Candidates who apply and qualify for a transitional B certificate on or before February 1, 2004 shall be issued a provisional certificate, upon meeting the requirements for the provisional certificate. Candidates who apply and qualify for a transitional B certificate after February 1, 2004*

shall be issued an initial certificate, upon meeting the requirements for the initial certificate.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-12-04-00013-P, Issue of March 24, 2004. The emergency rule will expire June 27, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by establishing requirements for certification in the classroom teaching service in the public schools of the State of New York.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

The amendment will clarify the applicability of the new certification requirements for the classroom teaching service, providing that the new certification requirements will apply to candidates who apply for certification on or after February 2, 2004, unless an exception is otherwise specifically set forth in the regulations. This is needed because a number of exceptions are stated in Part 80 that would permit candidates to meet the old requirements. These candidates already hold some type of certification, and are on the path to certification under the old requirements.

The amendment is needed to provide that candidates in the alternative certification programs who applied and qualified for a transitional B certificate on or before February 1, 2004 will be eligible to obtain a provisional certificate, upon meeting the requirements for the provisional certificate. Those applying and qualifying for the transitional B certification after February 1, 2004 will have to apply for the initial certificate and meet the new requirements. This change is necessary as matter of fairness to permit holders of the transitional B certificate who were already on track for obtaining a provisional certificate under the old requirements to obtain that certificate.

The amendment is needed to update the name of the examination for teaching assistants, the "Assessment of Teaching Assistant Skills," and to

specify the correct name for the examination required for an extension in bilingual education, the "bilingual extension assessment." In addition it is needed to clarify the language for the general science extension to indicate that study is required in "at least" two additional sciences, rather than in just two additional sciences.

Finally, the amendment removes the requirement that a candidate for an extension in career awareness must hold a base teacher certificate in career and technical education. It also removes the requirement that holders of the transitional A certificate must be in a registered teacher education program. The transitional A certificates are in specific career and technical subjects within the field of agriculture, health or a trade (7-12) and are designed to permit career changes who hold an associate degree or high school education to enter the teaching field in these technical areas. The Department does not believe that either of the requirements proposed for removal are necessary.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process applications for individual evaluations.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose costs on regulated parties, including candidates for teacher certificates.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The amendment will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and provide all evidence of having met the requirements for the certificate sought, including the education and experience requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

The amendment clarifies and corrects omissions in requirements for certification in the classroom teaching service that went into effect on February 2, 2004. Candidates must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004. The proposed amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or compliance requirements or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates for teaching certification in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

The amendment will clarify the applicability of the new certification requirements for the classroom teaching service, providing that the new certification requirements will apply to candidates who apply for certification on or after February 2, 2004, unless an exception is otherwise specifically set forth in the regulations.

The amendment will provide that candidates in the alternative certification programs who applied and qualified for a transitional B certificate on or before February 1, 2004 will be eligible to obtain a provisional certificate, upon meeting the requirements for the provisional certificate. Those applying and qualifying for the transitional B certification after February 1, 2004 will have to apply for the initial certificate and meet the new requirements.

The amendment will update the name of the examination for teaching assistants, the "Assessment of Teaching Assistant Skills," and specify the correct name for the examination required for an extension in bilingual education, the "bilingual extension assessment." In addition it will clarify the language for the general science extension to indicate that study is required in "at least" two additional sciences, rather than in just two additional sciences.

Finally, the amendment will remove the requirement that a candidate for an extension in career awareness must hold a base teacher certificate in career and technical education. It will also remove the requirement that holders of the transitional A certificate must be in a registered teacher education program.

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and show the education and experience required for the certificate sought.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire additional professional services in order to comply.

3. Costs:

The amendment will not impose costs on regulated parties, including candidates for certification in the classroom teaching service.

4. Minimizing adverse impact:

The amendment establishes requirements for teacher certification. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

Job Impact Statement

The purpose of the proposed amendment is to clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004. The amendment concerns preparation requirements for service as public school teachers. The proposed amendment will have no effect on the number of jobs or the number of employment opportunities available in this field. Because it is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in teaching or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

EMERGENCY RULE MAKING

Pathways to Certification in the Classroom Teaching Service

I.D. No. EDU-12-04-00014-E

Filing No. 350

Filing date: March 30, 2004

Effective date: March 30, 2004

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

Action taken: Amendment of sections 80-1.3, 80-2.1, 80-3.8, 80-3.9 and 80-5.17 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3001(2); 3004(1) and (7); 3006(1)(b); 3009(1) and 3010 (not subdivided)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004. Specifically, the amendment will clarify the citizenship requirement for certification consistent with recent statutory change, permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004, renew the pathway for license speech-language pathologists to qualify for teaching certificates under an exception to the regular requirements, renew the authority for certified out-of-state teachers to qualify for a conditional first-level certificate, and permit theater teachers who meet prescribed requirements to continue to teach under a statement of continued eligibility without additional certification.

Extensive new requirements for certification in the classroom teaching service went into effect on February 2, 2004. The proposed changes are needed immediately to renew necessary pathways to certification that were previously available under the requirements in effect prior to February 2, 2004. It is also needed immediately to clarify the citizen requirements for certification affecting current applicants. In addition, the amendment permits candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete certification requirements under the requirements that were in place prior to February 2, 2004. This change is needed to accommodate such candidates who were on track for meeting the requirements for certification under the requirements that were in place at the time they were called to service for the country. The department believes that these candidates should not be penalized for such service. This change must be made immediately because the new requirements are currently in place.

The recommended action is proposed as an emergency measure because such action is necessary for the preservation of the general welfare in order to clarify the new requirements, ensure that there are sufficient pathways to certification to meet the staffing needs of the State's public schools so that disruptions in essential educational programs are avoided, and immediately accommodate individuals whose educational preparation for teacher certification was interrupted by active military service.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its May 17-18, 2004 meeting.

Subject: Pathways to certification in the classroom teaching service.

Purpose: To clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

Text of emergency rule: 1. Section 80-1.3 of the Regulations of the Commissioner of Education is repealed and a new section 80-1.3 is added, effective March 30, 2004, as follows:

80-1.3 Citizenship.

(a) In accordance with section 3001 of the Education Law, to qualify for a certificate under this Part, the candidate shall be a citizen of the United States or meet the requirements in one or more of the following paragraphs, subject to the limitations therein prescribed, except as provided in subdivision (b) of this section:

(1) A candidate who is not a citizen of the United States may be issued a modified temporary license, transitional certificate, provisional certificate, initial certificate, or other time-limited license authorized by this Part, upon meeting the requirements for the certificate or license as defined in this Part and the Education Law, provided the candidate makes due application to become a citizen and thereafter within the time prescribed by law becomes a citizen.

(2) A candidate who is not a citizen of the United States may be issued any certificate or license under this Part, upon meeting the requirements for the certificate or license as defined in this Part and the Education Law, if the candidate's immigration status is that of a lawful permanent resident of the United States, provided that the provision permitting such a candidate to teach in the public schools of New York State set forth in subdivision (3) of section 3001 of the Education Law has not expired or been repealed.

(3) A candidate who is not a citizen of the United States, has not declared an intention of becoming a citizen, and does not qualify for a certificate under the requirements of paragraph (2) of this subdivision, may be issued a modified temporary license, transitional certificate, provi-

sional certificate, initial certificate, or other time-limited license authorized by this Part, provided that such candidate meets the requirements for the certificate or license, as defined in this Part and the Education Law, and either:

(i) possesses the skills or competencies not readily available among teachers holding citizenship; or

(ii) demonstrates to the department other good cause for obtaining such certificate, including but not limited to, the need to facilitate a candidate's ability to meet certification requirements of another jurisdiction.

(b) The requirements of subdivision (a) of this section shall not preclude a candidate who is not a citizen of the United States from qualifying for a permit or other authorization to teach in the public schools of New York State, in accordance with specific provisions of the Education Law that authorize such teaching service by a candidate who is not a citizen of the United States, such as section 3005 of the Education Law.

2. Subdivision (a) of section 80-2.1 of the Regulations of the Commissioner of Education is amended, effective March 30, 2004, as follows:

(a) Application of this Subpart.

(1) Candidates who apply for provisional teachers' certificates valid for classroom teaching service on or before February 1, 2004 and who upon such application qualify for such provisional certification effective on or before February 1, 2004 shall be subject to the requirements of this Subpart. Candidates who do not meet this condition shall be subject to the requirements of Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part.

(2) Candidates who apply for permanent teachers' certificates in the classroom teaching service shall be subject to the requirements of this Subpart, provided that they have been issued a provisional teacher's certificate in the title for which the permanent certificate is sought [with an effective date that begins on or before February 1, 2004].

(3) Candidates who were matriculated in a program registered pursuant to Part 52 of this Title as leading to certification in the classroom teaching service whose participation in that program was interrupted by mobilization in active military service between September 11, 2001 and February 1, 2004 shall be granted an extension of time to complete the requirements under this Subpart for the provisional or permanent certificate in the classroom teaching service equal to the amount of time the candidate was in active military service, provided the candidate provides the department with adequate documentation verifying the effective dates of such military service and matriculation in the registered program when mobilized for active military service. Such extension shall commence on September 1, immediately following the concluding date of the candidate's active military service.

[(3)] (4) . . .

3. Section 80-3.8 of the Regulations of the Commissioner of Education is added, effective March 30, 2004, as follows:

80-3.8 *Statement of continued eligibility for teachers of theater.* Upon application, a person employed in New York State in a public school or other school for which teacher certification is required, as a teacher of theater for three of the five years immediately preceding February 2, 2004, may be issued by the department a statement of continued eligibility pursuant to which such person may continue to teach theater in the classroom teaching service without the certificate prescribed in this Subpart, provided that such person holds a permanent certificate in the classroom teaching service. The statement of continued eligibility shall be valid for service in any school district.

4. Section 80-3.9 of the Regulations of the Commissioner of Education is added, effective March 30, 2004, as follows:

80-3.9 *Exception for licensed speech-language pathologists.*

(a) *Initial certificate.* In lieu of meeting the education and examination requirements prescribed in subdivision (b) of section 80-3.3 of this Part, a candidate may meet the following requirements for an initial certificate as a teacher of speech and language disabilities (all grades):

(1) the candidate must request in writing an exception to stated preparation under this section;

(2) the candidate must submit an application for initial certification to the department; and

(3) the candidate must be registered and hold a New York State license in speech-language pathology, pursuant to Title VIII of the Education Law.

(b) *Professional certificate.* In lieu of meeting the education, experience, and examination requirements prescribed in subdivision (b) of section 80-3.4 of this Part, the candidate issued an initial certificate under the requirements of subdivision (a) of this section shall meet the following

requirements for a professional certificate as a teacher of speech and language disabilities (all grades):

(1) the candidate must continue to be registered and hold a New York State license in speech-language pathology, pursuant to Title VIII of the Education Law;

(2) the candidate must satisfactorily complete three years of experience as a teacher of the speech-and hearing-handicapped in a school offering instruction in any grade, pre-kindergarten through grade 12; or three years of equivalent experience as determined by the department, such as experience providing speech-language pathology services to children in a preschool program, as defined in section 200.1 of this Title;

(3) the candidate must achieve a satisfactory level of performance on the liberal arts and sciences portion of the New York State Teacher Certification Examinations; and

(4) the candidate must satisfactorily complete while under the initial certificate, except for course work specified in subparagraph (ii) of this paragraph, either:

(i) 40 clock hours of coursework or other professional development activities which are approved by a school district or BOCES under the school district's or BOCES' professional development plan established in accordance with section 100.2(dd) of this Title, and which must be in the following subjects: classroom management; literacy education; and the development of knowledge, understanding, and skills for working with general education teachers in terms of the impact of speech, language, and hearing disabilities on learning in the general curriculum areas of the State learning standards for students, which are prescribed in Part 100 of this Title; or

(ii) six semester hours of undergraduate or graduate coursework from an institution of higher education with programs registered pursuant to Part 52 of this Title or a regionally accredited institution of higher education, which may be completed prior to the candidate obtaining the initial certificate and which must be in the following subjects: classroom management; literacy education; and the development of knowledge, understanding, and skills for working with general education teachers in terms of the impact of speech, language, and hearing disabilities on learning in the general curriculum areas of the State learning standards for students, which are prescribed in Part 100 of this Title; or

(iii) 40 continuing competency hours in acceptable learning activities, as defined in section 75.4 of this Title, except for undergraduate or graduate coursework as otherwise specified in subparagraph (ii) of this paragraph, which must be in the following subjects: classroom management; literacy education; and the development of knowledge, understanding, and skills for working with general education teachers in terms of the impact of speech, language, and hearing disabilities on learning in the general curriculum areas of the State learning standards for students, which are prescribed in Part 100 of this Title; or

(iv) a combination of the activities prescribed in subparagraphs (i), (ii), and/or (iii) of this paragraph that the department determines provides equivalent educational preparation.

