

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-19-04-00006-E
Filing No. 729
Filing date: June 22, 2004
Effective date: June 24, 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, article 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: Licensed mortgage bankers and registered mortgage brokers.

Purpose: To set forth the regulatory requirements and standards of operation.

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

Section 410.1(e) is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 410.11 is amended to include mortgage brokers.

Section 410.13 is amended to include mortgage brokers.

Section 410.14 is amended to include mortgage brokers.

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

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

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

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

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

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

Section 410.20 is added to indicate compliance dates.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. BNK-19-04-00006-P, Issue of May 12, 2004. The emergency rule will expire September 19, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us or at the department's website: www.banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

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

Subdivision 4 of Section 591 of the Banking Law provides that as a condition for the issuance and retention of a mortgage banker's license, and subject to such regulations as the Superintendent shall prescribe, applicants for a license shall file with the Superintendent a surety bond in

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

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

Part 410 is also being amended to impose additional recordkeeping and reporting requirements on mortgage bankers and brokers. In accordance with Section 590.2(a) of the Banking Law, no person, partnership, association, corporation or other entity may engage in the business of making five or more mortgage loans in any one calendar year without first obtaining a license from the Superintendent in accordance with the licensing procedures provided in Article 12-D and such regulations as may be promulgated by the banking board or prescribed by the Superintendent. Similarly, pursuant to Section 590.2(b), no person, partnership, association, corporation or other entity may engage in the business of soliciting, processing, placing or negotiating a mortgage loan or offering to solicit, process, place or negotiate a mortgage loan in this state without first being registered with the Superintendent as a mortgage broker in accordance with the procedures of Article 12-D and regulations promulgated by the banking board or prescribed by the Superintendent. Further, Section 590.5 of the Banking Law requires mortgage bankers to make mortgage loans and mortgage brokers to solicit, process, place and negotiate mortgage loans only in conformity with the provisions of Article 12-D and such rules and regulations as may be promulgated by the banking board or prescribed by the Superintendent pursuant to Article 12-D.

2. Legislative objectives:

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

Amendments to Article 12-D also authorize the Superintendent to deny an application for or suspend or revoke the license of a mortgage banker or the registration of a mortgage broker if the person or entity maintains a relationship with a "consultant," or a person operating in a similar capacity, who the Superintendent determines, based on certain prescribed conditions, does not possess the necessary character and fitness to be associated with the applicant, licensee or registrant. Therefore Part 410 is being amended to include a definition of "consultant."

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

3. Needs and benefits:

The bonding requirements for mortgage bankers and brokers will protect consumers' financial interests if a licensee or registrant ceases to operate and does not have sufficient assets to reimburse money owed to

customers. The bond proceeds shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the Superintendent to be improperly charged or collected and to pay past due Banking Department examination costs and assessments charged to the licensee or registrant, unpaid penalties, or other obligations of the licensee or registrant. For mortgage bankers the bond requirement in Part 410 is being increased and is based on a sliding scale according to the banker's volume of business. For mortgage brokers, previously the Superintendent could only impose a bonding requirement upon confirmation of misconduct. The amendments to Part 410 establish a bond requirement for all registered brokers according to a sliding scale based on the broker's volume of business. The clarification and expansion of the purposes for which the bond proceeds or designated assets can be used is intended to cover consumer refunds as well as expenses, penalties and other charges incurred by the Department that may arise out of investigation and enforcement actions.

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

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

4. Costs:

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

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

None.

8. Alternatives:

(a) Proposal – During the drafting of the proposed amendments to Part 410, the Banking Department met with representatives of the Mortgage Bankers Association, the Mortgage Brokers Association and the New York State Governor's Office of Regulatory Reform. These groups were given the opportunity to comment on the proposed amendments. The representatives were generally pleased with the proposal. To the extent that they had comments or suggestions, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposed amendments to address the suggestions and comments.

As was previously discussed in the Legislative Objective section contained herein, recent amendments to Article 12-D of New York's Banking Law require the Superintendent to issue regulations providing for varying bond requirements for New York State licensed mortgage bankers and registered mortgage brokers based on volume of business. The bonding requirements for mortgage bankers and brokers will protect consumers'

financial interests if a licensee or registrant ceases to operate and does not have sufficient assets to reimburse money owed to customers. The bond proceeds shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the Superintendent to be improperly charged or collected and to pay past due Banking Department examination costs and assessments charged to the licensee or registrant, unpaid penalties, or other obligations of the licensee or registrant. Some representatives expressed concern as to the cost of obtaining a bond, or in the alternative, to place assets on deposit. While this issue exists, the requirement to obtain the bond, or place assets on deposit, is not imposed by the rule, but rather is a statutory requirement.

