

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Regulation of Licensed Mortgage Bankers and Registered Mortgage Brokers

I.D. No. BNK-03-04-00017-E
Filing No. 1487
Filing date: Dec. 31, 2003
Effective date: Jan. 1, 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: 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.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.banking.state.ny.us): 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 March 29, 2004.

Text of 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

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:

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.

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, recording keeping 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.

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

Registration of Representative Offices of Banks, Trust Companies, Savings and Loan Associations and Savings Banks

I.D. No. BNK-03-04-00005-P

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

Proposed action: This is a consensus rule making to amend Supervisory Policy G-8 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 132, 258

Subject: Registration of representative offices of banks, trust companies, savings and loan associations, and savings banks chartered under the law of New York State or any other state of the United States.

Purpose: To set forth the circumstances under which banks, trust companies savings banks and savings and loan associations chartered under the laws of New York State, or any other state may establish representative offices in New York; expand the representative office to closely parallel those activities permissible under Federal laws; and allow representative offices of State chartered institutions operating in New York to also approve loans and execute loan documents.

Text of proposed rule: Section 8.1 General is amended to read as follows:

Any banking institution seeking to establish or maintain a representative office in this State shall submit the information called for by section 8.3 of this Supervisory Policy to the Superintendent of Banks, at the New York City Office of the Banking Department at the address set forth in section 1.1 of Supervisory Policy G-1.

Subsection (a) of Section 8.4 Permissible Activities is amended to add new paragraphs (1) and (2) and the remainder of the paragraphs are renumbered to read as follows:

(a) The activities that may be conducted by a representative office of a banking institution in this State on behalf of such banking institution shall be limited to the following:

- (1) *approval of loans*;
- (2) *execution of loan documents*;
- (3) solicitation of loans and, in connection therewith, assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans (including making recommendations with respect to action thereon);
- (4) solicitation of purchasers of loans from the banking institution;
- (5) solicitation of parties to contract with the banking institution for the servicing of its loans;
- (6) solicitation of other banking business on behalf of the banking institution;
- (7) conduct of research;
- (8) acting as a liaison with customers of the banking institution; and
- (9) other similar activities.

Subsection (b) of Section 8.4 is amended to read as follows:

(b) A representative office of a banking institution may not [approve loans, execute loan documents,] disburse funds, transmit funds, accept loan repayments, or accept or contract for deposits or deposit-type liabilities on behalf of the banking institution.

Text of proposed 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

Data, views or arguments may be submitted to: 45 days after publication of this notice.

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

Consensus Rule Making Determination

The proposed amendment to Banking Board Supervisory Policy G-8 is not likely to incur any objections. The revision adds two activities to those currently permissible for representative offices in New York State of domestic financial institutions, both those chartered in New York and in other states. These activities will help to bring the permissible scope of these activities in line with those permissible for national banks, a highly desirable goal of the New York State Banking Department (the "Department") since it will help to ensure the vitality and strength of the state-chartered banking system in New York and, indeed, in the country generally.

As part of its work on this amendment, the Department contacted the New York State Bankers Association ("NYSBA"). Based on this conversation with industry representatives, we are confident that this proposal will not receive any opposition. Indeed, based on our conversations with representatives of the NYSBA, industry comments about the proposal ranges from no position on the matter to highly positive. There were no objections voiced.

Job Impact Statement

A job impact statement is not submitted because the proposed rule has no effect on the creation or elimination of jobs. The rule amends the permissible activities of representative offices of domestic financial institutions operating in New York to include approving loans and executing documents. These additional activities are unlikely to affect substantially the level of employment at these offices, although it is conceivable that some additional hiring might take place because of these changes, but any such hiring should be limited.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-03-04-00004-P

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

Proposed action: This is a consensus rule making to amend section 83.2(g)(3) (Regulation 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To delete obsolete references to certain web sites.

Text of proposed rule: Section 83.2(g)(3) is amended to read as follows:

(3) In the time between the annual publication of these manuals, in order to provide the most current information on SSAPs that are presently under consideration at the NAIC, the NAIC has placed certain accounting pronouncements on its [website] *web site* until the next manual is published. Access to the [NAIC's Statutory Accounting Principles Working Group webpage is available at www.naic.org/1finance/sapwg/index.htm and the Emerging Accounting Issues Working Group is located at www.naic.org/1finance/eaiwg/index.htm. These pages are also accessible by clicking on "Statutory Accounting" under the "Relevant Issues" section] *accounting pronouncements is available at the NAIC's web site*, at www.naic.org.

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

The amendment makes technical changes and is non-controversial. Section 83.2(g)(3) is amended to merely delete obsolete references to certain web sites.

Job Impact Statement

The proposed rule change should have no impact on jobs and employment opportunities in New York State. The amendment merely deletes obsolete references to certain web sites.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rate/Fee Setting

I.D. No. MRD-03-04-00002-EP

Filing No. 1488

Filing date: Dec. 31, 2003

Effective date: Jan. 1, 2004

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

Action taken: Amendment of sections 635-10.5, 671.7, 680.12, 681.14 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09 and 43.02

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

Specific reasons underlying the finding of necessity: Fiscal uncertainties precluded OMRDD from securing necessary control agency approvals to allow for timely proposal and promulgation of these amendments within the regular SAPA procedural time frames. The emergency amendments revise the rates/fees of reimbursement of the referenced facilities and services. If OMRDD did not file this emergency adoption and establish the regulatory authority to pay the revised rates and fees effective Jan. 1, 2004, the loss of revenues could have a deleterious effect on the fiscal viability of some providers, especially those which have smaller operations. This potential negative effect could translate into compromised services for citizens with developmental disabilities who need such services.

Subject: Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services; HCBS waiver community residential habilitation services; specialty hospitals; intermediate care facilities for persons with developmental disabilities; and day treatment facilities serving persons with developmental disabilities.

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective Jan. 1, 2004.

Public hearing(s) will be held at: 11:00 a.m., March 8, 2004 at 65 Court St., Part 2, Buffalo, NY; 10:00 a.m., March 10, 2004 at CDPC, 75 New Scotland Ave., 3rd Fl., Classroom 38, Albany, NY; and 11:00 a.m., March 12, 2004 at 75 Morton St., Rm. 3C25B, Manhattan, NY.

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

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

Text of emergency/proposed rule: ° Paragraph 635-10.5(i)(1) - Add new subparagraph (xix):

(xix) 3.20 percent to trend 2003-2004 costs to 2004-2005. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.

Note: Rest of paragraph is renumbered accordingly.

° Paragraph 635-10.5(i)(2) - Add new subparagraph (xix):

(xix) 3.20 percent to trend calendar 2003 costs to calendar year 2004. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.

Note: Rest of paragraph is renumbered accordingly.

° Clause 671.7(a)(1)(vi)(a) - Add new subclause (12):

(12) For calendar year 2004:
 NYC and Nassau, Rockland, Suffolk, and Westchester Counties \$ 29.07 per day
 Rest of State \$ 28.07 per day

Note: Rest of clause remains unchanged.