5. Section 80-5.17 of the Regulations of the Commissioner of Education is added, effective March 30, 2004, as follows:

80-5.17 *Conditional initial certificate in the classroom teaching service.*

(a) For initial certification in a certificate title in the classroom teaching service for which this Part requires completion of an examination requirement, the commissioner may issue to a candidate who has not met such examination requirement a two-year nonrenewable conditional initial certificate, notwithstanding that the examination requirement has not been met, and deem that all other requirements for the initial teacher's certificate in the certificate title in the classroom teaching service have been met, provided that the candidate holds a valid regular teacher's certificate in the same or an equivalent title by a state which has contracted with the State of New York pursuant to section 3030 of the Education Law, the interstate agreement on the qualifications of educational personnel, and provided further that such regular teacher's certificate issued by the other state evidences knowledge, skills and abilities comparable to those required for certification in New York State.

(b) To meet the requirements for a full initial certificate in such certificate title, the candidate shall be required to submit to the commissioner, at least 60 days prior to the expiration of the conditional initial certificate, satisfactory evidence of meeting the examination requirement for the initial certificate title sought, as prescribed in this Part. If the candidate meets such examination requirement, the commissioner shall issue an initial certificate.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-12-04-00014-P, Issue of March 24, 2004. The emergency rule will expire June 27, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (3) of section 3001 of the Education Law establishes a citizenship requirement as a qualification for teaching in the public schools of New York State, with exceptions, and authorizes aliens to teach in the public schools pursuant to regulations of the Commissioner of Education.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by establishing requirements for certification in the classroom teaching service in the public schools of the State of New York.

3. NEEDS AND BENEFITS:

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

The amendment clarifies the citizenship requirement for certification consistent with recent statutory change. The amendment implements the provisions of section 3001 of the Education Law, which establishes exceptions to the citizenship requirement for teaching in the public schools of New York State. As permitted in section 3001 of the Education Law, the regulation provides that a candidate who is not a citizen of the United States may qualify if the candidate is a lawful permanent resident of the United States. It also establishes a number of exceptions that would allow non-citizens to obtain time-limited teaching certificates.

The amendment will permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004. This change is needed to accommodate such candidates who were on track for meeting the requirements for certification under the requirements that were in place at the time

they were called to service for the country. The Department believes that these candidates should not be penalized for such service.

The amendment renews two pathways to certification needed to meet teacher shortages. The first would permit licensed and registered speech-language pathologists to qualify for teaching certificates in speech and language disabilities (all grades) under an exception to the regular requirements. The second would permit certified out-of-state teachers to qualify for a "conditional" first level certificate, allowing holders two years to pass the New York State certification examination. Both pathways expired on February 1, 2004, and reinstatement is needed to meet teacher shortages.

The amendment also permits individuals who were employed in a public school or other school requiring certification, as theater teachers for a prescribed period prior to February 2, 2004, to continue to teach without additional certification, provided the teacher holds a permanent certificate in the classroom teaching service. The new teacher certification requirements establish the new certificate title, theater (all grades). This title did not exist before February 2, 2004. The amendment is needed as a matter of fairness to permit teachers who have recent employment as theater teachers to continue their employment.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process applications for individual evaluations.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose costs on regulated parties, including candidates for teacher certificates.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The amendment will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and provide all evidence of having met the requirements for the certificate sought, including the education and experience requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

The amendment clarifies and supplements the new requirements for certification in the classroom teaching service that went into effect on February 2, 2004. Candidates must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004. The proposed amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or compliance requirements or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates for teaching certification in all parts of the State, including the 44 rural counties with fewer than

200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

The amendment clarifies the citizenship requirement for certification consistent with recent statutory change. The amendment implements the provisions of section 3001 of the Education Law, which establishes exceptions to the citizenship requirement for teaching in the public schools of New York State. As permitted in section 3001 of the Education Law, the regulation provides that a candidate who is not a citizen of the United States may qualify if the candidate is a lawful permanent resident of the United States. It also establishes a number of exceptions that would allow non-citizens to obtain time-limited teaching certificates.

The amendment will permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004.

The amendment renews two pathways to certification needed to meet teacher shortages. The first would permit licensed and registered speech-language pathologists to qualify for teaching certificates in speech and language disabilities (all grades) under an exception to the regular requirements. The second would permit certified out-of-state teachers to qualify for a "conditional" first level certificate, allowing holders two years to pass the New York State certification examination. Both pathways expired on February 1, 2004.

The amendment also permits individuals who were employed in a public school or other school requiring certification, as theater teachers for a prescribed period prior to February 2, 2004, to continue to teach without additional certification, provided the teacher holds a permanent certificate in the classroom teaching service.

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification are required to make written application with the State Education Department and show the education and experience required for the certificate sought.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire additional professional services in order to comply.

3. Costs:

The amendment will not impose costs on regulated parties, including candidates for certification in the classroom teaching service.

4. Minimizing adverse impact:

The amendment establishes requirements for teacher certification. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

Job Impact Statement

The amendment concerns pathways to certification by the State Education Department to teach in the public school of New York State. The purpose of the proposed amendment is to clarify and supplement the new requirements for the certification of classroom teachers that became effective on February 2, 2004. The proposed amendment will have no effect on the number of jobs or the number of employment opportunities available in this field. Because it is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in teaching or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements for Licensure

I.D. No. EDU-15-04-00010-P

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

Proposed action: Amendment of section 52.30 and Part 74 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 212(3); 6501 (not subdivided); 6507(2)(a), (3)(a) and (4)(a); 7701(1); 7704(1)(b) and (c); 7704(2)(b), (c) and (d); 7705(1) and (2); 7706(2) and (3); and 7707(2) and (4); and Insurance Law, sections 3221(I)(4)(A) and (D) and 4303(i) and (n)

Subject: Requirements for licensure as a licensed master social worker, licensed clinical social worker and for registered college programs.

Purpose: To set forth requirements for licensure.

Substance of proposed rule (Full text is not posted on a State website): The State Education Department proposes to amend section 52.30 and Part 74 of the Regulations of the Commissioner of Education. The following is a summary of the proposed rule making.

Section 52.30 is repealed and a new section 52.30 is added. Subdivision (a) of this section establishes registration requirements for college programs leading to licensure in licensed master social work, and subdivision (b) establishes registration requirements for college programs leading to licensure in licensed clinical social work.

Section 74.1 is repealed and a new section 74.1 is added, to establish education requirements for licensure as a licensed master social worker and licensed clinical social worker, as follows:

74.1 Professional study of social work.

(a) As used in this section, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation of social work programs in a fair, consistent, and nondiscriminatory manner, such as the Council on Social Work Education, its successors, or an equivalent agency.

(b) Education requirement for licensure as a licensed master social worker. To meet the professional education requirement for licensure as a licensed master social worker, the applicant shall present satisfactory evidence of having received a master's degree, or its equivalent, in social work through completion of:

(1) a program in social work that is registered as leading to licensure in licensed master social work by the department pursuant to section 52.30 of this Title or a program in social work that is accredited by an acceptable accrediting agency or an equivalent social work program; or

(2) a program in social work located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of social work, has been verified in accordance with subdivision (c) of section 59.2 of this Title, and which is determined by the department to have substantial equivalence to a program in social work registered as licensure qualifying for licensure as a licensed master social worker by the department pursuant to section 52.30 of this Title or to a program accredited by an acceptable accrediting agency.

(c) Education requirement for licensure as a licensed clinical social worker.

(1) To meet the professional education requirement for licensure as a licensed clinical social worker, the candidate shall present satisfactory evidence of having received a master's degree, or its equivalent in social work through completion of:

(i) a program in social work that is registered as leading to licensure in licensed clinical social work by the department pursuant to section 52.30 of this Title or an equivalent social work program, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision; or

(ii) a program in social work that is accredited by an acceptable accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision; or

(iii) a program in social work located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of social work, has been verified in accordance with subdivision (c) of section 59.2 of this Title, and which is

determined by the department to have substantial equivalence to a program in social work registered as leading to licensure in licensed clinical social work by the department pursuant to section 52.30 of this Title or to a program in social work accredited by an acceptable accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision.

(2) Clinical content.

(i) A applicant must demonstrate satisfactory completion of at least 12 semester hours or the equivalent of coursework that prepares the individual to practice as a licensed clinical social worker, by providing clinical content which emphasizes the person-in-environment perspective and knowledge and skills in the following:

- (a) diagnosis and assessment in clinical social work practice;
- (b) clinical social work treatment; and
- (c) clinical social work practice with general and special populations.

(ii) The clinical content prescribed in subparagraph (i) of this paragraph must be coursework offered in a program prescribed in paragraph (1) of this subdivision. Such coursework may be taken as part of the master's degree program in social work that the candidate has completed or after completion of such program to remedy deficiencies in clinical content.

Section 74.2 is repealed and a new section 74.2 is added, to establish professional licensing examination requirements for licensure as a licensed master social worker and licensure as a licensed clinical social worker, including prescribing the licensing examinations and requirements for admission to the examinations for each level of professional practice.

Section 74.3 is repealed and a new section 74.3 is added, to establish the experience requirement for licensure as a licensed clinical social worker, as follows:

74.3 Experience requirement for licensure as a licensed clinical social worker.

(a) An applicant for licensure as a licensed clinical social worker shall meet the experience requirement for licensure by submitting documentation of a full-time supervised experience of three-years in clinical social work, or the part-time equivalent, or a combination of full-time and part-time supervised experience in clinical social work, completed over a period not to exceed six years in which the applicant provides clinical social work services within the scope of practice of licensed clinical social work as defined in section 7701(2) of the Education Law. For purposes of this subdivision, the full-time experience shall consist of not less than 48 weeks per year, excluding vacation, with not less than an average of 20 client contact hours per week. The part-time equivalent shall consist of the same total number of client contact hours provided over more than three years.

(1) The experience must be obtained after the applicant completes the master's degree program in social work required for licensure in licensed clinical social work, as prescribed in section 74.1(c) of this Part.

(2) The experience shall be a facility experience in clinical social work, as prescribed in subparagraph (i) of this paragraph, or a nonfacility experience in psychotherapy, as prescribed in subparagraph (ii) of this paragraph, or a combination of the two.

(i) The facility experience shall mean the provision of clinical social work services as a salaried employee or compensated independent contractor working for a facility, defined as a federal, state, county or municipal agency, or other political subdivision, or a chartered elementary or secondary school or degree-granting educational institution, or a not-for-profit or proprietary incorporated entity, which government agency, educational institution, or not-for-profit or proprietary incorporated entity is licensed or otherwise authorized to provide services that fall within the scope of practice of licensed clinical social work, under the supervision prescribed in paragraph (3) of this subdivision.

(ii) Nonfacility experience in psychotherapy shall mean the provision of psychotherapy, as defined in section 7701(4) of the Education Law, in a setting not prescribed in subparagraph (i) of this paragraph, under the supervision prescribed in paragraph (3) of this subdivision.

(3) Supervision of the experience. The experience shall be supervised in accordance with the requirements of this paragraph.

(i) Supervision of the experience shall consist of contact between the applicant and supervisor during which:

- (a) the applicant apprises the supervisor of the diagnosis and treatment of each client;
- (b) the applicant's cases are discussed;
- (c) the supervisor provides the applicant with oversight and guidance in diagnosing and treating clients;
- (d) the supervisor regularly reviews and evaluates the professional work of the applicant; and

(e) the supervisor provides at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that no more than 50 percent of the required hours of in-person supervision may be group clinical supervision.