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

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

9. Federal standards:

None.

10. Compliance schedule:

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

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

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

Job Impact Statement

The purpose of Article 12-D of the New York Banking Law, which provides for the licensing and regulation of mortgage bankers, mortgage brokers and other entities engaged in financing for residential real property, is to ensure that such entities operate in accordance with rigorous standards. Recent amendments to Article 12-D were adopted in connection with the business of brokering, originating and funding of residential

mortgage loans in order to increase the regulatory tools available to the Superintendent to properly supervise the mortgage banking industry and increase protections for consumers.

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

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

Industrial Board of Appeals

NOTICE OF ADOPTION

Procedures for Public Access to Records

I.D. No. IBA-17-04-00006-A

Filing No. 721

Filing date: June 17, 2004

Effective date: July 7, 2004

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

Action taken: Amendment of section 73.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Procedures for public access to Industrial Board of Appeals records.

Purpose: To update the procedures to be used in requesting F.O.I.L. access to IBA records.

Text or summary was published in the notice of proposed rule making, I.D. No. IBA-17-04-00006-P, Issue of April 28, 2004.

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

Text of rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Access to Records

I.D. No. IBA-17-04-00007-A

Filing No. 723

Filing date: June 17, 2004

Effective date: July 7, 2004

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

Action taken: Amendment of section 73.2 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Public access to Industrial Board of Appeals records.

Purpose: To update and clarify the location where the IBA provides access for F.O.I.L. requests.

Text or summary was published in the notice of proposed rule making, I.D. No. IBA-17-04-00007-P, Issue of April 28, 2004.

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

Text of rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Subject Matter List

I.D. No. IBA-17-04-00008-A

Filing No. 722

Filing date: June 17, 2004

Effective date: July 7, 2004

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

Action taken: Amendment of section 73.6 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Subject matter list.

Purpose: To update location of the list.

Text or summary was published in the notice of proposed rule making, I.D. No. IBA-17-04-00008-P, Issue of April 28, 2004.

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

Text of rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Subpoenas

I.D. No. IBA-27-04-00001-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 65.20 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Subpoenas.

Purpose: To extend the time period from 5 to 10 days, in which a person served with a subpoena may move to revoke or modify the subpoena.

Text of proposed rule: 65.20 Subpoenas.

(a) The board, by one or more members, shall have the power to issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents and other evidence. Applications for subpoenas shall be filed with the board and such applications may be ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena shall, within [five] *ten* (10) days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The board shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceeding, or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The board shall make a statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto and any ruling thereon, shall become a part of the record.

(c) Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(d) Subpoena forms shall be requested and obtained from the board, completed by the requesting party and submitted to the board for issuance. Service of subpoenas shall be effected by the requesting party.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.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

Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth the procedures for the application, issuance, and service of administrative subpoenas by the board, as well as the procedure for filing objections to a subpoena. The majority of the proceedings initiated with the board are filed by non-attorneys, who are representing themselves. This amendment will amend the rule, by extending the time period, from five (5) to ten (10) days, in which a person served with a subpoena may move to revoke or modify the subpoena, and also by standardizing the format, so that all numbers are listed both numerically and alphabetically.

It is the board's determination that amending this rule to extend the time period, from five (5) to ten (10) days, in which a person served with a subpoena may move to revoke or modify the subpoena, and by standardizing the format, so that all numbers are listed both numerically and alphabetically, will make the rule easier to understand. This will help make the administrative process easier, more efficient, more effective, and that no person is likely to object to this proposal.

Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making merely extends the time period, from five (5) to ten (10) days, in which a person served with a subpoena may move to revoke or modify the subpoena. It is apparent from the nature and purposes of the proposal that it will not have an impact on jobs and/or employment opportunities. Because this proposal will amend the rule to extend the time period from five (5) to ten (10) days, in which a person served with a subpoena may move to revoke or modify the subpoena, and also standardizes the format, so that all numbers are listed both numerically and alphabetically, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

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

Motions Addressed to Pleading; Time for Filing

I.D. No. IBA-27-04-00002-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 65.13 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Motions addressed to pleading; time for filing.

Purpose: To simplify wording.