° Clause 671.7(a)(1)(xvi)(a) - Add new subclause (10):

(10) 0.00 percent from January 1, 2004 through December 31, 2004.

° Clause 671.7(a)(1)(xvi)(b) - Add new subclause (10):

(10) 0.00 percent from July 1, 2004 through June 30, 2005.

° Paragraph 680.12(d)(3) - Add new subparagraph (xvii):

(xvii) 3.02 percent for 2004.

° Subparagraphs 681.14(g)(1)(x)-(xii) are amended as follows:

(x) Effective February 1, 2003, facilities will receive an amount that they would have received if the trend factor in subparagraph (ix) of this paragraph for the rate period of July 1, 2002 to June 30, 2003 were increased in the amount of 3.0 percent. The trend factor in effect for the rate period ending June 30, 2003 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xi) 3.43 percent for 2002-2003 to 2003-2004 [.] ; and

(xii) 3.20 percent for 2003-2004.

° Subparagraphs 681.14(g)(2)(x)-(xii) are amended as follows:

(x) Effective February 1, 2003, facilities will receive an amount that they would have received if the trend factor in subparagraph (ix) of this paragraph for calendar year 2002 were increased in the amount of 3.0 percent. The trend factor for the rate year ending December 31, 2002 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xi) 3.43 percent for 2002 to 2003 [.] ; and

(xii) 3.20 percent for 2003 to 2004.

° Subparagraphs 681.14(g)(3)(xviii)-(xx) are amended as follows:

(xviii) Effective February 1, 2003, facilities will receive an amount that they would have received if the trend factor in subparagraph (xvii) of this paragraph for the rate period of July 1, 2002 to June 30, 2003 were increased in the amount of 3.0 percent. The trend factor in effect for the rate period ending June 30, 2003 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xix) 3.43 percent for 2002-2003 to 2003-2004 [.] ; and

(xx) 3.20 percent for 2003-2004 to 2004-2005.

° Subparagraphs 681.14(g)(4)(xviii)-(xx) are amended as follows:
 (xviii) Effective February 1, 2003, facilities will receive an amount that they would have received if the trend factor in subparagraph (xvii) of this paragraph for calendar year 2002 were increased in the amount of 3.0 percent. The trend factor for the rate year ending December 31, 2002 shall be deemed to be increased in the amount of 3.0 percent; [and]

(xix) 3.43 percent for 2002 to 2003 [.] ; and

(xx) 3.20 percent for 2003 to 2004.

° Subparagraph 690.7(d)(6)(i) - Add new clause (p):

(p) 0.00 percent for 2003-2004 to 2004-2005, including those facilities in Regions II and III designated or elected to a Region I reporting year-end and fiscal cycle and excluding those facilities in Region I designated or elected to a Region II or III reporting year-end and fiscal cycle in accordance with subparagraph (b)(1)(iv) of this section.

° Subparagraph 690.7(d)(6)(ii) - Add new clause (p):

(p) 0.00 percent for 2003 to 2004, including those facilities in Region I designated or elected to Region II or III and excluding those facilities in Region II or III designated or elected to Region I in accordance with subparagraph (b)(1)(iv) of this section.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 29, 2004.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Acting Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

Public comment will be received until: five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

1. Statutory authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09.

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law. The enactment of these emergency/proposed amendments will ensure the funding to voluntary agency providers of the following services:

a. Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5).

b. Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7).

c. Specialty Hospitals (amendments to section 680.12).

d. Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD) (amendments to section 681.14).

e. Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7).

This funding is necessary in order to enable voluntary agencies that operate the above facilities to maintain services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and developmental disabilities.

3. Needs and benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities.

The emergency/proposed amendments are primarily concerned with identifying the respective trend factors applicable to these facilities and services, effective January 1, 2004.

Fiscal uncertainties precluded OMRDD from securing necessary control agency approval to allow for previous proposal and timely promulgation of these amendments within the regular SAPA procedural time frames. The loss of revenues, if OMRDD did not file this Emergency/Proposed Agency Action and establish the regulatory authority to reimburse providers of the above referenced facilities and services at revised rates/fees for the periods beginning January 1, 2004 and July 1, 2004, could have a negative effect on the fiscal viability of some providers, especially those which have smaller operations. This potentially negative effect could translate into compromised services for citizens with developmental disabilities.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

◦ For Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite, and prevocational services for the approximately 57,400 persons receiving such services as of December 2003.

The emergency/proposed amendments implement a trend factor of 3.20 percent. The estimated cost for implementation the trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$ 44.0 million for the fee periods beginning January 1, 2004 and July 1, 2004. This represents approximately \$ 20.4 million in State share and \$ 21.7 million in federal funds. The estimated cost of the 3.20 percent trend factor to local governments is approximately \$ 1.9 million on an annual aggregate basis and divided among the counties.

◦ For Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which are providing services to approximately 1,900 persons as of December 2003. The emergency/proposed amendments implement a trend factor of zero percent. There are therefore no costs attributable to this amendment, either to the State or to local governments.

The amendments to section 671.7 also update the SSI per diem allowances consistent with levels determined by the Federal Social Security Administration. There are no additional costs attributable to this conforming amendment, either to the State or to local governments.

◦ For Specialty Hospitals (amendments to section 680.12). New York State funds the one such facility currently in operation. The emergency/proposed amendments implement a trend factor of 3.02 percent. The estimated total cost for implementation of this trend factor on an aggregate annualized basis is approximately \$ 437,000 for the period beginning January 1, 2004. This represents approximately \$218,500 in State share and \$ 218,500 in federal funds. There are no costs to local governments as a result of the amendments.

◦ For Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2003, there were 623 voluntary-operated sites certified by OMRDD to provide ICF/DD services in New York State. The emergency/proposed amendments implement a trend factor of 3.20 percent. The estimated cost for implementation of the trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$ 22.8 million for the rate periods beginning January 1, 2004 and July 1, 2004. This represents approximately \$ 11.4 million in State share and \$ 11.4 million in federal funds.

There are no costs to local governments resulting from emergency/proposed amendments to section 681.14.

◦ For Day Treatment facilities serving persons with developmental disabilities (amendments to section 690.7). As of December 2003, there were 206 sites certified by OMRDD to provide day treatment services statewide. The amendments implement a trend factor of zero percent for the periods beginning January 1, 2004 and July 1, 2004. There is therefore no fiscal impact, State or federal, associated with the emergency/proposed amendments. There are also no costs to local governments resulting from these emergency/proposed amendments.

Pursuant to the Social Services Law, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. As previously discussed on a facility/service specific basis, an unreimbursed local government share is involved for only a portion of the consumers receiving HCBS waiver services (section 635-

10.5). These are consumers who live with their families or on their own and who do not qualify for local share relief under State law.