(ii) The supervision shall be provided by:

(a) a licensed clinical social worker who, at the time of supervision of the applicant, met the qualifications for insurance reimbursement pursuant to section 74.5 of this Part, and is a graduate of a council on social work education accredited graduate program, or its equivalent as determined by the department; or

(b) a psychologist who, at the time of supervision of the applicant, was licensed as a psychologist in the state where supervision occurred, was qualified in psychotherapy as determined by the department, and is a graduate of a program in psychology approved by the American Psychological Association or an equivalent program as determined by the department; or

(c) a physician who, at the time of supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department.

Section 74.4 is repealed and a new section 74.4 is added to establish requirements for limited permits to practice as a licensed master social worker and licensed clinical social worker, including qualifying and duration requirements.

Section 74.5 relates to requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement. This section is amended to update the title "certified social worker" to "licensed clinical social worker". It also deletes the requirement in section 74.5(c)(4), relating to submission of case summaries by applicants for the three-year credential, and substitutes the following requirement:

(4) Level of competence. Experience shall be of a level and nature acceptable to the State Board for Social Work, as demonstrated by submission by the applicant of a description of the experience, including but not limited to, information describing the nature of the psychotherapy, the clients served, and the supervision provided.

Section 74.6 is added to establish requirements for the supervision of licensed master social workers providing clinical social work services.

Section 74.7 is added to establish requirements for the supervision of baccalaureate social workers providing licensed master social work services.

Section 74.8 of the Regulations of the Commissioner of Education is added to establish special provisions for licensure. Subdivision (a) of section 74.8 establishes a special provision for licensure as a licensed master social worker for an applicant who on September 1, 2004, possesses both a master's of social work degree and five years of post-graduate social work employment. Subdivision (b) of section 74.8 establishes a special provision for licensure as a licensed clinical social worker for an applicant who is licensed as a certified social worker on September 1, 2004, but had not received an authorization for insurance reimbursement pursuant to section 74.5 of this Part, who files with the department by September 1, 2005 an application for licensure as a licensed clinical social worker and demonstrates to the satisfaction of the department that the applicant meets the requirements established in paragraph (2) of this subdivision, including meeting the requirement for a supervised experience for a three-year or six-year credential for authorization for insurance reimbursement upon application for licensure, among other requirements.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department to determine and set fees for certifications and permits.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession. Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 7701 of the Education Law defines the practice of licensed master social work and authorizes licensed master social workers to practice clinical social work in facility settings under supervision in accordance with Commissioner's Regulations.

Paragraphs (b) and (c) of subdivision (1) of section 7704 authorizes the State Education Department to establish implementing standards for the education and examination requirements that must be met to qualify for a license as a licensed master social worker.

Paragraphs (b), (c), and (d) of subdivision (2) of section 7704 of the Education Law authorizes the State Education Department to establish implementing standards for the education, experience, and examination requirements that must be met to qualify for a license as a licensed clinical social worker.

Subdivisions (1) and (2) of section 7705 of the Education Law authorizes the State Education Department to issue limited permits to practice licensed clinical social work and licensed master social work and to charge a fee for such permits.

Subdivision (2) of section 7706 of the Education Law provides an exemption, permitting an individual holding a baccalaureate of social work degree or its equivalent to practice licensed master social work under the supervision of a licensed master social worker or a licensed clinical social worker, in accordance with Commissioner's Regulations.

Subdivision (3) of section 7706 of the Education Law provides an exemption, permitting a licensed master social worker to practice within the scope of practice of a licensed clinical social worker in a facility setting and under supervision, in accordance with Commissioner's Regulations.

Subdivisions (2) and (4) of section 7707 of the Education Law establishes special provisions for certain licensees to be licensed as a licensed master social worker or a licensed clinical social worker.

Subparagraphs (A) and (D) of paragraph (4) of subsection (l) of section 3221 of the Insurance Law and subsections (i) and (n) of section 4303 of the Insurance Law authorizes licensed clinical social workers with experience satisfactory to the State Board for Social Work to qualify for reimbursements under certain group health insurance policies for psychotherapy services.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish standards for licensure as a licensed master social worker or as a licensed clinical social worker and requirements for graduate education programs leading to licensure in these fields.

3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to set forth requirements for licensure in the profession of social work, requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement, and requirements relating to the supervision of licensed master social workers who provide licensed clinical social work services and for baccalaureate social workers who provide licensed master social work services.

Chapter 420 of the Laws of 2002 repealed Article 154 and added a new Article 154, effective September 1, 2004, making social work a practice-protected profession. Prior to Chapter 420, social work was a title-protected profession only. The new statute has established two levels of social work practice, licensed master social work and licensed clinical social work, and requirements for licensure at each of the two levels of professional practice. The proposed regulation implements the new statutory requirements.

Specifically, the regulation is needed to establish education requirements for licensure in licensed master social work and licensed clinical social work, and requirements for graduate programs leading to licensure in these fields. The regulation is also needed to prescribe examination requirements for licensure at both levels. Education Law section 7704(2)(b) establishes an experience requirement for licensure in clinical social work. The regulation is needed to specify the experience that would be acceptable and the necessary supervision of that experience. The regulation is also needed to prescribe requirements for limited permits to practice licensed master social work and licensed clinical social work, consistent with the statutory requirements.

The regulation is needed to amend the requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement. The new title "licensed clinical social worker" is substituted for the former title "certified social worker." Also, a requirement that the licensee submit case summaries for the three-year credential is removed. The licensee will, however, be required to submit documentation describing the nature of the experience and the supervision provided. This change will ease the administration of the credentialing process, while still requiring verification of the level and nature of the experience.

The regulation is needed to specify the supervision required of licensed master social workers providing licensed clinical social work services, in accordance with section 7701(1)(d) of the Education Law, and the supervision required of baccalaureate social workers providing licensed master social work services, in accordance with section 7706(2) of the Education Law.

Finally, the regulation is needed to implement special provisions for licensure, prescribed in section 7707 of the Education Law. The first would permit an applicant who on September 1, 2004 possesses both a master's of social work degree or an equivalent degree and requisite social work experience to be licensed as a licensed master social worker without having to pass a licensure examination. The second would permit an applicant who is licensed as a "certified social worker" on September 1, 2004, but had not received an authorization for insurance reimbursement, to be licensed as a licensed clinical social worker, provided that the applicant meets prescribed requirements.

4. COSTS:

(a) Costs to State government. The proposed regulation implements statutory requirements and establishes standards as directed by statute. The regulation will not impose any additional cost on State government, beyond the cost imposed by the statutory requirements.

(b) Cost to local government. There are no costs to local government attributable to the proposed regulation.

(c) Cost to private regulated parties. The regulation imposes an application fee of \$85 for an application for the psychotherapy privilege for licensed clinical social workers. The remaining fees are prescribed in statute. Statutory provisions establish a licensure application fee of \$115, a triennial registration fee of \$155, and a limited permit fee of \$70. All other costs are also attributable to the statutory requirements, which the regulation implements.

(d) Cost to the regulatory agency. As stated above in Costs to State government, the proposed amendment does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements statutory requirements relating to licensure and practice for licensed master social workers and licensed clinical social workers and college programs leading to licensure in these fields. It does not impose any program, service, duty, or responsibly upon local governments.

6. PAPERWORK:

Each applicant will be required to submit an application that documents to the satisfaction of the Department the applicant's qualifications for licensure as a licensed master social worker or licensed clinical social worker, or for limited permits in these fields. In addition, the regulation requires individuals seeking authorization for third-party reimbursement for psychotherapy services to document acceptable experience as defined in the regulation.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of licensed master social workers or licensed clinical social workers or the psychotherapy privilege for licensed clinical social workers.

10. COMPLIANCE SCHEDULE:

The proposed regulation implements and clarifies statutory requirements. Applicants must comply with the regulation on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment concerns standards that individuals must meet to be licensed as licensed master social workers and licensed clinical social workers and requirements for college programs leading to licensure in this field. It does not impose any adverse economic impact, reporting, record-keeping, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed regulation will affect all licensed master social workers and licensed clinical social workers in New York State. Currently, there are 40,892 certified social workers registered to practice in New York State, of whom about 11 percent, about 4,500, reside in rural areas of New York State. The Department estimates that about the same number of licensed master social workers and licensed clinical social workers will reside in rural areas of the State. None of the colleges that offer licensure-qualifying programs are located in a rural area of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed regulation establishes education requirements for licensure in licensed master social work and licensed clinical social work, and requirements for graduate programs leading to licensure in these fields. The regulation also prescribes examination requirements for licensure at both levels.

The regulation specifies the experience requirement for licensure as a licensed clinical social worker. It also prescribes requirements for limited permits to practice licensed master social work and licensed clinical social work, consistent with the statutory requirements. The regulation prescribes requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement. A requirement that the licensee submit case summaries for the three-year credential is removed. The licensee will, however, be required to submit documentation describing the nature of the experience and the supervision provided.

The regulation specifies the supervision required of licensed master social workers providing licensed clinical social work services, in accordance with section 7701(1)(d) of the Education Law, and the supervision required of baccalaureate social workers providing licensed master social work services, in accordance with section 7706(2) of the Education Law.

The regulation implements the special provisions for licensure, prescribed in section 7707 of the Education Law. The first would permit an applicant who on September 1, 2004 possesses both a master's of social work degree or an equivalent degree and requisite social work experience to be licensed as a licensed master social worker without having to pass a licensure examination. The second would permit an applicant who is licensed as a "certified social worker" on September 1, 2004, but had not received an authorization for insurance reimbursement, to be licensed as a licensed clinical social worker, provided that the applicant meets prescribed requirements.

Each applicant will be required to submit an application that documents to the satisfaction of the Department the applicant's qualifications for licensure as a licensed master social worker or licensed clinical social worker, or for limited permits in these fields. In addition, the regulation requires individuals seeking an authorization for third-party reimbursement for psychotherapy services to document acceptable experience as defined in the regulation. The proposed regulation does not impose a need for regulated parties to hire professional services.

3. COSTS:

The regulation imposes an application fee of \$85 for an application for the psychotherapy privilege for licensed clinical social workers. The remaining fees are prescribed in statute. Statutory provisions establish a

licensure application fee of \$115, a triennial registration fee of \$155, and a limited permit fee of \$70. All other costs are also attributable to the statutory requirements, not the proposed regulation.

4. MINIMIZING ADVERSE IMPACT:

The proposed regulation carries out statutory directives to establish standards for licensure as a licensed master social worker or as a licensed clinical social worker and requirements for graduate education programs leading to licensure in these fields. The statutory requirements do not make exceptions for applicants for licensure or licensure-qualifying programs that may be located in rural areas. The Department has determined that the proposed regulation's requirements should apply to all applicants for licensure and licensure-qualifying programs regardless of their geographic location to ensure that applicants across the State are uniformly held to high licensure standards and that quality educational programs are offered in all parts of the State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed regulations were solicited from statewide organizations representing all parties having an interest in the practice of licensed master social work and licensed clinical social work. Included in this group were the State Board for Social Work and professional associations representing the social work profession. These groups have members who live or work in rural areas. Also, the Department solicited comment from all colleges and universities in the State that offer licensure-qualifying social work programs, and public and private entities, including state and local government, that employ individuals that live or work in rural areas among others. Each organization has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

The purpose of the proposed regulation is to set forth requirements for licensure in the profession of social work, requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement, and requirements relating to the supervision of licensed master social workers who provide licensed clinical social work services and for baccalaureate social workers who provide licensed master social work services.

This amendment implements statutory requirements for licensure. As required by statute, it establishes supervision standards for the experience requirement for licensure as a licensed clinical social worker, and for the supervision required of licensed master social workers providing licensed clinical social work services and baccalaureate social workers providing licensed master social work services. The regulation will not negatively affect the number of jobs available in social work in New York State. In fact, it will likely to have a small positive effect, resulting from entities meeting the supervision requirements.