Text of proposed rule: 65.13 Motions addressed to pleading; time for filing.

(a) If any matter contained in a petition, answer or reply be[sham,] frivolous, irrelevant, redundant, repetitious, unnecessary, impudent or scandalous, or may tend to embarrass or delay the fair hearing or consideration of a proceeding, the board, on its own motion or on the motion of any party made on *ten* (10) days' notice of motion, may order such material stricken. In such case, the pleading will be deemed amended accordingly, or the board may order that an amended pleading be served, omitting the objectionable material.

(b) If any material contained in a petition, answer or reply be so indefinite, uncertain or obscure that the precise meaning or application thereof is not readily apparent, the board, on its own motion or on the motion of any party made on *ten* (10) days' notice of motion, may order the party responsible to file and serve an amended pleading.

(c) The motions referred to in subdivisions (a) and (b) of this section shall be made by a party within *thirty* (30) days after service of the petition, answer or reply.

(d)(1) Within *thirty* (30) days after the receipt of a petition, any respondent may, upon *ten* (10) days' notice of motion, move for an order dismissing the petition where it appears that:

- (i) the board lacks jurisdiction in the matter;
- (ii) the petitioner is not an interested party; or
- (iii) the petition fails to comply with the provisions of either section 101 or the board's rules.

(2) Thereafter, such motion shall be made only by permission of the board.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.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

Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth the general procedure for the filing of any motions addressed to a pleading, previously filed with the board pursuant to Labor Law section 101. The majority of the proceedings initiated with the board are filed by non-attorneys, who are representing themselves. This amendment will simplify the rule, by deleting the archaic word "sham" from the listing of potential objections, and by standardizing the format, so that all numbers are listed both numerically and alphabetically.

It is the board's determination that amending this rule to simplify the rule, by deleting archaic language ("sham"), and standardizing the format, so that all numbers are listed both numerically and alphabetically, will make the rule easier to read and understand. This will help make the administrative process easier, more efficient, more effective, and that no person is likely to object to this proposal.

Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making merely amends the rule to make it more easily understood, without changing the rule. It is apparent from the nature and purposes of the proposal that it will not have an impact on jobs and/or employment opportunities. Because this proposal will simplify the rule by deleting archaic language ("sham"), and standardizing the format, so that all numbers are listed both numerically and alphabetically, making the rule easier to read and understand, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

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

Settlement

I.D. No. IBA-27-04-00003-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 65.42 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Settlement.

Purpose: To notify the board of a settlement agreement, either in writing or on the record of the hearing.

Text of proposed rule: 65.42 Settlement

(a) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Labor Law.

(b) *Notification of a* [Proposed] settlement agreement[s] *must* [shall] be submitted in writing to the board or entered on the record of the hearing.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.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 Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consen-

rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule currently states that proposed settlement agreements shall be submitted in writing to the board, or entered on the record of the hearing. The majority of the proceedings initiated with the board are filed by non-attorneys, who are representing themselves. This amendment will amend the rule, replacing the requirement that the parties shall submit proposed settlement agreements to the board, and instead providing that the board must be notified of any settlement agreements, either in writing or on the record of the hearing.

It is the board's determination that amending this rule so that the parties will be required to notify the board of a settlement agreement, either in writing or on the record of the hearing, instead of the current requirement to submit a proposed settlement agreement to the board, either in writing or on the record of the hearing, will make the rule easier to understand. This will help make the administrative process easier, more efficient, more effective, and that no person is likely to object to this proposal.

Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making amends the rule, so that the parties will be required to notify the board of a settlement agreement, either in writing or on the record of the hearing, instead of the current requirement to submit a proposed settlement agreement to the board, either in writing or on the record of the hearing. It is apparent from the nature and purposes of the proposal that it will not have an impact on jobs and/or employment opportunities. Because this proposal will amend the rule so that the parties will be required to notify the board of a settlement agreement, either in writing or on the record of the hearing, instead of the current requirement to submit a proposed settlement agreement to the board, either in writing or on the record of the hearing, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Application

I.D. No. IBA-27-04-00004-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 66.1 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Application of the board's rules to appeals filed with the board.

Purpose: To delete an obsolete notation.

Text of proposed rule: Section 66.1 Application.

(a) Under section 101 any person in interest or his duly authorized agent may, except where otherwise prescribed by law, petition the board for a review of the validity or reasonableness of any rule, regulation or order made by the Commissioner of Labor under any provision of the Labor Law.