In all instances, these estimated cost impacts have been derived by applying the trend factor provisions of the emergency/proposed amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of December, 2003.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency/proposed amendments are necessary to maintain funding of the above cited facilities at revised levels of reimbursement in effect as of January 1, 2004. To the extent that the amendments provide trend factor increases to the providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork will be required by most of the emergency/proposed amendments.

7. Duplication: The emergency/proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these emergency/proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these trend factors were considered. There is no alternative to emergency adoption that would allow for prompt, timely implementation of the trend factor provisions contained in the emergency/proposed amendments.

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

10. Compliance schedule: The emergency rule is effective January 1, 2004. OMRDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. The emergency/proposed amendments are primarily concerned with revising the various reimbursement methodologies to implement trend factor adjustments for facilities and providers of services to persons with developmental disabilities. These amendments do not impose any significant new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These emergency/proposed regulatory amendments will apply to voluntary not-for-profit corporations that operate the following facilities and/or provide the following services for persons with developmental disabilities in New York State:

◦ Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite and prevocational services for the approximately 57,400 persons receiving such services as of December 2003.

◦ Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which serve approximately 1,900 persons.

◦ Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2003, there were 623 voluntary-operated sites certified by OMRDD to provide ICF/DD services in New York State.

◦ Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7). As of December 2003, there were 206 voluntary-operated sites certified by OMRDD to provide day treatment services statewide.

The OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the above referenced facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

There is only one Specialty Hospital (amendments to section 680.12) certified to operate in New York State. It employs more than 100 persons and would therefore not be considered a small business as contemplated under the State Administrative Procedure Act (SAPA).

The emergency/proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local

governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the emergency/proposed amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements. In fact, the provisions contained in the emergency/proposed amendments will either have no fiscal impact, or they will provide for increased reimbursements to small business providers of services, due to the application of the trend factors established by the amendments. Specific impacts of the increased funding are set forth in the accompanying Regulatory Impact Statement as costs to State and Federal government.

Pursuant to the Social Services Law, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. As discussed on a facility/service specific basis in the Regulatory Impact Statement, an unreimbursed local government share is involved for only a portion of the consumers receiving HCBS waiver services (section 635-10.5). These are consumers who live with their families or on their own and who do not qualify for local share relief under State law. For these people receiving HCBS waiver services, the implementation of the 3.20 percent trend factor contained in the emergency/proposed amendments will result in a county share of approximately \$1.9 million in the aggregate. This cost impact is divided among all the counties.

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these emergency/proposed amendments.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The emergency/proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these emergency/proposed amendments.

5. Economic and technological feasibility: The emergency/proposed amendments are concerned with rate/fee setting in the affected facilities or services, and only revise the reimbursement methodologies which describe the ways in which OMRDD calculates the appropriate reimbursement of such facilities and services. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: The purpose of these emergency/proposed amendments is to allow OMRDD to reimburse providers of the referenced services at revised levels in effect as of January 1, 2004. Specifically, these amendments establish trend factor adjustments for the regulations governing the reimbursement of the referenced facilities/services for the rate/fee periods beginning January 1, 2004 and July 1, 2004. The trend factor provisions will either have no impact on funding of small business providers of services, or will have positive impacts resulting from increased reimbursements to the providers.

As previously stated, the emergency/proposed amendments will only have a relatively minimal fiscal impact on local governments due to the implementation of the 3.20 percent trend factor contained in the amendments for reimbursements to HCBS waiver services.

These amendments impose no adverse economic impact on regulated parties, and no compliance response. The local government share of Medicaid funded programs is established by State law. Therefore, the approaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

7. Small business and local government participation: To the extent that information regarding provider reimbursement has been available, OMRDD has shared and discussed such information with provider representatives.

Further, OMRDD has complied with relevant Federal notice requirements concerning changes in certain Medicaid funded facilities and services. Thus, known information concerning regulatory amendments involving changes to the reimbursement methodology of Day Treatment facilities was published in a Public Notice that appeared in the State Register prior to the emergency adoption of these amendments.

In addition, OMRDD is required to hold public hearings only on those amendments to section 671.7 as they may affect reimbursement of the room and board components of the community residence fees. However, it

has been OMRDD's long-standing practice to enlarge the scope of these scheduled public hearings so as to include all of the emergency/proposed amendments contained in this rule making, as well as to provide an opportunity to comment on any aspect of the various rate and fee setting methodologies. These hearings are scheduled to be held on March 8, 2004 (Buffalo), March 10, 2004 (Albany), and March 12, 2004 (NYC).

Rural Area Flexibility Analysis

A rural area flexibility analysis for these emergency/proposed amendments is not submitted because the amendments will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The emergency/proposed amendments are concerned with providing necessary revisions to the reimbursement methodologies which OMRDD uses in determining the reimbursement of the affected developmental disabilities services or facilities. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties. Further, the emergency/proposed amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodologies are primarily based upon reported costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these emergency/ proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the emergency/proposed amendments are concerned with providing revisions to the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. More specifically, the emergency/proposed amendments establish trend factors to be applied within the context of reimbursement methodologies for the various facility/program types. These trend factor increases are not expected to result in changes in reimbursements significant enough to affect staffing patterns within the regulated facilities or programs. They will, however, not have any adverse impacts. Therefore, it is reasonable to expect that the emergency/proposed amendments will have a positive impact on jobs in New York State.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Certain Power and Energy

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

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

Proposed action: 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.

Substance of proposed rule:

2004 PROPOSED CONVENTIONAL PRODUCTION RATES
SOUTHEASTERN NEW YORK GOVERNMENTAL
CUSTOMERS
(proposed to be effective for March 2004 billing cycle)

Service Class	Demand Rates \$/kW-mo.	Base Energy Rates Mills/kWh *
62 General Small	**	69.03

64	Commercial & Industrial Redistribution	9.41	35.54
65	Electric Traction Systems	6.95	41.00
85s	NYC Transit Authority Substation	7.74	37.76
66	Westchester Street lighting	**	58.03
68/82	Multiple Dwellings Redistribution	8.32	36.66
69	General Large	6.86	38.39
80	NYC Streetlighting	7.57	36.54
91	NYC Public Buildings	7.01	40.63

*In addition to the base energy rates, there is a stabilized energy charge adjustment that varies annually and is applied on a monthly basis.
 **Service classes 62 and 66 do not have demand metering. Accordingly, the base energy rates reflect total demand, as well as energy-related costs.

2004 PROPOSED TOD PRODUCTION RATES SOUTHEASTERN NEW YORK GOVERNMENTAL CUSTOMERS (proposed to be effective for March 2004 billing cycle)

Service Class	Demand Rates \$/kW-mo.	On-Peak Base Energy Rates Mills/kWh	Off-Peak Base Energy Rates Mills/kWh
64 Commercial & Industrial Redistribution	7.73	51.23	28.33
68/82 Multiple Dwellings Redistribution	7.46	52.97	29.01
69 General Large	5.68	54.78	28.54
91 NYC Public Buildings	5.75	58.82	28.76

- Notes:
- (1) The on-peak period for demand is weekdays from 8 AM to 6 PM, including holidays.
 - (2) The on-peak period for energy is weekdays from 8 AM to 10 PM, including holidays.
 - (3) The off-peak period for demand and energy is all other hours.
 - (4) Demand rates apply to peak demand occurring during the on-peak period.
 - (5) In addition to the indicated energy rates, the stabilized energy charge adjustment is applied on a monthly basis.
 - (6) Proposed increases as allowed by contract.