Because it is evident from the nature of the proposed amendment that it would have either no impact on the number of jobs and employment opportunities in the field of social work or only a positive impact, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

EMERGENCY RULE MAKING

DRGs, SIWs, Trimpoints and Arithmetic Mean LOS

I.D. No. HLT-15-04-00005-E

Filing No. 339

Filing date: March 29, 2004

Effective date: March 29, 2004

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

Action taken: Amendment of sections 86-1.62 and 86-1.63 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(3)

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

Specific reasons underlying the finding of necessity: The Department finds that the immediate adoption of this amendment is necessary to make current regulations consistent with changes made to the diagnosis related group (DRG) classification system used by the Medicare prospective payment system (PPS). This is required by Section 2807-c(3) of the Public Health Law, which states, "The Commissioner shall establish as a basis for case classification for case based rates of payment the same system of diagnosis-related groups for classification of hospital discharges as established for purposes of reimbursement of inpatient hospital service pursuant to Title XVIII of the Federal Social Security Act (Medicare) in effect on the first day of July in the year preceding the rate period." Additionally, such amendments modify existing DRGs and add new DRGs to reflect medically appropriate patterns of health resource use. The current service intensity weights (SIWs) and trimponts are also updated to be consistent with the proposed DRG modifications.

The SIWs and non-Medicare trimponts are an integral part of the 2004 hospital Medicaid and like payor inpatient rates. The amendments provide payors of inpatient hospital services with the new values used to determine the correct case based payment for each DRG for each hospital so hospital claims can be submitted and paid in a timely manner. Additionally, the Legislature sought to have the DRGs used in the hospital reimbursement methodology be consistent with those used in Medicare reimbursement and reflect medically appropriate, efficient and economic patterns of health use and services. Such requirements warrant adoption of these amendments as soon as practicable.

Subject: Revision to the DRGs, SIWs, trimponts and arithmetic mean LOS used to determine cased-based payments.

Purpose: To modify the DRG listing, SIWs, trimponts and the arithmetic mean LOS.

Substance of emergency rule: 86-1.62 - Service Intensity Weights and Group Average Arithmetic Inlier Lengths of Stay

The proposed amendments of section 86-1.62 of Title 10 (Health) NYCRR are intended to change the diagnosis related group (DRG) classification system for inpatient hospital services and the corresponding service intensity weight (SIWs) and group average arithmetic inlier length of stay (LOS) for each DRG.

The DRG classification system used in the hospital case payment system is updated to incorporate those changes made by Medicare for use in the prospective payment system and additional changes to identify medically appropriate patterns of health resource use for services that are efficiently and economically provided. The SIWs were revised accordingly to reflect the costs of the redistributed cases.

86-1.63 - Non-Medicare Trimponts

The proposed amendments of section 86-1.63 of Title 10 (Health) NYCRR are intended to change the non-Medicare trimponts used to determine the outlier days in the hospital case based payment system.

The changes in the DRG classification system described above (Section 86-1.62 of Title 10 (Health) NYCRR) cause a modification of the non-Medicare trimponts to reflect the redistribution of cases from the existing DRGs to the new DRGs. These new trimpont values are provided in Section 86-1.63.

Provider/Payor Fiscal Impact:

The changes to the DRG classification system will enable providers to place patients in the most appropriate DRG and, therefore, they will receive adequate reimbursement for services provided. In the aggregate, these changes will have a budget-neutral impact on the reimbursement system.

Reasons for Initiating Regulation:

The Department is statutorily required to update the grouper to be consistent with changes made to the DRG classification system used by the Medicare prospective payment system (PPS) and to modify existing and add new DRGs to more accurately reflect patterns of health resource use.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 26, 2004.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the subject regulations is contained in sections 2803(2) and 2807(3) of the Public Health Law (PHL), which require the

State Hospital Review and Planning Council (SHRPC), subject to the approval of the Commissioner, to adopt and amend rules and regulations for hospital reimbursement rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities. PHL section 2807-c(3) authorizes the SHRPC to adopt rules subject to the Commissioner's approval, to adjust the diagnosis related groups (DRGs) or establish additional DRGs to reflect subsequent revisions applicable to reimbursement for discharges of Medicare beneficiaries or to identify medically appropriate patterns of health resource use efficiently and economically provided and to subsequently amend the service intensity weights (SIWs) and trimponts for each DRG.

Legislative Objectives:

The Legislature sought to have the DRGs used in the hospital reimbursement methodology be consistent with those used in Medicare reimbursement and reflect medically appropriate, efficient and economic patterns of health resource use and services.

Needs and Benefits:

The proposed amendments to sections 86-1.62 and 86-1.63 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are intended to make current regulations consistent with changes made to the diagnosis related group (DRG) classification system used by the Medicare prospective payment system (PPS) and to modify existing and add new DRGs to reflect medically appropriate patterns of health resource use. The current service intensity weights (SIWs) and trimponts are also updated to be consistent with the proposed DRG modifications.

The SIWs and non-Medicare trimponts are an integral part of the 2004 hospital Medicaid and like payor inpatient rates. The Department makes changes to the grouper used to assign inpatient cases to the appropriate DRG. As part of this process, the Department may make modifications, revisions and create new DRGs that reflect the current resources consumed by inpatients. After the grouper is modified, the SIWs and trimponts must be recalculated consistent with the newly created and updated list of DRGs, thus creating new values for the SIWs and trimponts in sections 86-1.62 and 86-1.63. Additionally, the amendments provide payors of inpatient hospital services with the new values used to determine the correct case base payment for each DRG so hospital claims can be submitted and paid in a timely manner.

COSTS:

Costs to State Government:

The proposed regulations do not impact the cost base upon which payments are made. Therefore, costs to the State are not expected to markedly change as a result of these amendments.

Costs of Local Government:

No increase in costs to local governments is anticipated as a result of these amendments.

Costs to Private Regulated Parties:

In the aggregate, there will be no increases or decreases in hospital revenues as a result of these amendments. Changes to the DRG classification system will cause a realignment of cases among the DRGs. Those cases that require more intensive provision of care will realize an increase in the SIW (and reimbursement) for that DRG. The removal of such cases from the DRG to which they were previously assigned will decrease the SIW (and reimbursement) for that DRG. Therefore, revenues will shift among individual hospitals depending upon the diagnosis of and procedures performed on the patients they treat. The extent of the shift in revenues cannot be determined because it will depend upon future patient services.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

This regulation affects the costs to counties and New York City for services provided to Medicaid beneficiaries as described above. It imposes no program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

No significant alternatives were considered.

Federal Standards:

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

Compliance Schedule:

The proposed rule establishes rates of payment as of January 1, 2004; there is no period of time necessary for regulated parties to achieve compliance.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Compliance Requirements

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of this rule.

Professional Services

No new or additional professional services are required in order to comply with the proposed amendments

Economic and Technical Feasibility

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to make current regulations consistent with changes made to the DRG classification system used by the Medicare prospective payment system (PPS), and add new DRGs to reflect medically appropriate patterns of health resource use. The current SIWs and trimpoints are also updated to be consistent with the proposed DRG modifications.

Compliance Costs

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. In the aggregate, as a result of these amendments, there will be no anticipated increases or decreases in hospitals' revenues in the aggregate. Revenues will shift among individual hospitals depending upon the diagnoses of and procedures performed on the patients they treat and the extent to which they would be classified into the modified diagnosis related groups.

Minimizing Adverse Impact

The proposed amendments will be applied to all general hospitals. The Department of Health considered approaches specified in section 202-b(1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Small Business and Local Government Participation

Local governments and small businesses were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2003 meeting. That agenda is mailed to general hospitals qualifying as small businesses, providers, members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations that represent the interests and concerns of hospitals across New York State, including small businesses and local governments.

Rural Area Flexibility Analysis

Effect on Rural Areas Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

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

Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. In the aggregate, as a result of these amendments, there will be no increases or decreases in hospitals' revenues. Revenues will shift among individual hospitals depending upon the diagnoses of and approved procedures performed on the patients they treat.

Minimizing Adverse Impact

The proposed amendments will be applied to all general hospitals. The Department of Health considered the approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Opportunity for Rural Area Participation

Rural areas were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2003, meeting. That agenda is mailed to members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations, which represent the needs and concerns of providers across New York State, including rural areas. The amendment was described at meetings of the Fiscal Policy Committee prior to the filing of the notice of proposed rulemaking.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

NOTICE OF ADOPTION

Non-Rectifiable Offenses in Adult Care Facilities

I.D. No. HLT-01-04-00003-A

Filing No. 336

Filing date: March 24, 2004

Effective date: April 14, 2004

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

Action taken: Amendment of section 486.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 460

Subject: Non-rectifiable offenses in adult care facilities.

Purpose: To comply with a recent State Supreme Court decision stating that the department's statutory authority provides that in seeking to penalize ACFs for violations of non-rectifiable offenses, the burden of proof shall be on the department.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-01-04-00003-P, Issue of January 7, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Availability of Insurance Department Records

I.D. No. INS-15-04-00009-P

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

Proposed action: This is a consensus rule making to amend Part 241 (Regulation 71) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; and Public Officers Law, art. 6

Subject: Availability of Insurance Department records.

Purpose: To update references to names of bureaus within the department and add a reference to the department's web site.

Text of proposed rule: Section 241.1(b) is amended to read as follows:

(b) The Albany and New York City offices of the Bureau of *Public Affairs and Research* [and Statistics] shall also have conspicuously posted instructions to the public regarding the method of obtaining access to public records, consistent with this Part.

Section 241.2(a) is amended to read as follows:

(a) Requests for access to records available to the public under the Insurance Law and the Freedom of Information Law shall be made to the records access officers in the office of general counsel in the Albany or New York City office of the department. Such request for access shall be made on a form prescribed by the department for such purpose, which may be obtained from the department's Bureau of *Public Affairs and Research* [and Statistics] in Albany or in New York City, or from the department's web site at www.ins.state.ny.us.

Section 241.5(a) is amended to read as follows:

(a) The fiscal officer of the department, designated pursuant to the Freedom of Information Law, is the director of [insurance] *the bureau of* taxes and accounts, in the Albany office, (518) 474-8567.

Section 241.6(b)(3) is amended to read as follows:

(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the Committee on [Public Access to Records] *Open Government*.

Section 241.6(c)(2) is amended to read as follows:

(2) The appeal shall be determined by the superintendent or [the general counsel] *his designee* within 10 business days after its receipt. Written notice of the determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the Committee on [Public Access to Records] *Open Government*. The notice shall contain a statement of the reasons for the determination.

Text of proposed rule and any required statements and analyses may be obtained from: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

This amendment to Part 271 (Regulation No. 71) makes non-substantive changes. It deletes obsolete references and replaces them with updated references. The amendment also adds a reference to the Department's web site for the purpose of obtaining a form.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely deletes obsolete references and replaces them with updated references and adds a reference to the Department's web site for the purpose of obtaining a form.

Office of Mental Health

EMERGENCY RULE MAKING

Operation of Residential Treatment Facilities for Children and Youth

I.D. No. OMH-15-04-00001-E

Filing No. 337

Filing date: March 26, 2004

Effective date: March 26, 2004

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 June 23, 2004.

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: §§ 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 resi-

dences, 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 Otilie, was at 56 beds and another, Linden Hill, was at 55 beds. St. Christopher Otilie 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 expired 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.

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

Patients Committed to the Custody of the Commissioner

I.D. No. OMH-15-04-00002-P

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

Proposed action: Amendment of Part 540 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 7.09(c) and 31.04(a); and Criminal Procedure Law, art. 730

Subject: Patients committed to the custody of the commissioner pursuant to Criminal Procedure Law, art. 730.

Purpose: To establish a faster and more appropriate process for determination of fitness to stand trial and return to court of a patient against whom criminal charges are pending.

Substance of proposed rule (Full text is posted at the following State website: www.omh.state.ny.us): Part 540 currently provides that the clinical director of a State operated forensics facility may apply to the court

for the return of a patient in the custody of his or her facility where that patient's mental status has changed in terms of their capability of understanding the court proceedings and participating in their own defense. The current regulation involves a review by the hospital forensic committee in accordance with requirements of Section 540.9. This rule will streamline the process of making determinations regarding the fitness to stand trial and the return to court of the patients involved. It will establish that the clinical director is responsible for determining whether a patient remains an incapacitated person or is fit to stand trial. It outlines that the clinical director may designate certain facility psychiatrists to examine the patient and prepare a report and recommendation to the clinical director. While the clinical director will review and consider these recommendations, he or she need not follow them.