(b) For general rules of procedure and practice not specified in this Part, see Part 65 of this Subchapter.

[Note: Appeals from minimum wage compliance orders issued under article 19, formerly had or taken under Part 71 of this Subchapter, are now had or taken as proceeding under this Part. (See section 658, as amended, effective August 29, 1980, and sections 218, as amended, and 219).]

(c) The board's procedure in these matters approximates that of a judicial proceeding. Customarily, a hearing is held at which the Commissioner of Labor, represented by counsel, appears as a defending party. The hearing is *de novo* (original) in nature and is in no sense an appeal. The parties may submit oral or documentary evidence which is material and relevant to the issues. The board will not take cognizance of any evidence submitted to any unit or division of the Department of Labor prior to the petition unless it is introduced and accepted in the record of the proceeding or is a matter properly a subject of official notice.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.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

Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth the application of the Part to appeals filed with the board, pursuant to Labor Law section 101, seeking a review of the validity or reasonableness of any rule, regulation or order made by the Commissioner of Labor. This amendment will delete language in a notation in section 66.1, subdivision (b), which had been added more than twenty (20) years ago to assist parties with understanding the applicability of the rules, following a statutory change in the Labor Law, which had become effective on August 29, 1980. The amendment only deletes this obsolete language, as it no longer is needed to direct parties in preparing an appeal, based upon a statute that has not been further amended since 1980. The amendment does not change any part of the body of the rule, or make any change in the application of the rule.

It is the board's determination that amending this rule to delete obsolete language that is no longer needed to assist in clarifying the impact of a twenty two (23) year old statutory amendment, without altering any of the requirements of the rule itself, will make the administrative process more efficient, and effective, and that no person is likely to object to this proposal.

Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making deletes obsolete language in a notation within the rule, which had been inserted following a statutory change, that had become effective over twenty (20) years ago, on August 29, 1980. The amendment will delete this notation. It is apparent from the nature and purposes of the proposal that it will not have an impact on jobs and/or employment opportunities. Because this proposal merely deletes obsolete language, is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Advanced Notice for Administrative Hearings

I.D. No. IBA-27-04-00005-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 section 65.21 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Notice.

Purpose: To extend the time period from 8 to 10 days in advance, in which a party shall be given notice of the time, place and nature of an administrative hearing conducted by the board.

Text of proposed rule: 65.21 Notice.

Notice of the time, place and nature of a hearing shall be given by the board to the parties at least [eight] *ten* (10) days in advance of such hearing.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.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

Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth the requirement that the parties to an administrative hearing being conducted by the board shall receive a specific, minimum amount of advance notice of the time, place and nature of the hearing. The majority of the proceedings initiated with the board are filed by non-attorneys, who are representing themselves. This amendment will amend the rule, by extending the time period, from eight (8) to ten (10) days in advance, in which a party shall be given notice of the time, place and nature of an administrative hearing conducted by the board, and also by standardizing the format, so that all numbers are listed both numerically and alphabetically.

It is the board's determination that amending this rule to extend the time period, from eight (8) to ten (10) days in advance, in which a party shall be given notice of the time, place and nature of an administrative hearing conducted by the board, and by standardizing the format, so that all numbers are listed both numerically and alphabetically, will make the rule easier to understand. This will help make the administrative process easier, more efficient, more effective, and that no person is likely to object to this proposal.

Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making merely extends the time period, from eight (8) to ten (10) days in advance, in which a party shall be given notice of the time, place and nature of an administrative hearing conducted by the board. It is apparent from the nature and purposes of the proposal that it will not have an impact on jobs and/or employment opportunities. Because this proposal will amend the rule to extend the time period from eight (8) to ten (10) days in advance, in which a party shall be given notice of the time, place and nature of an administrative hearing conducted by the board, and also standardizes the format, so that all numbers are listed both numerically and alphabetically, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rules of Evidence

I.D. No. IBA-27-04-00006-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 65.29 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Rules of evidence.

Purpose: To more accurately reflect the contents of the rule.

Text of proposed rule: 65.29 Rules of *procedure and evidence*.

The Board and the hearing officer shall not be bound by technical rules of procedure and evidence.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.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

Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth that technical rules of procedure, and of evidence, are not binding upon the board in the conduct of administrative hearings. The majority of the proceedings initiated with the board are filed by non-attorneys, who are representing themselves. This amendment will amend the heading of the rule, by adding the word "procedure", so that a party reviewing the rules will more easily find and note that this rule concerns the applicability of both technical rules of evidence and procedure.