Interested parties may receive documentation concerning the rate proposal and the relevant resolution of the Authority's Board of Trustees from the Secretary of the Authority at the address and phone number set forth below.

Secretary's Office
 New York Power Authority
 123 Main Street, 15-M
 White Plains, New York 10601
 Phone: (914) 287-3092

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

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, 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.

Public Service Commission

PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED

Interconnection of Networks between Time Warner Telecom-NY d/b/a Time Warner Telecom and ALLTEL New York, Inc.
I.D. No. PSC-03-04-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Time Warner Telecom-NY d/b/a Time Warner Telecom and ALLTEL New York, Inc. for approval of an interconnection agreement executed on Dec. 18, 2003.

Statutory authority: Public Service Law, section 94(2)
Subject: Interconnection of networks for local exchange service and exchange access.

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

Substance of proposed rule: Time Warner Telecom-NY d/b/a Time Warner Telecom and ALLTEL New York, Inc. have reached a negotiated agreement whereby Time Warner Telecom-NY d/b/a Time Warner Telecom 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 December 18, 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. Brillong, 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-C-1755SA1)

PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED

Interconnection of Networks between Dobson Communications Corporation and Signatory Independent Local Exchange Carrier
I.D. No. PSC-03-04-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Dobson Communications Corporation and Signatory Independent Local Exchange Carrier for approval of a mutual traffic exchange agreement executed on Dec. 12, 2003.

Statutory authority: Public Service Law, section 94(2)
Subject: Interconnection of networks for local exchange service and exchange access.

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

Substance of proposed rule: Dobson Communications Corporation and Signatory Independent Local Exchange Carrier have reached a negotiated agreement whereby Dobson Communications Corporation and Signatory Independent Local Exchange Carrier will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-C-1763SA1)

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

Interconnection of Networks between Frontier Telephone of Rochester, Inc. and Sprint Communications Company, L.P.

I.D. No. PSC-03-04-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Telephone of Rochester, Inc. and Sprint Communications Company, L.P. for approval of an interconnection agreement executed on Oct. 28, 2003.

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

Subject: Interconnection of 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 Sprint Communications Company, L.P. have reached a negotiated agreement whereby Frontier Telephone of Rochester, Inc. and Sprint Communications Company, L.P. 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 October 28, 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. (03-C-1789SA1)

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

Interconnection of Networks between Citizens Telecommunications Company of New York, Inc. and Sprint Communications Company, L.P.

I.D. No. PSC-03-04-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and Sprint Communications Company, L.P. for approval of an interconnection agreement executed on Oct. 28, 2003.

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

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

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

Substance of proposed rule: Citizens Telecommunications Company of New York, Inc. and Sprint Communications Company, L.P. have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Sprint Communications Company, L.P. 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 October 28, 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. (03-C-1790SA1)

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

Interconnection of Networks between Sprint Communications Company L.P. and ALLTEL New York, Inc.

I.D. No. PSC-03-04-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Sprint Communications Company L.P. and ALLTEL New York, Inc. for approval of an interconnection agreement executed on Dec. 15, 2003.

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

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

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

Substance of proposed rule: Sprint Communications Company L.P. and ALLTEL New York, Inc. have reached a negotiated agreement whereby Sprint Communications Company L.P. 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. 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-C-1799SA1)

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

Issuance of Debt by the New York Independent System Operator, Inc.

I.D. No. PSC-03-04-00011-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 a petition of the New York Independent System Operator, Inc. for authority to enter into a three-year revolving credit facility for up to \$100,000,000 with three separate four-year term loan conversion options to provide funding for strategic initiatives, including computer equipment and software upgrades and expenses, related to the management of the New York power grid.

Statutory authority: Public Service Law, section 69

Subject: Issuance of debt.

Purpose: To enter into a three-year revolving/term loan facility for an amount up to \$100,000,000.

Substance of proposed rule: The Public Service Commission may approve, deny or modify New York Independent System Operator, Inc.'s request to enter into a three-year revolving/term loan facility in the amount of \$100.0 million to fund equipment, software upgrades, and related expenses to maintain compliance with and implement the next stage of the market design directives of the Federal Energy Regulatory Commission for standard market design and other operational improvements. Proceeds would be used for the purposes permitted by Section 69 of the Public Service Law.

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

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

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

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

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

(03-E-1770SA1)

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

Gas Pipeline Tariff No. 219 by Niagara Mohawk Power Corporation

I.D. No. PSC-03-04-00012-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 grant a waiver regarding the applicability of certain tariff provisions contained in Niagara Mohawk Power Corporation's Service Classification No. 14 of its gas pipeline tariff no. 219.

Statutory authority: Public Service Law, section 66

Subject: Tariff provisions contained in Niagara Mohawk Power Corporation's Service Classification No. 14 in the content of an individually negotiated gas transportation agreement with a prospective generator.

Purpose: To determine whether to grant a waiver.

Substance of proposed rule: The Commission is considering whether to approve or reject a request from Niagara Mohawk Power Corporation for waiver regarding the applicability of certain tariff provisions contained in its Service Classification 14 of its Gas Pipeline Tariff No. 219 in the context of an individually negotiated gas transportation agreement with a prospective generator.

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

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

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

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

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

(03-G-1674SA1)

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

Functional Storage Service Option by Orange and Rockland Utilities, Inc.

I.D. No. PSC-03-04-00013-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 Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 4.

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

Subject: Functional storage service option.

Purpose: To eliminate from Service Classification Nos. 6 and 11 the functional storage service option for Service Classification No. 6 customers.

Substance of proposed rule: Orange and Rockland Utilities, Inc. proposes to eliminate from its S.C. No. 6 - Firm Transportation Service and S.C. No. 11 - Continuous Receipt of Customer-Owned Gas Service the Functional Storage Service Option for S.C. No. 6 customers. Currently, customers must elect under S.C. No. 6 the Balancing Service Option or the Functional Storage Service Option to meet their gas requirements during the winter period (*i.e.*, November through March) of each year.

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

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

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

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

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

(03-G-1734SA1)

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

Winter Bundled Sales Service Option by Orange and Rockland Utilities, Inc.

I.D. No. PSC-03-04-00014-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 Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 4.

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

Subject: Winter bundled sales service option.

Purpose: To establish in Service Classification Nos. 6 and 11 a winter bundled sales service option applicable to Service Classification No. 6 customers.