Text of proposed 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

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

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

Regulatory Impact Statement

1. Statutory Authority: Sections 7.09(b), 7.09(c) and Section 31.04(a) of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction, the authority to administer the forensic psychiatric program, and the power to adopt regulations for quality control, respectively. Article 730 of the Criminal Procedure Law establishes the role of the Commissioner of Mental Health in the process of determining the fitness to stand trial.

2. Legislative Objectives: Article 7 and Article 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Article 730 of the Criminal Procedure Law reflects the role of the Commissioner of Mental Health in the process of determining the fitness to stand trial.

3. Needs and Benefits: This amendment will streamline proper decision making regarding changes in custody status of patients who have been committed to the custody of an Office of Mental Health (OMH) forensic facility by a criminal court after having been found to have a mental illness which renders them incapable of understanding the court proceedings against them or participating in their own defense. OMH has a responsibility to take steps, in the interest of public safety, to see that these individuals are kept at the appropriate level of custody and are promptly returned to the court when their mental status changes.

Currently Part 540 provides that the clinical director may apply to the court for the return of a patient in the custody of his or her facility where that patient's mental status has changed in terms of their capability of understanding the court proceedings and participating in their own defense. The current regulation involves a review by the hospital forensic committee in accordance with requirements of Section 540.09. The hospital forensic committee reviews, due to difficulty of scheduling and additional paperwork, often consume a period of several weeks. This adds unnecessarily to the patient's length of stay and delays the defendant's ability to face a fair and speedy trial. It also results in over crowding as patients who might otherwise return to court await the committee's action. This situation has become critical and immediate action is necessary to address it.

This rule will streamline the process of making determinations regarding the fitness to stand trial and the return to court of the patients involved. It will establish that the clinical director is responsible for determining whether a patient remains an incapacitated person or is fit to stand trial. It outlines that the clinical director may designate certain facility psychiatrists to examine the patient and prepare a report and recommendation to the clinical director. While the clinical director will review and consider these recommendations, he or she need not follow them.

In summary, this amendment streamlines the process of determining fitness to stand trial. It supports sound decision making and it maintains the final decision making authority of the clinical director. This new process will meet all the requirements and expectations of the court orders involved.

4. Costs: It is estimated that this amendment could result in a savings of at least 2,000 hours of staff time per year at Mid-Hudson Forensic Psychiatric Center. It is also estimated that by streamlining this process there will be a reduction at that facility in patient length of stay, averaging between 14 to 21 days and resulting in a savings to the State of at least \$100,000 in associated costs.

There will also be significant savings to local governments. As required by subdivision (c) of Section 43.03 of the Mental Hygiene Law, the costs of care of patients receiving services while being held pursuant to order of a criminal court must be paid by the county in which such court is located. OMH currently provides services to approximately 350 patients admitted under Article 730 of the Criminal Procedure Law. Counties are currently billed at a rate of \$301.00 per day of inpatient service. Based on an estimated 14 to 21 days reduction in length of stay the annual savings to counties, on a statewide basis, will be between \$1,475,000 to \$2,212,000.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts. This regulation applies only to state-operated forensic facilities.

6. Paperwork: This rule should decrease and simplify the paperwork requirements.

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

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative was rejected. This change is critical and is needed immediately to address census and staffing issues, improve treatment for patients, and provide for a safer environment for patients and staff.

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

10. Compliance Schedule: These regulatory amendments will be effective upon their adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose any adverse economic impact on small businesses, or local governments. There will be significant savings to local governments. As required by subdivision (c) of Section 43.03 of the Mental Hygiene Law, the costs of care of patients receiving services while being held pursuant to order of a criminal court must be paid by the county in which such court is located. OMH currently provides services to approximately 350 patients admitted under Article 730 of the Criminal Procedure Law. Counties are currently billed at a rate of \$301.00 per day of inpatient service. Based on an estimated 14 to 21 days reduction in length of stay the annual savings to counties, on a statewide basis, will be \$1,475,000 to \$2,212,000.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule will have a positive economic impact on rural counties.

There will be significant savings to rural county governments. As required by subdivision (c) of Section 43.03 of the Mental Hygiene Law, the costs of care of patients receiving services while being held pursuant to order of a criminal court must be paid by the county in which such court is located. OMH provides services to approximately 350 patients admitted under Article 730 of the Criminal Procedure Law. Counties are currently billed at a rate of \$301.00 per day of inpatient service. Based on an estimated 14 to 21 days reduction in length of stay the annual savings to counties, on a statewide basis, will be between \$1,475,000 to \$2,212,000.

Rural counties have been especially concerned about these costs since they can have a proportionately larger budget impact and are difficult to plan for or to address in the local budget process.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves procedural changes to custody determinations regarding patients at state operated forensic facilities and will not have any adverse impact on jobs and employment activities. It will have a positive impact on staffing at Mid-Hudson Forensic Psychiatric Center by reducing the amount of staff time necessary to conduct reviews and prepare documentation regarding custody determinations under Criminal Procedure Law Article 730.

Niagara Falls Water Board

NOTICE OF ADOPTION

Water and Wastewater Treatment and Distribution System

I.D. No. NFW-01-04-00008-A
Filing No. 348
Filing date: March 30, 2004
Effective date: April 14, 2004

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

Action taken: Addition of Parts 1950 and 1960 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-f

Subject: Regulation of water and wastewater treatment and distribution system in Niagara Falls, New York.

Purpose: To establish regulations for all persons who use the water, wastewater and stormwater facilities located in the City of Niagara Falls and nearby service area.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. NFW-01-04-00008-EP, Issue of January 7, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Charles C. Martorana, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 566-1512, e-mail: cmartorana@hiscockbarclay.com

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Certain Power and Energy

I.D. No. PAS-52-03-00027-A
Filing date: March 30, 2004
Effective date: March 30, 2004

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

Action taken: Revisions to sale-for-resale tariffs for expansion power, replacement power and economic development power in the service areas of New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation.

Statutory authority: Public Authorities Law, section 1005(5) and (6)

Subject: Rates for the sale of certain power and energy.

Purpose: To maintain the system's fiscal integrity; this change in the service tariffs is not the result of a Power Authority rate increase.

Text of final rule: Pursuant to the New York State Public Authorities Law, Section 1005 (5) and (6), the Power Authority of the State of New York (the "Authority") proposes to adopt the following tariff amendments providing for the recovery of costs incurred by the Authority in connection with transmission of electric power under its Expansion Power, Replacement Power, and Economic Development Power Programs in the services areas of the New York State Electric and Gas Corporation and Niagara Mohawk Power Corporation - a National Grid Company.

Rate Schedule NP-F1 (Interim Schedule of Rates for Wholesale Firm Power Service) (Replacement Power Program rates) (effective December 1, 1960)

Add a new provision to the "Adjustments" section of Rate Schedule NP-F1 to read as follows:

For New York Independent System Operator Transmission and Related Charges:

Unless there are other arrangements between the Authority and individual Replacement Power Customers, the Contractor shall also compensate the Authority for the following Charges assessed on the Authority for services provided by the New York Independent System Operator, Inc. ("NYISO") or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with deliveries to the Replacement Power recipients:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT; and
5. Any and all other charges, assessments or other amounts associated with deliveries to the Replacement Power customers that are assessed on the Authority by the NYISO under the provisions of its OATT or other tariffs.

The Authority shall designate to the Contractor which of the above NYISO Charges shall apply to the various Replacement Power customers on an account-by-account basis and in accordance with all applicable agreements. Such NYISO Charges are in addition to the Authority production charges that are charged to the Replacement Power Customers in accordance with other provisions of this tariff. The collection of such NYISO Charges from the Replacement Power customers by the Contractor shall be accomplished in a manner as may be mutually agreed upon between the Contractor and the Authority consistent with the Contractor's applicable retail tariffs.

Service Tariff No. 46 (Expansion Power Resale Service) (Expansion Power Program rates) (effective January 1, 1988)

Add a new Special Provision to Service Tariff No. 46 to read as follows:

D. New York Independent System Operator Transmission and Related Charges Unless there are other arrangements between the Authority and individual Expansion Power customers, the Company will compensate the Authority for the following Charges the Authority incurs for services provided by the New York Independent System Operator, Inc. ("NYISO") or any successor organization pursuant to its Open Access Transmission Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with deliveries to the Expansion Power customers:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT; and
5. Any and all other charges, assessments, or other amounts associated with deliveries to the Expansion Power customers that are assessed on the Authority by the NYISO under the provisions of its OATT or other tariffs.

The Authority shall designate to the Company which of the above NYISO Charges shall apply to particular Expansion Power Customers on an account-by-account basis and in accordance with all applicable agreements. Such NYISO Charges are in addition to the Authority production charges that are charged to the EP Customers in accordance with other provisions of this tariff. The collection of such NYISO Charges from the EP Customers by the Company will be accomplished in a manner as may be mutually agreed upon between the Company and the Authority, consistent with the Company's applicable retail tariffs.

Service Tariff No. 50 (Business Economic Development Power Service) (Economic Development Power Program rates) (effective May 1, 1994)

Add a new Special Provision to Service Tariff No. 50 to read as follows:

E. New York Independent System Operator Transmission and Related Charges.

Unless there are other arrangements between the Authority and individual Economic Development Power ("EDP") Customers, the Company shall compensate the Authority for the following Charges for services provided by the New York Independent System Operator, Inc. ("NYISO") or any successor organization pursuant to its Open Access Transmission

Tariff ("OATT") or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with deliveries to the EDP Customers:

1. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
2. Marginal losses;
3. The New York Power Authority Transmission Adjustment Charge ("NTAC");
4. Congestion costs, less any associated grandfathered Transmission Congestion Contracts ("TCCs") as provided in Attachment K of the OATT; and
5. Any and all other charges, assessments or other amounts associated with deliveries to the EDP Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or other tariffs.

The Authority shall designate to the Company which of the above NYISO Charges shall apply to the EDP Customers on an account-by-account basis and in accordance with all applicable agreements. Such NYISO Charges are in addition to the Authority production charges that are charged to the EDP Customers in accordance with other provisions of this tariff. The collection of such NYISO Charges from the EDP Customers by the Company shall be accomplished in a manner as may be mutually agreed upon by the Company and the Authority, consistent with the Company's applicable retail tariffs.

Final rule as compared with last published rule: Nonsubstantive changes were made in Service Tariffs NP-F1, 46 and 50 in the first and last sentence in relation to non-substantive administrative matters.

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

NOTICE OF ADOPTION

Rates for the Sale of Certain Power and Energy

I.D. No. PAS-03-04-00016-A

Filing date: March 30, 2004

Effective date: April 1, 2004

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

Action taken: Revision in rates for the sale of firm power to governmental customers located primarily in New York City.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of certain power and energy.

Purpose: To recover the authority's cost of providing firm power and energy services.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-03-04-00016-P, Issue of January 21, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

EMERGENCY RULE MAKING

Issuance of Debt by Astoria Energy LLC

I.D. No. PSC-15-04-00007-EA

Filing date: March 26, 2004

Effective date: March 26, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 04-E-0201, granting Astoria Energy LLC (Astoria) authority to issue non-recourse debt.