It is the board's determination that amending the heading of this rule by adding the word "procedure", will make the rule easier to understand. This

will help make the administrative process easier, more efficient, more effective, and that no person is likely to object to this proposal.

Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making merely amends the heading of the rule, by adding the word "procedure", without changing any part of the rule itself. It is apparent from the nature and purposes of the proposal that it will not have an impact on jobs and/or employment opportunities. Because this proposal will amend the rule by adding the word "procedure" to the rule heading, without amending the body of the rule itself, allowing a party reviewing the rules to more easily find and note that this rule concerns the applicability of both technical rules of evidence and procedure, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

Office of Mental Health

EMERGENCY RULE MAKING

Residential Treatment Facilities for Children and Youth

I.D. No. OMH-18-04-00010-E

Filing No. 727

Filing date: June 22, 2004

Effective date: June 22, 2004

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

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

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

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

Specific reasons underlying the finding of necessity: To address the immediate needs of children being served in Residential Treatment Facilities for Children and Youth (RTF) it is necessary to continue to temporarily expand the capacity of certain RTF's.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 20, 2004.

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

Regulatory Impact Statement

1. Statutory Authority: §§ 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters

under his jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

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

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

There are a number of initiatives underway that focus on improving the use of the current RTF resources by decreasing the length of stay. These initiatives include focused development of supervised community residences, family based treatment programs, case management and family support to assist the youth discharged from an RTF to successfully reintegrate into the community.

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

4. Costs:

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

NOTICE OF ADOPTION

Patients Committed to the Custody of the Commissioner

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

Filing No. 728

Filing date: June 22, 2004

Effective date: July 7, 2004

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

Action taken: Amendment of Part 540 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, §§ 7.09(b), (c) and 31.04(a); and Criminal Procedure Law, article 730

Subject: Patients committed to the custody of the commissioner.

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

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-15-04-00002-P, Issue of April 14, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Registration of Pickup Trucks

I.D. No. MTV-18-04-00017-A

Filing No. 726

Filing date: June 22, 2004

Effective date: July 7, 2004

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

Action taken: Amendment of section 106.6(b) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 401(7) and (15)

Subject: Registration of pickup trucks.

Purpose: To raise the registration weight for certain pickup trucks to 5,500 pounds.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-18-04-00017-P, Issue of May 5, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Assessment of Public Comment

Enterprise Rent-A-Car wrote in support of the proposed amendment, stating that the regulation would "benefit small businesses and New York consumers alike." The Department appreciates Enterprises' support.

New York State 911 Board

**INFORMATION NOTICE
NOTICE OF PROPOSED AMENDMENT**

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions. *Proposed Amendments to Minimum Standards Relating to Expedited Deployment Funding*. Summary. At its meeting of January 13, 2004, the Board adopted final standards relating to Expedited Deployment funding under County Law, Article 6-A. Those final standards were published in the *Register* of February 4, 2004 as 21 NYCRR Part 5204. On June 23, 2004, the Board proposed amendments to Section 5204.6 of this Part ("Standards Governing Reasonable Eligible Wireless 911 Service Costs"). The amendments clarify and provide further detail regarding particular categories of items for which funding will be allowed or prohibited, and express the requirement that associated costs are eligible for funding to the extent that they are integrally related to the acquisition and installation of eligible items, including first-year training of instructional personnel.

A minimum 45-day comment period follows this Notice, during which all interested persons and organizations are invited to comment.

Further information, contacts: Written comments may be submitted to Harry J. Willis, Esq., at the New York State Department of State, Office of Counsel, 41 State Street, Suite 830, Albany NY 12231, fax: 518-473-9211, phone: 518-474-6740.

The proposed amendment is as follows:

§ 5204.6 Standards Governing Reasonable Eligible Wireless 911 Service Costs.