Substance of proposed rule: Orange and Rockland Utilities, Inc. proposes to establish in its S.C. No. 6 - Firm Transportation Service and S.C. No. 11 - Continuous Receipt of Customer-Owned Gas Service a new

Winter Bundled Sales Service Option applicable to S.C. No. 6 customers. This option will replace the Functional Storage Service Option and allow S.C. No. 6 customers to meet their gas requirements during the winter period (*i.e.*, November through March). The Winter Bundled Sales Service Option will be very similar to the Functional Storage Service Option except that the company will be providing the gas commodity during the winter period.

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. 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-G-1735SA1)

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

Transfer of Cable System Facilities from Hornell Television Service, Inc. to Atlantic Broadband Penn, LLC

I.D. No. PSC-03-04-00015-P

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

Proposed action: Transfer of certain cable system facilities in Cattaraugus County by Hornell Television Service, Inc. to Atlantic Broadband Penn, LLC.

Statutory authority: Public Service Law, section 222

Subject: To transfer certain cable system facilities, franchises and State certificates of confirmation in and around the City of Salamanca in Cattaraugus County currently held by Hornell Television Service, Inc. to Atlantic Broadband Penn, LLC.

Purpose: To approve the transfer.

Substance of proposed rule: The Public Service Commission is reviewing a joint petition submitted by Atlantic Broadband Penn, LLC and Hornell Television Service, Inc. requesting approval to transfer certain cable system facilities, franchises and State certificates of confirmation currently held by Hornell Television Service, Inc. to Atlantic Broadband Penn, LLC. The subject cable system operates in the City of Salamanca, the Towns of Great Valley, Little Valley and Salamanca and the Village of Little Valley in Cattaraugus County.

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. 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-V-1783SA1)

Department of State

NOTICE OF ADOPTION

Fire Safety Standards for Cigarettes

I.D. No. DOS-53-02-00018-A

Filing No. 1486

Filing date: Dec. 31, 2003

Effective date: June 28, 2004

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

Action taken: Addition of Part 429 to Title 19 NYCRR.

Statutory authority: Executive Law, section 156-c(2)(a)

Subject: Fire safety standards for cigarettes.

Purpose: To set fire safety standards for cigarettes which will insure that such cigarettes meet performance standards which limit the risk that such cigarettes will ignite upholstered furniture, mattresses, or other household furnishings.

Text of final rule: PART 429

FIRE SAFETY STANDARDS FOR CIGARETTES

1. General Requirements.

(a) On and after June 28, 2004, no cigarettes subject to the provisions of section 156-c of the Executive Law shall be sold or offered for sale in this state unless:

(1) such cigarettes have been tested in accordance with the test method prescribed in section 3 of this Part;

(2) such cigarettes meet the performance standard specified in section 4 of this Part; and

(3) a written certification has been filed by the manufacturer with the Department of State, Office of Fire Prevention and Control, 41 State Street, Albany, New York, 12231-0001, and the Office of the Attorney General, Cigarette Fire Safety Certifications, Administration Office, State Capitol, Albany, New York 12224 in accordance with section 6 of this Part.

(b) Nothing in this Part shall prohibit wholesale dealers or retail dealers from selling their inventory of cigarettes existing on June 28, 2004, provided that such wholesale dealer or retail dealer can establish that New York State tax stamps were affixed to such cigarettes pursuant to Article 20 of the Tax Law prior to June 28, 2004, and provided further that such wholesale dealer or retail dealer can establish that such inventory was purchased prior to June 28, 2004 in comparable quantity to the inventory purchased during the same period of 2003.

2. Definitions. For the purposes of this Part:

(a) "Agent" shall have the same meaning as subdivision eleven of section four hundred seventy of the tax law.

(b) "Cigarette" shall mean any roll for smoking whether made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(c) "Manufacturer" shall mean:

(1) any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in New York State, including cigarettes intended to be sold in the United States through an importer; or

(2) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) any entity which becomes a successor of an entity described in paragraph (1) or (2) of this subdivision.

(d) "Repeatability" shall mean the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 per cent of the time.

(e) "Retail dealer" shall have the same meaning as subdivision nine of section four hundred seventy of the tax law.

(f) "Sale" shall mean any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money are considered sales.

(g) "Sell" shall mean to sell, or to offer or agree to do the same.

(h) "Quality control and quality assurance program" shall mean the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment related problems do not effect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in section 3(e) of this Part for all test trials used to certify cigarettes in accordance with this regulation.

(i) "Wholesale dealer" shall have the same meaning as subdivision eight of section four hundred seventy of the tax law.

3. Test Method.

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-02b "Standard Test Method for Measuring the Ignition Strength of Cigarettes," subject to the modifications stated in Appendix A to this Part. This standard may be obtained from the publisher at ASTM International, 100 Barr Harbor Drive, P. O. Box C700, W. Conshohocken, Pennsylvania 19428-2959. This material is available for public inspection and distribution at the Department of State, Office of Fire Prevention and Control, 41 State Street, Albany, New York 12231-0001.

(b) Testing shall be conducted on 10 layers of filter paper.

(c) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(d) The performance standard required by section 4 of this Part shall only be applied to a complete test trial.

(e) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19 pursuant to section 4 of this Part.

4. Performance Standard.

(a) When tested in accordance with section 3 of this Part, no more than 25 percent of the cigarettes tested in a test trial shall exhibit full length burns.

(b) Each cigarette listed in a certification submitted pursuant to section 6 of this Part that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in subdivision (a) of this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column (or 10 millimeters from the labeled end of the tobacco column for a non-filtered cigarette).

(c) The manufacturer or manufacturers of a cigarette that the Office of Fire Prevention and Control determines cannot be tested in accordance with the test method prescribed in section 3 of this Part shall propose a test method and performance standard for such cigarette to the Office of Fire Prevention and Control. Upon approval of the proposed test method and a determination by the Office of Fire Prevention and Control that the performance standard proposed by the manufacturer or manufacturers is equivalent to the performance standard prescribed in section 4 of this Part, the manufacturer or manufacturers may employ such test method and performance standard to certify such cigarette pursuant to section 6 of this Part. All other applicable requirements of this Part shall apply to such manufacturer or manufacturers.

5. Test Data.

In order to ensure compliance with the performance standard specified in section 4 of this Part, data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by such manufacturers for a period of 3 (three) years and shall be sent to the Office of Fire Prevention and Control upon its request, and to the Office of the Attorney General upon its request, at the addresses specified in section 1(c) of this Part.

6. Certification.

(a) Each manufacturer shall submit a written certification attesting that:

(1) each cigarette listed in the certification has been tested in accordance with section 3 of this Part; and

(2) each cigarette listed in the certification meets the performance standard set forth in section 4 of this Part.

(b) Each cigarette listed in the certification shall be described with the following information:

1. brand (i.e., the trade name on the package)

2. style (e.g., light, ultra light)

3. length in millimeters

4. circumference in millimeters

5. flavor (e.g., menthol, chocolate) if applicable

6. filter or non-filter

7. package description (e.g., soft pack, box)

8. marking approved in accordance with section 8 of this Part.