Statutory authority: Public Service Law, section 69
Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.
Specific reasons underlying the finding of necessity: Insufficient funding would cause a delay in commencing the construction of the Astoria Generating Facility raising a grave risk that it will not be available to meet the demand expected in 2006.
Subject: Issuance of debt.
Purpose: To approve financing for the construction of Astoria’s generating facility.
Substance of emergency rule: The Commission adopted as an emergency permanent rule a request by Astoria Energy LLC for authority to issue debt to fund the construction of a 500 megawatt generating facility in the Borough of Queens, New York City, subject to the terms and conditions set forth in the Order.
The agency adopted the provisions of this emergency rule as a permanent rule, pursuant to section 202(6)(c) of the State Administrative Procedure Act because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.
Text of emergency rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204
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. (04-E-0201SA1)

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

Transfer of Property by Consolidated Edison Company of New York, Inc. and Astoria Energy LLC
I.D. No. PSC-15-04-00016-EP
Filing date: March 30, 2004
Effective date: March 30, 2004
 PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: The commission, on March 30, 2004, adopted an order in Case 04-M-0317, approving a joint petition by Consolidated Edison Company of New York, Inc. and Astoria Energy LLC (Astoria) allowing the transfer of an easement in certain real property in Queens County to Astoria Energy LLC.
Statutory authority: Public Service Law, section 70
Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.
Specific reasons underlying the finding of necessity: Immediate transfer of an easement is necessary to commence construction of Phase I of Astoria’s Generating Facility. A delay in construction of the facility would raise a grave risk that it will not be available to meet the projected energy demand for New York City in 2006.
Subject: Transfer of property.
Purpose: To approve the transfer of an easement.
Substance of emergency/proposed rule: The Commission approved on an emergency basis, the joint petition of Consolidated Edison Company of New York, Inc. and Astoria Energy LLC, allowing the transfer of an easement in certain real property in Queens County to Astoria Energy LLC, subject to the terms and conditions set forth in the order.
This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire June 27, 2004.
Text of rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (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. (04-M-0317SA2)

NOTICE OF ADOPTION

Security Deposit Requirements by Niagara Mohawk Power Corporation
I.D. No. PSC-25-03-00006-A
Filing date: March 25, 2004
Effective date: March 25, 2004
 PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: The commission, on March 16, 2004, adopted an order in Case 03-M-0772 directing Niagara Mohawk Power Corporation’s (Niagara Mohawk) to return to customers with interest security deposits collected under its leased-based policy.
Statutory authority: Public Service Law, section 36
Subject: Residential security deposits.
Purpose: To monitor the results of Niagara Mohawk’s efforts to reduce its high uncollectible expenses.
Substance of final rule: The Commission directed Niagara Mohawk Power Corporation to return to customers with interest all security deposits collected under its leased-based policy, 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. (03-M-0772SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Forest Park Water Company, Inc.
I.D. No. PSC-42-03-00013-A
Filing date: March 29, 2004
Effective date: March 29, 2004
 PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: The commission, on March 16, 2004, adopted an order in Case 03-W-0979, approving revisions to Forest Park Water Company’s (Forest Park) tariff schedule, P.S.C. No. 2—Water.
Statutory authority: Public Service Law, section 89-c(10)
Subject: Tariff filing.
Purpose: To allow Forest Park to increase its annual water revenues.
Substance of final rule: The Commission authorized an increase in Forest Park Water Company, Inc.’s tariff rates over the next two years to provide a total increase in annual water revenues of \$133,668 or 36%, 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. (03-W-0979SA2)

NOTICE OF ADOPTION

Electronic Filing of Tariff Schedule by Somers Chase Water Works Corporation**I.D. No.** PSC-49-03-00012-A**Filing date:** March 30, 2004**Effective date:** March 30, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-W-1606, approving Somers Chase Water Works Corporation's (Somers Chase) initial electronic tariff schedule, P.S.C. No. 1—Water.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule.

Purpose: To allow the new electronic tariff schedule to take effect April 1, 2004.

Substance of final rule: The Commission authorized Somers Chase Water Works Corporation's (Somers Chase) initial electronic tariff schedule, P.S.C. No. 1—Water, to go into effect on April 1, 2004, and granted Somers Chase exemption from the rate making setting requirements of PSL § 89-c, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-W-1606SA1)

NOTICE OF ADOPTION

Long Term Main Renewal Program by United Water New Rochelle Inc.**I.D. No.** PSC-51-03-00008-A**Filing date:** March 29, 2004**Effective date:** March 29, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-W-1146, approving United Water New Rochelle Inc.'s (United Water) request to extend its Long Term Main Renewal Program.

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

Subject: Long Term Main Renewal Program.

Purpose: To extend the Long Term Main Renewal Program.

Substance of final rule: The Commission granted United Water New Rochelle Inc. authorization to extend the Long Term Main Renewal Program two years, from January 1, 2004 to December 31, 2005 and to recover the costs via a surcharge on customers' bills until such time as the full amount is recovered, 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.

(03-W-1146SA2)

NOTICE OF ADOPTION

Major Rate Increase by the Village of Freeport**I.D. No.** PSC-52-03-00022-A**Filing date:** March 25, 2004**Effective date:** March 25, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-E-0686, approving modifications to the Village of Freeport's tariff schedule, P.S.C. No. 8—Electricity.

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

Subject: Tariff filing for major rate increase.

Purpose: To allow the Village of Freeport to increase annual electric revenues.

Substance of final rule: The Commission authorized the Village of Freeport to increase its annual electric revenues by \$4.32 million or 18.2% and directed the Village of Freeport to file additional tariff revisions on not less than one day's notice, to take effect as of April 1, 2004, 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.

(03-E-0686SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Intercarrier Agreement by Citizens Telecommunications Company of New York, Inc. and PaeTec Communications, Inc.****I.D. No.** PSC-15-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Citizens Telecommunications Company of New York, Inc. and PaeTec Communications, Inc. to revise the interconnection agreement effective on Oct. 5, 2001.

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

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

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and PaeTec Communications, Inc. in October 2001. The companies subsequently have jointly filed amendments to clarify the provisions regarding interconnection trunking arrangements and specified points of interconnection. The Commission is considering these changes.

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.

(01-C-1956SA3)

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

Interconnection of the Networks between PaeTec Communications, Inc. and Alltel New York, Inc.

I.D. No. PSC-15-04-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by PaeTec Communications, Inc. and Alltel New York, Inc. for approval of an interconnection agreement executed on Oct. 6, 2003.

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

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

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

Substance of proposed rule: PaeTec Communications, Inc. and Alltel New York, Inc. have reached a negotiated agreement whereby PaeTec Communications, Inc. and Alltel New York, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 30, 2004, or as extended.

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. (04-C-0119SA1)

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

Interconnection of the Networks between Verizon New York Inc. and Trans National Communications International

I.D. No. PSC-15-04-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Trans National Communications International for approval of an interconnection agreement executed on Feb. 9, 2004.

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

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

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

Substance of proposed rule: Verizon New York, Inc. and Trans National Communications International have reached a negotiated agreement whereby Verizon New York, Inc. and Trans National Communications International will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until February 8, 2006, or as extended.

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.

(04-C-0369SA1)

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

Interconnection of the Networks between Verizon New York Inc. and CornerStone Telephone Company

I.D. No. PSC-15-04-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and CornerStone Telephone Company for approval of an interconnection agreement executed on March 3, 2004.

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

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

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

Substance of proposed rule: Verizon New York, Inc. and CornerStone Telephone Company have reached a negotiated agreement whereby Verizon New York, Inc. and CornerStone Telephone Company will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until March 2, 2006, or as extended.

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.

(04-C-0370SA1)

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

Interconnection of the Networks between Verizon New York Inc. and NextGen Telephone, Inc.

I.D. No. PSC-15-04-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and NextGen Telephone, Inc. for approval of an interconnection agreement executed on Feb. 6, 2004.

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

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

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

Substance of proposed rule: Verizon New York Inc. and NextGen Telephone, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and NextGen Telephone, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers.

The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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.

(04-C-0371SA1)

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

Interconnection of the Networks between Verizon New York Inc. and Econodial, LLC

I.D. No. PSC-15-04-00017-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Econodial, LLC for approval of an interconnection agreement executed on Feb. 20, 2004.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Econodial, LLC have reached a negotiated agreement whereby Verizon New York Inc. and Econodial, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 1, 2004, or as extended.

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.

(04-C-0373SA1)

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

Interconnection of the Networks between Frontier Telephone of Rochester, Inc. and Corporatepage.com, Inc. d/b/a Upstate Telephone and Cellular

I.D. No. PSC-15-04-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Telephone of Rochester, Inc. and Corporatepage.com, Inc. d/b/a Upstate

Telephone and Cellular for approval of an interconnection agreement executed on Feb. 2, 2004.

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

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

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

Substance of proposed rule: Frontier Telephone of Rochester, Inc. and Corporatepage.com, Inc. d/b/a Upstate Telephone and Cellular have reached a negotiated agreement whereby Frontier Telephone of Rochester, Inc. and Corporatepage.com, Inc. d/b/a Upstate Telephone and Cellular will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until April 4, 2004, or as extended.

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.

(04-C-0376SA1)

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

Interconnection of the Networks between Frontier Communications of New York, Inc. and PAETEC Communications, Inc.

I.D. No. PSC-15-04-00020-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of New York, Inc. and PAETEC Communications, Inc. for approval of an interconnection agreement executed on Jan. 26, 2004.

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

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

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

Substance of proposed rule: Frontier Communications of New York, Inc. and PAETEC Communications, Inc. have reached a negotiated agreement whereby Frontier Communications of New York, Inc. and PAETEC Communications, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 26, 2006, or as extended.

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.

(04-C-0377SA1)

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

Rates for Unbundled Network Elements Platform (UNE-Ps) and Transport Rates by Verizon New York Inc.

I.D. No. PSC-15-04-00021-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 or not to direct Verizon New York Inc. (Verizon) to file a tariff for unbundled network element platform (UNE-P) rates and transport rates.

Statutory authority: Public Service Law, sections 92(2), 94(2)

Subject: Unbundled network elements platform (UNE-Ps) and transport rates.

Purpose: To consider directing Verizon to file rates for UNE-Ps and transport.

Substance of proposed rule: The Commission is considering whether or not to direct Verizon New York Inc. (Verizon) to file a tariff for Unbundled Network Element Platform (UNE-P) rates and Transport rates.

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

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

(04-C-0420SA1)

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

Submetering of Electricity by Glenn Gardens Associates, L.P.

I.D. No. PSC-15-04-00022-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 Glenn Gardens Tenants' Association to reverse its approval in its order issued on Feb. 18, 2004 on the petition filed by Glenn Gardens Associates, L.P. to submeter electricity at 175 West 87th Street, Manhattan, New York.

Statutory authority: Public Service Law, sections 65(1), 66(1), (2), (3), (4), (5), (12), (14)

Subject: Submetering of electricity.

Purpose: To permit electric submetering at 175 West 87th Street in Manhattan, New York.

Substance of proposed rule: The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private or government entities according to established guidelines. The Owner at 175 West 87th Street, Manhattan, NY, Glenn Gardens Associates, L.P., had submitted a proposal to master meter and submeter his residential complex that is undergoing renovations. The total electric building usage for this complex will be master metered and each residential unit will be individually submetered.

The submetering plan set forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems in compliance with the Home Energy Fair Practices Act (HEFPA).

The Commission issued an order on February 18, 2004 that accepted the proposal to submeter electricity at 175 West 87th Street, Manhattan, New York.

By letter dated March 17, 2004, the Glenn Gardens Tenants' Association filed a petition of re-hearing for the Commission to reconsider its

decision on the submetering proposal submitted by Glenn Gardens Associates, L.P. The petition presents the following reasons for the re-hearing: 1) tenants of Glenn Gardens did not receive notification of Glenn Gardens Associates, L.P. intent to petition the Commission to submeter electricity; 2) submeters had been installed in vacant apartments three months prior to filing the petition; and, 3) more than 40 renovated apartments had been submetered with new tenants currently receiving billings for submetered electricity prior to Commission approval.

The Commission may accept, deny or modify, in whole or in part, the petition for rehearing on the proposal to submeter electricity at 175 West 87th Street, Manhattan, NY.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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-1425SA2)

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

Transfer of Certain Electrical Substation Facilities by Niagara Mohawk Power Corporation

I.D. No. PSC-15-04-00023-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 March 8, 2004 petition filed by Niagara Mohawk Power Corporation seeking authorization to transfer certain electric substation facilities to Oneida Indian Nation.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain electric substation facilities.

Purpose: To transfer certain electric substation facilities to Oneida Indian Nation.

Substance of proposed rule: On March 8, 2004, Niagara Mohawk Power Corporation (the Company) filed a petition, pursuant to Public Service Law Section 70, requesting authorization to transfer certain electric substation facilities to Oneida Indian Nation (the Nation) for \$1,228,047.60. Upon entering into a Customer Service Agreement with the Nation on June 5, 1996, the Company constructed a 115 kv to 13.2 kv substation (the Substation) for the purpose of providing electric service to the Turning Stone Casino Resort, Hotel and other associated structures owned by the Nation and located at the premises. The original Customer Service Agreement included a provision that permitted the Nation to purchase the Substation upon early termination of the Agreement. The Public Service Commission 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. Brilling, 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.

(04-E-0309SA1)

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

Area and Street Lighting Changes by Central Hudson Gas & Electric Corporation

I.D. No. PSC-15-04-00024-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal by Central Hudson Gas & Electric Corporation to make various changes to its rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 15—Electricity, to become effective June 25, 2004.