[Items are eligible only insofar as they] *Eligible wireless 911 service costs may be paid or reimbursed for the eligible items set forth in paragraph (a) below to the extent such items relate to the provision of enhanced wireless service. For purposes of this section, "eligible wireless 911 service costs" shall mean the actual costs incurred by the governmental entity seeking payment or reimbursement which are related to the acquisition, design, installation, customization and delivery of eligible items, including shipping and handling fees, site-surveying and engineering costs, construction and renovation costs incidental to the installation of eligible items, and non-recurring costs incurred for the modification or customization of eligible items to enable such eligible items to be operational for their intended purpose and to ensure functionality and compatibility with the software and equipment of and services provided by wireless telephone service suppliers, provided, however, that any such costs for consultant services for software improvements and training of those personnel of the local governmental entity primarily responsible for the instruction of local government employees in the proper use of eligible items of equipment or software are an integral part of a hardware/software procurement package and are incurred not later than one year after the later of the date the eligible items to which such costs relate is delivered or accepted.*

(a) Eligible items:

(1) [computer] equipment, including, but not limited to, computers, connection equipment providing automatic number identification (ANI) and automatic location information (ALI) operations, and uninterruptible power systems (UPS);

(2) consoles and furniture for additional positions and/or required for new equipment;

[(2)] (3) software, including software licensing fees.[];

(3) connection equipment (ANI & ALI);

(4) on-site equipment.]

(b) Funding shall not be awarded for any items purchased prior to May 15, 2003.

(c) *Except to the extent otherwise provided above, [Funding] funding shall not be awarded for:*

(1) [capital] construction and renovation costs, other than costs incidental to the installation of eligible items;

(2) personal services; [or]

(3) training of personnel; or

(4) ordinary or recurring maintenance charges.

Division of Probation and Correctional Alternatives

EMERGENCY RULE MAKING

Interstate/Intrastate Transfer and Related Supervision Rule

I.D. No. PRO-27-04-00007-E

Filing No. 720

Filing date: June 17, 2004

Effective date: June 17, 2004

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

Action taken: Amendment of Parts 349 and 351 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); and Criminal Procedure Law, section 410.80

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

Specific reasons underlying the finding of necessity: To increase offender accountability and ensure continuity of supervision to safeguard against inappropriate transfer and guarantee appropriate recordkeeping of finger-printable probationers.

Subject: Interstate/intrastate transfer and related supervision rule.

Purpose: To regulate interstate and intrastate transfers.

Text of emergency rule: Amend paragraph (a) to read as follows:

(a) All interstate transfers of probation supervision shall be in accordance with the provisions of the interstate compact for the supervision of parolees and probationers, the juvenile compact, any other governing compact, and applicable rules, regulation and procedures as adopted by the State compact administrator for such compacts with reference to the transfers of probation supervision. Any sending probation department shall take all necessary steps to ensure the following are completed prior to transfer:

(1) fingerprinting of any convicted adult, youthful offender, juvenile offender/youthful offender, and juvenile delinquent adjudicated of a fingerprintable offense;

(2) DNA testing, where applicable; and

(3) Sex Offender Registration, where applicable.

A sending department shall indicate what actions it has taken with regard to these aforementioned requirements.

Section 349.4 Requirement for the intrastate transfers of supervision.

Amend paragraph (a) to read as follows:

(a) Any intrastate transfer must be pursuant to a designation and order of the court. A probationer must agree in writing to comply with any and all conditions set forth by the receiving court and be subject to any other fees and/or surcharges authorized by law. No intrastate transfer shall be initiated by a sending probation department when there exists a pending violation of probation in its jurisdiction unless the receiving probation department expresses in writing willingness to accept transfer. No transfer of interim probation cases shall be initiated unless statutorily authorized. Transfers are prohibited whenever there exists pending criminal charge(s) in the sending jurisdiction unless the probationer is a resident of the receiving jurisdiction at time of commission of the offense or at sentencing/disposition or has family residing in the receiving jurisdiction with whom he/she will reside, the transfer enhances public safety, and the receiving probation department expresses in writing willingness to accept transfer.

Amend paragraph (b) to read as follows:

(b) Prior to a transfer, the sending probation department shall provide the court with information relevant to a probationer's [program] prospective plan of transfer, including residence, [whenever there is a question concerning the availability of a probation program] in the jurisdiction to which supervision is to be transferred.

Amend paragraph (c) to read as follows and renumber paragraphs 2, 3 and 4, to be paragraphs 4, 5 and 6 respectively:

(c)(1) Immediately upon knowledge that a person being considered for probation or on probation resides or desires to reside in another jurisdiction, the sending probation department may request the receiving probation department to verify the subject's residence or prospective residence except those cases enumerated in paragraph (2) of subdivision (c).

All efforts shall be made to afford the receiving department adequate time so as not to delay disposition of the case.

Factors that may be considered when determining suitability to transfer to another probation department are the individual's address for mailing and/or tax purposes, where he/she lives the majority of time, votes, and where his/her vehicle is registered.