(c) Each cigarette certified under this section shall be re-certified every three years.

7. Notification of Certification.

Manufacturers certifying cigarettes in accordance with section 6 of this Part shall provide a copy of such certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the cigarette packaging marking utilized by the manufacturer pursuant to section 8 of this Part for each retailer to which the wholesale dealers and agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these cigarette packaging markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the Office and Fire Prevention and Control to inspect markings of cigarette packaging marked in accordance with section 8 of this Part.

8. Marking of Cigarette Packaging.

(a) Cigarettes which have been certified by a manufacturer in accordance with section 6 of this Part shall be marked to indicate compliance with the requirements of this Part. Such marking shall be in eight point type or larger and consist of:

(1) Modification of the product UPC Code to include a visible mark printed at or around the area of the UPC Code. Such mark may consist of alphanumeric or symbolic character(s) permanently stamped, engraved, embossed or printed in conjunction with the UPC; or

(2) Any visible combination of alphanumeric or symbolic character(s) permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet New York Standards.

(b) Such marking shall be unique to packages that meet New York Standards.

(c) A manufacturer must use only one marking, and must apply this marking uniformly for all packages (including but not limited to packs, cartons, and cases) and brands marketed by that manufacturer.

(d) The Office of Fire Prevention and Control must be notified at the address specified in section 1(c) of this Part as to the marking which is selected.

(e) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the Office of Fire Prevention and Control for approval. Upon receipt of the request, the Office of Fire Prevention and Control will approve or disapprove the marking offered. Proposed markings shall be deemed approved if the Office of Fire Prevention and Control fails to act within 10 business days of receiving a request for approval.

(f) No manufacturer shall modify its approved marking unless the modification has been approved by the Office of Fire Prevention and Control in accordance with this section.

9. Severability.

If any clause, sentence, paragraph, or section of this Part be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof but shall be applied in its operation to the clause, sentence, paragraph, or section hereof directly involved in the controversy in which such judgment shall have been rendered.

APPENDIX A TO PART 429 OF TITLE 19 NYCRR

The provisions of American Society of Testing and Materials ("ASTM") standard E2187-02b "Standard Test Method for Measuring the Ignition Strength of Cigarettes," referenced in section 3(a) of Part 429 of Title 19 NYCRR, are modified for the purposes of this rule as follows:

(1) Section 6.2.2. is changed to read:

Respiratory equipment shall be made available for personnel upon request or if the environmental conditions in the laboratory warrant.

(2) Sections 7.3 to 7.6. are changed to allow the following dimensions and allowances for the test apparatus:

	inches		mm	
	Dimension	Tolerance	Dimension	Tolerance
Test Chamber				
Height	14.5	1	368	25

Width	11.5	0.25	292	6
Depth	15.5	0.25	394	6
Thickness	0.25	nominal	6	nominal
Chimney Height	6.5	0.5	165	13
Chimney I.D.	6.0	0.25	152	6
Filter Paper Holder				
O.D.	6.5	0.04	165	1
I.D.	5.0	0.04	127	1
Recess Depth	0.5	0.04	13	1
Recess I.D.	6.0	0.04	152	1
Metal Rim				
O.D.	5.9	0.08	150	2
I.D.	5.1	0.08	130	2
Thickness	0.25	0.04	6.4	1
Pin Diameter	0.04	nominal	1	nominal
Pin Separation	0.32	0.02	8.1	0.05
Pin Length	0.65	0.15	17	4

Note: the O.D. of the metal rim is not to exceed the I.D. of the recess in the filter paper holder.

(3) Section 7.7. is changed to delete the word "pencil" in describing the mark on the cigarette.

(4) Section 8.1.2. is changed to read:

The non-turbulent smoke column height is to be a nominal 150 mm (6 in) above the lit end of the cigarette.

(5) Section 9.1. is changed to read:

Cigarette test specimens and filter paper substrates are sensitive to contamination. Test cigarettes shall be handled only by the last 25 mm of the end of the cigarette that is not to be lit. The sheets of filter paper shall not be handled in the vicinity where the cigarette will contact the paper during a test. In all cases, the materials shall be handled with dry hands only.

Note: The use of clean, dry, non-powdered surgical gloves can mitigate incidental contamination of the test materials while maintaining operator dexterity.

(6) The following is added to Section 9.2.2.:

Note: Alternative devices for marking the test cigarettes are permissible providing they do not damage the cigarette.

(7) The following is added to Section 9.3.:

Pending assurance of the availability of filter paper that meets the specifications in Section 9.3 of ASTM E2187-02b, the following provisions apply:

Paper with a mean mass up to 0.5 g (for 15 sheets) less than the specified dry and/or conditioned weights may be used for the testing of cigarettes.

The standard deviation of at least five samples (dry or conditioned) shall not exceed 0.4 g.

(8) Section 10.1. is changed to read:

Cigarettes shall be conditioned at a relative humidity of 55± 5% and a temperature of 23 ± 30°C (73 ± 5°F) for at least 24 h prior to testing. The cigarettes shall be placed in a clean, open container, with the number of cigarettes being sufficiently small as to enable free air access to the specimens.

(9) The following note is added to section 11.4.1:

Note: This provision need not be followed by an individual test operator if that operator has demonstrated that lifting the restriction does not introduce error that significantly changes either the measured ignition strength or the uncertainty of that measurement. This determination is the responsibility of the testing laboratory.

(10) Section 11.5 is changed to read:

Holding the cigarette vertically, coal end up, transport the cigarette to the test chamber.

Note: It has been found that holding a 600 ml beaker over the cigarette coal is helpful in mitigating the likelihood of a foreign object or room air current impacting the cigarette during transport and thus leading to the need to terminate the determination.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 429.1, 429.2(d), 429.3(a), 429.4(a)-(c), 429.8(e) and 429.9.

Text of rule and any required statements and analyses may be obtained from: John Mueller, Chief, Fire Prevention Bureau, Office of Fire Prevention and Control, Department of State, 41 State St., Albany, NY 12231, (518) 474-6746

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, 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.

Summary of Assessment of Public Comment

Approximately 572 pages of comments were submitted during the comment period which commenced upon publication of the Notice of Revised Rule Making in the State Register on September 3, 2003. Approximately 117 of these pages consisted of one or two page comments sent by citizens voicing their opinions on the proposed rule. All but one of these comments supported the rule, made no suggestions that it be modified, and urged its speedy adoption. The remaining comment opposed to the rule did not suggest any significant alternative to the rule. Non-industry organizations, including the New York City Department of Health and Mental Hygiene, Fire Department of New York, National Fire Protection Association, Finger Lakes Burn Association, New York Public Interest Research Group, and the Center for Tobacco Free New York each submitted comments which supported the proposed rule.