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

Subject: Area and street lighting.

Purpose: To revise certain terms of service, eliminate certain lighting options and to provide additional lighting options within service classifications Nos. 5 and 8.

Substance of proposed rule: Central Hudson Gas & Electric Corporation filed proposed tariff revisions to revise certain terms of service, eliminate certain lighting options and to provide additional lighting options within Service Classifications No. 5 - Area Lighting and No. 8 - Public Street and Highway Lighting, to become effective June 25, 2004.

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.

(04-E-0385SA1)

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

Transmission Revenue Adjustment by Niagara Mohawk Power Corporation

I.D. No. PSC-15-04-00025-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal by Niagara Mohawk Power Corporation to make various changes to its rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 207—electricity, to become effective June 4, 2004.

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

Subject: Rule No. 43—transmission revenue adjustment.

Purpose: To allocate a percentage of the transmission revenue adjustment to S.C. No. 4—second voltage level customers.

Substance of proposed rule: Niagara Mohawk Power Corporation (the company) filed proposed tariff revisions to Rule No. 43 - Transmission Revenue Adjustment to become effective June 4, 2004. The company proposes to allocate a percentage of the Transmission Revenue Adjustment (TRA) to S.C. No. 4 - Secondary Voltage Level Customers (S.C. No. 4 - Secondary) at the same percentage allocation factors of its parent service classifications, S.C. Nos. 3 and 3A. Since the customers being added to S.C. No. 4 - Secondary are currently paying the parent class TRA rates, the company's proposal will not result in any TRA rate changes for these customers.

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.

(04-E-0419SA1)

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

Base Cost of Fuel by the Village of Richmondville

I.D. No. PSC-15-04-00026-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal by the Village of Richmondville to make various changes to its rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—electricity, to become effective September 1, 2004.

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

Subject: Base cost of fuel and factor of adjustment.

Purpose: To revise the base cost of fuel and the factor of adjustment which recovers system losses.

Substance of proposed rule: The Village of Richmondville (the Village) filed proposed tariff revisions to its electric tariff schedule to become effective September 1, 2004. The Village proposes to revise its base cost of fuel to allow the Village to recover additional fuel cost in base rates and to revise its factor of adjustment which recovers system losses.

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.

(04-E-0421SA1)

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

Clarification to Tariff Provisions by National Fuel Gas Distribution Corporation

I.D. No. PSC-15-04-00027-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 National Fuel Gas Distribution Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 8.

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

Subject: Clarifications to tariff provisions.

Purpose: To make clarifications and corrections.

Substance of proposed rule: National Fuel Gas Distribution Corporation proposes clarifying revisions to its gas tariff schedule, P.S.C. No. 8. The revisions: reflect changes in the NYCRR and the Public Service Law regarding shared meters; change the published index used for establishing various charges; replace "DTI South Point" with "Dominion South Point" to match the terminology used by Platts (the publisher of "Gas Daily"); and correct Economic Development Zone rate discounts for Daily Metered Transportation Service and Monthly Metered Transportation Service customers with a maximum annual capability of burning between 5,000 and 25,000 MCF.

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: Jaelyn 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.

(04-G-0304SA1)

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

Replacement of Expired Storage Contracts and Capacity Cost Imputation by Rochester Gas & Electric Corporation

I.D. No. PSC-15-04-00028-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Rochester Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 16.

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

Subject: Replacement of expired storage contracts and the expiration of the company's capacity cost imputation.

Purpose: To reflect the replacement of the expired Union Gas Limited Storage Contracts and to address the expiration of the company's capacity cost imputation.

Substance of proposed rule: Rochester Gas and Electric Corporation proposes changes to its gas tariff schedule, P.S.C. No. 16. The revisions reflect the replacement of the expired Union Gas Limited Storage Contracts with the BP Canada Energy Company Delivery and Storage Redelivery Service and address the expiration of the company's Capacity Cost Imputation which is an element of the company's Capacity Incentive Program.

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: Jaelyn 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.

(04-G-0386SA1)

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

Lightened Regulation of Utility Operations by Eastman Kodak Company

I.D. No. PSC-15-04-00029-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 a petition from Eastman Kodak Company for lightened regulation of electric, gas, steam and water utility operations within its Kodak Park facility located in the City of Rochester and the Town of Greece. The commission may adopt, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 2(10), (11), (12), (13), 2(21), (22), 2(26), (27), 5(b), 64, 65, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89-a, 89-b, 89-c, 89-d, 89-e, 89-f,

89-g, 89-h, 89-i, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b, 119-c

Subject: Lightened regulation of electric, gas, steam and water utility operations.

Purpose: To approve lightened regulation.

Substance of proposed rule: The Commission is considering a petition from Eastman Kodak Company for lightened regulation of electric, gas, steam and water utility operations within its Kodak Park facility located in the City of Rochester and the Town of Greece. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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: Jaelyn 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.

(04-M-0388SA1)

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

Transfer of Certain Biomass Processing by Niagara Mohawk Power Corporation

I.D. No. PSC-15-04-00030-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 by Niagara Mohawk Power Corporation ("Niagara Mohawk" or "the Company") and Dunkirk Power LLC ("Purchaser") for authority, pursuant to Public Service Law, section 70, to transfer a biomass processing system installed at the Dunkirk Steam Station Unit 1, to purchaser.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain biomass processing technology.

Purpose: To permit the transfer of certain biomass processing technology to Dunkirk Power LLC.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition from Niagara Mohawk Power Corporation requesting permission to transfer certain biomass processing technology to Dunkirk Power LLC pursuant to PSL Section 70.

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: Jaelyn 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-1767SA1)

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

Refinancing of Existing Debt by Heritage Hills Water Works Corporation

I.D. No. PSC-15-04-00031-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 a petition of Heritage Hills Water Works Corporation to incur debt in the amount of \$2,500,000 to refinance existing debt and finance other projects. The commission may approve, modify, or reject, in whole or in part the request of Heritage Hills Water Works.

Statutory authority: Public Service Law, section 89-f

Subject: Refinance existing debt financing of projects.

Purpose: To obtain approval to issue long-term debt.

Substance of proposed rule: By petition dated March 18, 2004, Heritage Hills Waterworks Corporation requests Commission approval to incur debt in the amount of \$2,500,000 to refinance existing debt and to finance other projects. The Commission may approve, modify, or reject, in whole or in part the request of Heritage Hills Water Works Corporation.

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.

(04-W-0366SA1)

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

Water Rates and Charges by High Meadow Water Company, Inc.

I.D. No. PSC-15-04-00032-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by the High Meadows Water Company, Inc. to make various changes in the rates and charges contained in its tariff schedule, P.S.C. No. 2—Water, to become effective July 1, 2004.

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

Subject: Water rates and charges.

Purpose: To increase High Meadows Water Company, Inc. annual revenues by about \$36,167 or 90%.

Substance of proposed rule: On March 15, 2004, the High Meadows Water Company, Inc. (High Meadows) filed to become effective July 1, 2004, First Revised Leaf No. 12 to its tariff schedule P.S.C. No. 2 - Water. High Meadows currently provides water service to 79 customers and is located in the Town of North Greenbush, Rensselaer County. The proposed filing would increase the rates by 90% and annual revenues by \$36,167. The Commission may approve or reject, in whole or in part, or modify the company'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.

(04-W-0414SA1)

Racing and Wagering Board

NOTICE OF ADOPTION

Discretion by the Stewards when Determining Whether to Disqualify

I.D. No. RWB-50-03-00001-A

Filing No. 352

Filing date: March 30, 2004

Effective date: April 14, 2004

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

Action taken: Amendment of section 4035.2(b) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering & Breeding Law, sections 101 and 212

Subject: Discretion of the stewards when determining whether to disqualify.

Purpose: To vest the stewards with the discretion and ability to use their experience to consider whether the foul altered the finish and whether a DQ is merited.

Text or summary was published in the notice of proposed rule making, I.D. No. RWB-50-03-00001-P, Issue of December 17, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Erin Dahlmeyer, Racing & Wagering Board, One Water-vliet Ave. Ext., Albany, NY 12206-1668, (518) 453-8460, e-mail: edeahlmeyer@racing.state.ny.us

Assessment of Public Comment

No negative comments were received. Two comments were received. One OTB stated they had no comment. NYRA indicated support for proposal.

Department of State

NOTICE OF ADOPTION

Inspection of College Buildings for Fire Safety Compliance

I.D. No. DOS-52-03-00002-A

Filing No. 346

Filing date: March 30, 2004

Effective date: April 14, 2004

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

Action taken: Addition of Part 500 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 91, 156 and 156-e; and Education Law, section 807-b

Subject: Inspection of college buildings for fire safety compliance with the Uniform Fire Prevention and Building Code.

Purpose: To protect college students and staff from injury or death because of fires.

Text of final rule: 19 NYCRR Chapter XII, Office of Fire Prevention and Control, is amended by the addition of a new Part 500 to read as follows:

PART 500

CAMPUS FIRE SAFETY

500.1 Authority, intent, purpose and scope

(a) The Department of State, Office of Fire Prevention and Control (OFPC) has authority to inspect the majority of public and independent college facilities in the state for compliance with both the Uniform Fire Prevention and Building Code (UFPBC) and Education Law, section 807. The Department, through OFPC, also has authority to prepare inspection reports, issue citations and corrective orders for violations, take appropriate actions to ensure compliance with its orders, and do all other things necessary and appropriate to effectuate the law. This Part establishes

procedural and substantive requirements to implement and apply that authority.

(b) This Part is inapplicable to the City of New York, which shall continue to conduct inspections of public and independent colleges under its jurisdiction.

500.2 Inspections and reports

(a) The authorities in charge of any public or independent college or university shall permit the interior and exterior of all buildings under their jurisdiction to be inspected at least annually, when in use, for compliance with both the UFPBC and Education Law, section 807, as applicable, as provided in this Part.

(b) Either OFPC or a county, city, town or village to which OFPC has delegated inspection authority under this Part (the "inspecting authority"), shall conduct the inspections. College and university authorities shall provide the inspector with access to all building areas. An employee with knowledge of the physical characteristics of the buildings shall accompany the inspector during each inspection.

(c) Inspections shall consist of the following activities: exterior examination of the building in question; interior examination of all areas of the building in question; review of any recently completed or planned building alterations, additions, or renovations; audit of all inspection, testing and maintenance records of building systems as required by the UFPBC; review of all records pertaining to fire evacuation drills and fire safety training activities; review of reports of any fire activity within the building since the last inspection.

(d) All inspections shall be recorded in a format prescribed by OFPC.

(e) OFPC or a local government to which inspection authority has been delegated shall produce a report for each building inspected.

(f) The buildings in which a violation exists may be reinspected to verify abatement has been accomplished.

(g) The inspecting authority may inspect any college or university building upon report of a real or suspected fire danger made by students, staff, parents, a member of the public, local governments or the college or university authorities, or when in the opinion of the inspecting agency, unsafe or noncompliant conditions may exist as a result of activities within a building. The inspection shall be limited to the building in which the suspected danger was reported.

500.3 Report of Inspection/Notice of Violation

(a) When a violation is determined to exist, it shall be identified by the inspecting authority on a Report of Inspection/Notice of Violation. The inspecting authority shall file the Report within 90 days of the inspection with the college or university authorities, the Commissioner of Education, and the chief or other comparable officer of any fire department or fire corporation having jurisdiction to fight fire in the building inspected. Where there has been a delegation of inspection authority, the inspecting authority shall also file a copy of the Report with OFPC.

(b) The Report shall contain the following:

- (1) the nature and location of the violation;
- (2) reference to applicable sections of the UFPBC, or of Education Law, section 807, as applicable; and
- (3) the earliest date by which a reinspection will occur.

500.4 Reinspection; Order to Comply

(a) Whenever a reinspection is performed and a violation previously identified on a Report of Inspection/Notice of Violation has not been satisfactorily abated as required, the inspecting authority shall serve an Order to Comply on the authority having jurisdiction over the property or structure.

(b) The Order to Comply shall state:

- (1) the location and nature of the violation and the date by which abatement must occur;
- (2) the earliest date by which a reinspection will occur; and
- (3) the daily penalties which may be imposed upon failure to comply as required.