(2) Prior to a transfer involving any person convicted or adjudicated of an offense defined in Article 130, 235, 263 of the Penal Law or Section 255.25 of such law, or of an offense between spouses, parent and child, or between members of the same family or household, or any other crime where an order of protection exists, and where a probationer is not a resident of the receiving jurisdiction at the time of sentencing or disposition, the sending probation department shall afford the receiving probation department the opportunity to investigate the prospective transfer and verify actual residence prior to his/her movement and transfer of supervision to a receiving jurisdiction. For purposes of this section, offense shall include the criminal offense or matter for which convicted or adjudicated, as well as any other criminal offense or matter that is part of the same criminal transaction or underlying behavior or that is contained in any other accusatory instrument or petition disposed of by a plea of guilty or finding of fact or admission of guilt in satisfaction.

(3) The sending probation department shall provide the receiving department at a minimum the following information:

- (i) subject's current address and prospective address if different;
- (ii) subject's current home and business telephone number;
- (iii) the order and conditions of probation;
- (iv) a copy of any existing order of protection;
- (v) a brief description of the underlying offense or act;
- [(iv)] (vi) where applicable, subject's current employer and prospective employer if different; and
- [(v)] (vii) where applicable, the name, address, and telephone number of the subject's residential treatment provider or educational institution.

Amend paragraph (e) to read as follows:

(e) *The sending probation department shall take all necessary steps to ensure fingerprinting, DNA testing, and Sex Offender Registration, where applicable, are completed prior to transfer and shall indicate what actions it has taken with regard to these requirements.* The sending probation department [upon], within ten calendar days of receipt of a court order of transfer, shall transmit to the receiving probation department designee the following information:

- (1) a completed DPCA-16, DPCA-16a or DPCA-16b, whichever is applicable;
- (2) the pre-sentence or pre-disposition investigation report where available or in lieu of the report, a completed pre-sentence or pre-disposition report facesheet, the accusatory instrument or the petition, whichever is applicable, and police report(s) where available;
- (3) periodic supervision reports;
- (4) any mental health/substance abuse evaluation and/or treatment summary;
- (5) any records regarding outstanding financial obligations;
- (6) a photograph if available;
- (7) a copy of any existing or recent orders of protection *and/or victim information, including name and address;*
- (8) *whether the probationer is subject to sex offender registration and where applicable* all documents relating to sex offender registration, including photograph;
- (9) any other information authorized by law;
- (10) information required by either the court ordering the transfer or the court to which supervision is transferred; [and]
- (11) name, address, phone number of probationer's prospective or existing employer, residential treatment provider, and/or educational institution;
- (12) proposed residence, phone number, and information pertaining to others living in the household; and

(13) *whether the individual is subject to fingerprinting and/or DNA testing.* [A completed form DPCA-200 for registering probationers shall be promptly forwarded to the Division of Probation and Correctional Alternatives and the Division of Criminal Justice Services] *Where any convicted adult, youthful offender, juvenile offender/youthful offender, or juvenile delinquent adjudicated of a fingerprintable offense, is under probation supervision, a copy of the DPCA-200 or through an equivalent process which indicates the sending probation department's ORI number and the probationer's registration number associated with the underlying*

offense for which such individual is under supervision shall be transmitted to the DPCA via DCJS with a copy to the receiving probation department.

Paragraph (f) is renumbered paragraph (h) and a new paragraph (f) shall read as follows:

(f) *If it is determined that the probationer: resides at the specified address in the order of transfer; has absconded; does not reside; or will not be residing at the specified address in the order of transfer; the receiving probation department shall immediately upon knowledge, but no later than sixty calendar days after the date the initial court transfer order is received, notify the sending probation department of its finding with respect to residency or non-residency. If the address in the order of transfer is inaccurate, the correct address shall be provided. Any verbal notification shall be immediately confirmed in writing. The sending probation department shall notify the sending court of the finding. The sending probation department shall retain the duty of supervision for the probationer and the sending court shall retain jurisdiction over the case prior to verification of residence or upon notification of probationer non-residency within the time period. If no notification of residency or non-residency occurs within sixty calendar days of the date the court transfer order is received, the transfer shall be effective and the receiving court shall assume those powers and duties as otherwise specified in the court order and the receiving probation department shall assume the duty of supervision. Upon knowledge of residency or non-residency, the receiving probation department shall complete the acknowledgment section contained in the appropriate DPCA transfer form and return two duly executed copies to the sending probation department. Upon acceptance, the receiving probation department shall transmit to DPCA via DCJS a DPCA-200 or through an equivalent process which updates information and shall provide a copy to the sending probation department. After sixty calendar days of the court order being received, if the receiving department has not already done so, the sending department shall transmit to DPCA via DCJS a DPCA-200 or an equivalent electronic process which updates information and provide a copy or notification to the receiving department of its action. Where non-residency is determined, the receiving probation department shall return all appropriate transfer material to the sending probation department within ten calendar days of such a determination.*