Approximately 355 pages of the comments received were technical in nature. These comments were submitted by tobacco manufacturers; stamping agents, wholesalers, and retailers of tobacco products; convenience store owners; public interest research groups; and governmental bodies. Comments which were not previously addressed in the Assessment of Public Comment which was filed with the Notice of Revised Rule Making on September 3, 2003 were directed at the following matters found in the text of the proposed rule: general requirements of the rule, the rule's requirements concerning certification, the definition section of the rule, the test method required by the rule, the performance standard established by the rule, cigarette testing, and the package marking requirements found in the rule.

All comments received during the comment period which were not previously addressed in the Assessment of Public Comment which was filed with the Notice of Revised Rule Making on September 3, 2003 were reviewed and assessed in accordance with the provisions of the State Administrative Procedure Act. Upon assessment of the comments and further review of the proposed rule and the statements and analyses associated with it, it was determined that the following nonsubstantial changes would be made to clarify the rule:

Section 1 of the rule has been modified to permit a sell through period for New York State wholesalers and retailers.

Section 2(d) of the rule has been modified to clarify the definition of "repeatability."

Section 3(a) of the rule concerns American Society of Testing and Materials ("ASTM") standard E2187-02b "Standard Test Method for Measuring the Ignition Strength of Cigarettes," the test method prescribed by the rule. Appendix A to Part 429, referred to in section 3(a), clarifies and makes nonsubstantial modifications to ASTM standard E2187-02b.

The language of section 4(a) of the rule has been clarified.

Section 4(b) has been modified in response to manufacturers' comments concerning the location of bands in cigarettes using banding technology to meet the performance standard specified in the section 4(a) of the rule. This modification allows the Office of Fire Prevention and Control to continue to meet its statutory responsibility to limit the risk that cigarettes will ignite upholstered furniture, mattresses or other household furnishings, while taking into consideration the current state of banded technology and making provision for future innovations to this technology.

Section 4(c) has been added to the rule to address testing of cigarettes which cannot be tested in accordance with the test method prescribed by section 3 of this rule.

The language of section 8 of the rule has been clarified.

Section 9 concerning severability of the provisions of the rule has been added.

It has been determined that the rule making as published otherwise meets the objectives set forth in Executive Law section 156-c. It was further determined that other proposed revisions contained in the comments submitted would not advance these objectives.

The issues raised by these comments, significant alternatives suggested by them, and descriptions of the nonsubstantial changes made to the rule as a result of such comments, or statements of reasons why alternatives suggested by these comments were not incorporated into the rule, are contained in the full Assessment of Public Comment. The Assessment of Public Comment may be obtained from the agency contact identified in the Notice of Adoption.

**NOTICE OF CONTINUATION
NO HEARING(S) SCHEDULED**

Approval of Real Estate Courses

I.D. No. DOS-31-03-00001-C

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

The notice of proposed rule making, I.D. No. DOS-31-03-00001-P was published in the *State Register* on August 6, 2003.

Subject: Approval of real estate courses leading to qualification for a license as a real estate broker and real estate salesperson.

Purpose: To update the existing rules relating to the approval of real estate courses and schools offering qualifying education to prospective real estate brokers and salespersons, and eliminate obsolete portions of the existing rules.

Substance of rule: The Real Property Law, § 441 requires that an applicant for a real estate salesperson's license complete 45 hours of real estate education and further requires that an applicant for a real estate broker's license complete an additional 45 hours of real estate education. Section 442-k(2) & (3) of the Real Property Law provide that the Real Estate Board of the State of New York is empowered to prescribe the content for courses of study for real estate brokers and salespersons and to adopt rules governing the approval of schools that offer courses of study for real estate brokers and salespersons. This proposal updates existing rules and eliminates unnecessary rules relating to the content of qualifying courses and the approval of schools offering real estate courses.

Changes to rule: No substantive changes.

Expiration date: August 5, 2004.

Text of proposed rule and changes, if any, may be obtained from: Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

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

**Office of Temporary and
Disability Assistance**

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

Supplemental Security Income Benefits

I.D. No. TDA-03-04-00003-P

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

Proposed action: Repeal of section 352.2(b); addition of new section 352.2(b); amendment of sections 352.3(k)(3), (i), 352.30(a) and (f), and 352.31(a)(2); and addition of section 352.3(l) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 158, 349 and 355(3)

Subject: Treatment of supplemental security income (SSI) benefits when determining household need standard.

Purpose: To require social services districts to consider the presence in the household of an adult or child receiving SSI who would, except for the receipt of SSI, be required to be included in the public assistance household when determining the household's standard of need.

Text of proposed rule: Subdivision (b) of section 352.2 is repealed and a new subdivision (b) is added to read as follows:

(b) *When a public assistance household resides together with persons who would otherwise be required to be in the filing unit except that they are in receipt of SSI, those persons applying for public assistance shall constitute a separate household from any such SSI recipients who do not apply for public assistance. The standard of need for such separate household shall be the standard of need for the number of persons in the household as if the SSI recipients were included, reduced pro rata to reflect the number of persons actually applying for and receiving assistance.*

The introductory language of paragraph (3) of subdivision (k) of section 352.3 and subparagraph (i) of such paragraph are amended to read as follows:

(3) When a household comprising both [ADC] *public assistance* and SSI eligible persons requests an emergency shelter allowance, the social services district must compute the amount of the allowance as follows:

(i) determine the public assistance grant of the [ADC] *public assistance* eligible persons using the appropriate rent schedule amount in subdivision (a) of this section;

Subdivision (l) is added to section 352.3 to read as follows:

(l) *Shelter allowances in excess of the standards. Except when provided under section 352.3(k) of this Part, when an individual or family qualifies for a shelter supplement in excess of the allowances contained in section 352.3(a) of this Part, the entire shelter cost shall be apportioned to each dwelling unit member. Non-public assistance individual(s) residing in the dwelling unit shall be responsible for their prorata share of the actual shelter costs.*

Subdivisions (a) and (f) of section 352.30 are amended to read as follows:

(a) For budgetary purposes, the number of persons in the public assistance household are those persons who the applicant, recipient or a representative indicates wish to receive public assistance and who reside together in the same dwelling unit. When a minor dependent child is named as an applicant for public assistance, his or her natural or adoptive parents and blood-related or adoptive brothers and sisters (who are also minor dependent children) must also apply for public assistance and have their income and resources applied toward the public assistance household if they reside in the same dwelling unit as the applying minor dependent child. A person required to be added to the public assistance household is deemed to be included in the application already on file as of the date the person joins the household, either by birth, adoption, or by moving into the dwelling unit of the existing public assistance household. For the purposes of this subdivision, a minor dependent child is a child who is under 18 years of age [and, with respect to aid to dependent children, is or would be eligible for assistance without regard to income or resources]. *Subject to section 352.2(b) of this Part, parents* [Parents] and siblings who are SSI recipients, stepbrothers and stepsisters, ineligible sponsored aliens, aliens who fail to meet the citizenship and alienage requirements in section 349.3(a) of this Title, individuals ineligible due to the lump sum provision of section 352.29(h) of this Part, or children who are receiving adoption subsidies which are exempt under section 352.22(p) of this Part are not required to apply in accordance with this subdivision. The public assistance household may also include persons who are temporarily absent from such household, such as children or minors attending school away from home whose full needs are not otherwise met.