(b) The inspecting authority shall serve an Order to Comply either personally or by certified mail, return receipt requested, on either the president of the college or university or on an individual duly designated to accept such service.

500.5 Penalties

OFPC may assess monetary penalties of up to five hundred dollars per calendar day commencing on the first day following the abatement date specified in the Order, and continuing until the violation has been abated. Abatement of violations shall be verified by OFPC. Calculation of monetary penalties shall be governed by the following standards which will be used to determine the gravity of the violation:

(a) Fire probability and loss severity.

(1) Fire probability is OFPC's assessment of the likelihood that a fire will occur. At a minimum, the following factors shall be considered: contents, processes, arrangement of contents, occupancies, operations conducted in the area, construction class and hours of operation. Based upon these factors, OFPC will assign one of the following fire probability values from the table appearing in paragraph (2) of this subdivision:

- (i) Likely to occur immediately or within a short period of time (fire probability A).
- (ii) Probably will occur in time (fire probability B).
- (iii) Possible to occur in time (fire probability C).
- (iv) Unlikely to occur (fire probability D).

(2) Loss Severity is OFPC's assessment of the expected loss should a fire occur. At a minimum the following factors shall be considered: contents, processes, occupancies, construction, installed fire protection features and impact of the deficiency during a fire. Based upon these factors, OFPC will assign one of the following loss severity values from the table appearing in paragraph (2) of this subdivision:

- (i) Loss of life, major monetary loss (>\$5,000,000) (loss severity 1).
- (ii) Permanent disability, possible death, severe monetary loss (\$1,000,000 - \$5,000,000) (loss severity 2).
- (iii) Possible injury, moderate monetary loss (\$100,000 - \$999,999) (loss severity 3).
- (iv) Injury unlikely, slight monetary loss (<\$100,000) (loss severity 4).

(b) A determination of the Fire Safety Deficiency Code (FSD) will be made from the table below based on the fire probability value and the loss severity value.

LOSS SEVERITY	FIRE PROBABILITY			
	A	B	C	D
1	I	I	II	III
2	I	II	III	IV
3	II	III	IV	VI
4	III	IV	V	V

(c) Fine amounts and abatement periods. Once the FSD Codes for each violation are determined, a hazard class, predetermined daily fines and maximum abatement period shall be established according to the following table:

FSD Code	Violation Class	Definition	Daily Fine	Maximum Abatement Period
I	Severe	A severe violation that would result in high loss of life or catastrophic loss of the facility or contents.	\$500	1 day
II	Serious	A serious violation that has a high probability of loss of life or major impact on the facility or contents.	\$400	3 days
III	Significant	A violation that may constitute a significant risk to life or property.	\$200	7 days
IV	Moderate	A violation that may contribute to minor property damage or slight risk to people.	\$100	15 days
V	Minimal	A violation that has little impact on property or people.	\$50	30 days

(d) Fines shall be paid within 30 days of assessment.

(e) The State Fire Administrator shall have the discretion to compromise or settle fines where there is written demonstration that the public interest in fire safety would so warrant. No compromise or settlement shall occur while the violation for which the fine was imposed continues unabated.

500.6 Methods of Abatement. Violations may be considered abated by either one or a combination of the following means:

(a) Direct correction of the condition or behavior that is in violation of the UFPBC or Education Law, section 807, as applicable; and/or

(b) *OFPC acceptance of a written compliance plan from the college or university, demonstrating a commitment to undertake corrective action to abate the violation(s). The plan shall contain, but not be limited to, procedural and/or policy changes, specification of the necessary training, work, personnel, materials, expected costs, time lines, and procurement and financial commitments which are necessary to achieve abatement.*

500.7 Certificate of Compliance

(a) *Where inspection of a building reveals that it is in full compliance with the UFPBC and/or Education Law, section 807, as applicable, OFPC or its designee shall issue a Certificate of Compliance in a format prescribed by OFPC.*

(b) *The Certificate of Compliance shall be prominently posted in a protective frame or case within the building and shall provide the telephone number and address at which OFPC may be contacted.*

(c) *The Certificate of Compliance shall be valid for a period of one year unless sooner revoked as provided in this Part.*

500.8 Revocation of a Certificate of Compliance

(a) *OFPC may revoke any Certificate of Compliance whenever it finds that a violation of the UFPBC or Education Law, section 807 exists.*

(b) *Immediately upon receiving a revocation notice from OFPC, the college or university authorities shall remove the Certificate of Compliance from its posted location and replace it with a notice that the Certificate of Compliance has been revoked, stating the reasons therefor and the telephone number and address at which OFPC may be contacted.*

500.9 Order to Vacate

Notwithstanding any other provision of this Part, OFPC may order the closing of a building, buildings or parts thereof whenever a severe or serious violation exists; or whenever justified by the cumulative effect of numerous significant violations, which constitute conditions OFPC determines to be an imminent threat to public health or safety.

(a) *An imminent threat to public health or safety is a condition or practice in any building or facility which creates a situation which could reasonably be expected to cause death or serious physical harm immediately or before abatement can be achieved.*

(b) *OFPC's authority to order closing of buildings or parts thereof shall only be exercised by the State Fire Administrator, Deputy State Fire Administrator, or a Bureau Chief or Deputy Bureau Chief of OFPC.*

500.10 Delegation of inspection authority to local governments

(a) *Except as provided in paragraph (4) of this subdivision, a county, city, town or village may by resolution of its legislative body apply to OFPC for delegation of its inspection authority in relation to independent colleges and universities. The resolution shall specify which local government office shall be responsible for carrying out the duties delegated. The county, city, town or village shall forward such resolution and application to OFPC. Where a delegation has been made to both a county, and a city, town or village within such county, the authority delegated shall be exercised by the city, town or village to the extent authorized by OFPC.*

(1) *OFPC may make such delegation upon acceptable demonstration by the applicant of adequate capability, resources and commitment. Such demonstration shall consist of but not be limited to a showing of:*

(i) *sufficient and properly trained staff;*

(ii) *adequate funding;*

(iii) *a proven record of obtaining compliance with the UFPBC and/or Education Law, section 807, as applicable;*

(iv) *certification of inspectors by the State Fire Administrator; and*

(v) *a statement in the resolution that no fee shall be charged for inspections performed pursuant to Education Law, section 807-b;*

(2) *A delegation shall expire three years from the date made in writing by OFPC. OFPC may, however, revoke a delegation or continue it subject to terms and conditions, where OFPC finds that inspections, the prompt filing of reports thereof, or the faithful execution of any other delegated duties, are inadequate or ineffective.*

(3) *An application for renewal of the delegation shall be accompanied by a new resolution of the legislative body at least 90 days prior to the expiration of the previous delegation. If renewal does not occur for any reason, all authority previously delegated shall revert to OFPC.*

(4) *The authority of OFPC to impose penalties on public and independent colleges and universities for violations of the UFPBC and/or Education Law, section 807, as applicable, shall not be delegated by OFPC. Instead, the local inspection authority shall promptly refer all cases of violations to OFPC for further action.*

(b) *The duties, rights and powers conferred upon OFPC by Executive Law, section 156-e and Education Law, section 807-b, with respect to the*

State University of New York (SUNY) and other public college facilities as identified in Education Law, sections 350 and 352, shall not be delegated.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 500.3, 500.4, 500.5, 500.9 and 500.10.

Text of rule and any required statements and analyses may be obtained from: John F. Mueller, Department of State, 41 State St., Albany, NY 12231, (518) 474-6746

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

The rule as adopted contains nonsubstantial revisions. These revisions do not necessitate that a revised Regulatory Impact Statement, revised Regulatory Flexibility Analysis for Small Businesses and Local Governments, revised Rural Area Flexibility Analysis, or revised Job Impact Statement be issued.

Assessment of Public Comment

The agency received no public comment.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Articles of Organization of the Student Assembly

I.D. No. SUN-15-04-00008-P

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

Proposed action: Amendment of Part 341 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b)

Subject: Articles of organization of the student assembly of the State University of New York.

Purpose: To make changes in certain structural features and organizational rules of the student assembly in order to increase effectiveness of the University-wide student governance organization.

Text of proposed rule: § 341.17 Executive Committee.

(a) There shall be an Executive Committee of the Student Assembly to conduct necessary business between meetings of the Student Assembly and other matters as prescribed by this Article or the Bylaws. The Executive Committee shall include the officers of the Student Assembly and the designated number of representatives from the following: [one representative] *two representatives* from the University Centers (undergraduate division); [two] *three* representatives from the University Colleges; [one representative from the Colleges of Technology or the Colleges of Agriculture and Technology;] one representative from the Health Science Centers—[one representative from the Specialized/Statutory Colleges;] *two representatives from the Colleges of Technology, Agriculture and Technology, and Specialized/Statutory Colleges;* one representative from the University Centers (graduate division); [four] *six* representatives from the Community Colleges and one nonvoting student representative from each standing committee.

(b) The members of the Executive Committee shall be elected by and from among the representatives of the designated constituencies according to procedures outlined in the Bylaws. Each designated constituency shall elect from among its representatives alternate(s) to serve in the absence of its representative(s) to the Executive Committee.

(c) Meetings. Meetings of the Executive Committee are to be determined by its members with the requirement that all meeting notices required of the Student Assembly meetings be followed except for the time of notification which will be seven days for Executive Committee meetings. The President of the Student Assembly shall serve as the presiding officer of the Executive Committee.

(d) *Institutional Classification. The Student Assembly is empowered, via its bylaws, to, as necessary, classify member institutions for representation on the Executive Committee in accordance with the history and mission of each individual institution.*

Text of proposed rule and any required statements and analyses may be obtained from: Edward Engelbride, Assistant Vice Chancellor for

University Life, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5116, e-mail: engelbed@sysadm.suny.edu
Data, views or arguments may be submitted to: Same as above.

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Section 355(2)(b). Education Law, Section 355(2)(b) empowers the State University Board of Trustees to make regulations for the governance of the State University.

2. Legislative Objectives: The State University Trustees have created a number of University-wide organizations which participate in the government of the University. The Student Assembly is the structure created by the Trustees within which students participate in University-wide governance. The proposed regulations, therefore, implement the statutory authority by making improvements in the student governance organization.

3. Needs and Benefits: The State University Board of Trustees has broad statutory rule making authority covering the administration, coordination and government of the State University [Education Law, Section 355(2)(b)]. Implementing this authority, the State University Trustees have promulgated Part 341 of Title 8 of the Official Compilation of Codes, Rules and Regulations as part of the "Policies of the Board of Trustees of the State University of New York". In Part 341, the State University Trustees created a mechanism through which State University students may participate in University-wide governance by providing information and views to the Chancellor and the Trustees, along with the University Faculty Senate (Part 331) and the Campus Councils (Part 332). The Student Assembly has identified an area of needed improvement in the governance process, specifically in the structure of the Executive Committee of the organization. The proposed regulation will improve the effectiveness of the Student Assembly by increasing the number of representatives on the Executive Committee of the Student Assembly and realigning the responsibilities of the representatives with respect to campus sectors. The purpose of the expansion and realignment is to reduce the number of campuses each representative must serve.

4. Costs: No costs are associated with the proposed revision.

5. Local Government Mandates: None.

6. Paperwork: No additional paperwork is required.

7. Duplication: This regulation is not redundant with other State requirements.

8. Alternatives: This regulation implements specific statutory responsibilities of the State University Trustees. Other alternatives were considered including making no changes in Executive Committee membership, but the Student Assembly voted to approve the proposal under consideration here as the most efficient and effective.

9. Federal Standards: None.

10. Compliance Schedule: The amendments will be effective immediately upon final adoption.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

Department of Taxation and Finance

NOTICE OF ADOPTION

Estimated Tax Payments on Sales or Transfers of Real Property by Nonresident Taxpayers

I.D. No. TAF-06-04-00001-A

Filing No. 344

Filing date: March 30, 2004

Effective date: April 14, 2004

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

Action taken: Addition of Part 163 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 663 and 697(a)

Subject: Estimated tax payments on sales or transfers of real property by nonresident taxpayers.

Purpose: To implement the estimated tax on sales or transfers of real property by nonresident taxpayers as required by new section 663 of the Tax Law.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. TAF-06-04-00001-EP, Issue of February 11, 2004.

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.