(f) When an applicant for or recipient of [ADC] *public assistance* refuses to cooperate in applying for or *accepting* SSI benefits for himself or herself or for a member of the [ADC] *public assistance* household, the *prorata* needs of such individual shall be eliminated from the grant, and the needs of the family shall be determined based on the remaining persons in the grant. If, however, such individual is physically or emotionally unable to complete the SSI application process, the local department of social services shall provide any services which are necessary to insure that the individual is assisted in making the SSI application. In such instance, that individual shall not be denied public assistance and care.

Paragraph (2) of subdivision (a) of section 352.31 is amended to read as follows:

(2) All available and unrestricted income of a legally responsible relative in the home and/or a relative required to be in the public assistance household pursuant to section 352.30 of this Part must be applied against his/her own needs and the needs of the other persons in the public assistance household. *The income of an SSI recipient who is a member of a family unit shall be applied only against his or her prorata share of the needs.* In determining eligibility and degree of need, if one of the relatives referenced in this paragraph is sanctioned under Part 347, 349, 352, 369, or 370 [or 385] of this Title or Part 1300 of 12 NYCRR, all of that person's income, minus any appropriate disregards under section 352.19 or 352.20 of this Part, must be applied against the needs of the [remaining members of the] public assistance household.

Text of proposed rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

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:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganizes the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Sections 158 and 349 of the SSL set forth the eligibility requirements for the Safety Net Assistance program and the Family Assistance program.

Section 355(3) of the SSL requires OTDA to promulgate regulations necessary for the implementation of the Family Assistance program.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that public assistance benefits could be provided to those individuals determined eligible for such assistance.

3. Needs and Benefits:

The proposed amendments would eliminate the current requirement which provides that if a public assistance family includes a member who receives Supplemental Security Income (SSI) benefits, that individual is not considered when the amount of public assistance to which the household is eligible is determined, except when the SSI individual is a legally responsible relative of an individual in receipt of Safety Net Assistance. The determination of financial eligibility is made by comparing a family unit's countable income against the standard of need. The standard of need is comprised of the basic allowance, energy allowances, the shelter allowance and, if appropriate, a fuel for heating allowance. The amounts of the allowances vary by household size. Currently, if a family includes three members who receive public assistance and one member who receives SSI, the three family members receive public assistance based on a standard of need for three persons. The proposed amendments would require social services districts to consider the presence in the household of an adult or child receiving SSI when determining the household's standard of need. The current policy would change so that the public assistance family members will receive public assistance based on three-quarters of the standard of need for four. The income of the SSI beneficiary will count against his or her pro rata (one-quarter) share of the household's needs but not against the needs of the family members receiving public assistance.

The proposed amendments would eliminate different budgeting methods required to be used for various family circumstances. With the exception of budgeting for households requesting and eligible to receive an emergency shelter allowance under 352.3(k), these amendments would result in the establishment of one budgeting method for determining the needs standard for a household that is applying for benefits and reduce budgeting errors.

The proposed amendments also would provide that when an individual or family qualifies for a shelter supplement in excess of the appropriate allowance, except under 352.3(k), the entire shelter cost will be apportioned to each dwelling unit member. Individuals not receiving public assistance who reside in the dwelling unit are responsible for their pro rata share of the actual shelter costs.

4. Costs:

Based on current information, there are approximately 40,000 households receiving a combination of benefits under the temporary assistance for needy families program (TANF) and SSI. Approximately 26,700 of those cases would be affected by the proposed amendments. This would consist of 8,700 cases with at least one child in the household receiving SSI and an estimated 18,000 cases with at least one adult in the household receiving SSI. To determine the average impact per household, data was used that compares the monthly standard of need for the respective number of people in the household receiving temporary assistance (the current methodology) and the pro rata share of the temporary assistance grant resulting from including the needs and excluding the excess income of the SSI recipients in the household (the proposed methodology). The average monthly savings per household is estimated to be \$90. The resulting fiscal impact from the proposed amendments would be annual gross savings of

\$30 million. The federal savings would be \$12 million and the State and local savings would be \$9 million each. Based on the current surplus of maintenance of effort expenditures under the TANF program, the federal savings identified in this statement will free up TANF grants that can be reinvested in any of the numerous existing TANF-eligible projects or in some future TANF efforts. The full projected savings would be realized only after necessary system changes were implemented.

5. Local Government Mandates:

The proposed amendment would require social services districts to consider the presence of adults and children in receipt of SSI who are required to be included in the public assistance household when determining the household's standard of need. The income of the SSI beneficiary will count against his or her pro rata share of the household's needs but not against the needs of the other family members.

6. Paperwork:

No new forms or reporting requirements are anticipated as a result of the proposed amendments.

7. Duplication:

The proposed amendments do not duplicate State or federal requirements.

8. Alternatives:

This Office could maintain the current regulations as written but this would not accomplish the purpose of the proposed amendments which is to provide greater consistency among the public assistance programs, simplify the budgeting requirements for public assistance programs and implement a more equitable method of determining the amount of benefits that will be provided to needy families.

9. Federal Standards:

The proposed amendments do not exceed federal minimum standards for the same subject.

10. Compliance Schedule:

Social services districts will be able to implement the proposed amendments when they become effective.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendments will not affect small businesses but will have an impact on the 58 social services districts in the State.

2. Compliance requirements:

The proposed amendments would require social services districts to consider the presence in the household of an adult or child receiving Supplemental Security Income (SSI) when determining the household's standard of need. The income of the SSI beneficiary will count against his or her prorata share of the household's needs but not against the needs of the household members receiving public assistance.

3. Professional services:

No new professional services will be required in order for social services districts to comply with the proposed amendments.

4. Compliance costs:

The proposed amendments will not require the social services districts to incur any initial capital costs. The districts will not be required to incur any costs for continuing compliance with the proposed amendments. It is anticipated that the proposed amendments would result in annual local savings of \$9 million.

5. Economic and technological feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed amendments.

6. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts.

7. Small business and local government participation:

Several social services districts throughout the State have been informed of the proposed changes and no objections to the changes have been expressed.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed amendments will affect the 44 rural social services districts in the State.

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

The proposed regulations would require social services districts to consider the presence in the household of an adult or child receiving Supplemental Security Income (SSI) when determining the household's standard of need. The income of the SSI beneficiary will count against his or her prorata share of the household's needs but not against the needs of the household members receiving public assistance.

The proposed amendments would not require social services districts in rural areas to comply with new reporting or recordkeeping requirements.

3. Costs:

It is anticipated that the proposed amendments would result in annual local savings of \$9 million.

4. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

Some social services districts in rural areas have been informed of the proposed changes and no adverse comments have been received.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.