A new paragraph (g) shall read as follows:

(g) *Where the receiving probation department recommends additional conditions, it shall seek to calendar the case with the receiving court for modification of conditions within twenty business days of acceptance of transfer. Nothing shall preclude the ability of the receiving probation department to request modification of conditions and/or a court to modify conditions during the term of supervision.*

Section 351.6. Reporting Requirements.

Amend Section 351.6 to read as follows:

Each probation director shall report to the State Director of Probation and Correctional Alternatives in the form and manner prescribed, including any and all such information requested pertaining to each person sentenced to probation by a criminal court *and each juvenile delinquent adjudicated of a fingerprintable offense* and under the supervision of the probation director's department in accordance with timeframes established by the division.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 14, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Linda J. Valenti, Counsel, Division of Probation and Correctional Alternatives, 80 Wolf Rd., Suite 501, Albany, NY 12205, (518) 485-2394

Regulatory Impact Statement

1. Statutory authority:

Executive Law Section 243(1) empowers the State Director of Probation and Correctional Alternatives to promulgate rules and regulations governing the administration of probation services, including but not limited to the supervision of probationers. Executive Law Sections 259-m and 259-mm. Sections 1801 *et seq.* of the Unconsolidated Laws, Criminal Procedure Law Section 410.80, and Family Court Act Section 176 authorize interstate and intrastate transfer of probation supervision of criminal court and family court probationers. Further, Criminal Procedure Law Section 410.80(1) states that criminal courts may authorize intrastate transfers of probation supervision and that such transfers must be in accordance with regulations adopted by the State Director.

2. Legislative objectives:

This regulation is consistent with legislative intent that the State Director adopt regulations in areas relating to critical probation functions. It is in keeping with legislative intent to promote uniformity that the Division of Probation and Correctional Alternatives issue regulations establishing standardized procedures for handling transfers. Standardization and strengthened procedures in this area will promote consistency, good professional practice, ensure effective application and prevent disruption in supervision.

Further, there exist various state laws governing fingerprinting, sex offender registration, and DNA collections of certain individuals involved in the criminal justice or juvenile justice system, namely Criminal Procedure Law Section 160.10, Family Court Act Section 306.1, Article 6-C of the Correction Law, and Article 49-B of the Executive Law. Certain provisions of this regulation which establish that sending departments take all necessary steps to ensure such are completed where applicable will optimize compliance in these areas.

3. Needs and benefits:

The proposed amendments to the interstate/intrastate and supervision rules are designed to increase offender accountability, ensure continuity of supervision, promote public safety, and improve data reporting. It is in the best interests of the state and local government that these amendments be issued as emergency regulations to address and optimize public and victim safety and to safeguard against inappropriate transfers.

The Division of Probation and Correctional Alternatives is aware of several problems that have arisen in the area of interstate and intrastate transfer that can be remedied by establishing restrictions and conditions that must be met before transfers are initiated and completed. A recent incident involved an upstate sex offender with other pending sex crimes being judicially transferred and allowed to relocate to another jurisdiction. The transfer occurred before the receiving probation agency could verify residency or conduct a criminal history check. Public safety was compromised as the offender was subsequently arrested for another sex offense in the receiving jurisdiction while the transfer was pending. The proposed rule amendment will ensure that this situation does not happen again by establishing stronger measures that clearly delineate responsibilities of sending and receiving jurisdictions that will both guarantee offender accountability and compliance and protect public and victim safety.

Examples of new key regulatory provisions are highlighted below:

- Since transfer of probation is a privilege not a right, an interstate probationer will be required to agree in writing to comply with any and all conditions set forth by the receiving court and to be subject to any other fees and/or surcharges. This is consistent with current law in the area of interstate transfer which recognizes that a probationer must agree to abide by any conditions set by a supervising agency, compact administrator or designee.
- It is reasonable and sound that no intrastate transfer shall be initiated by a sending probation department when there exists a pending violation of probation in its jurisdiction unless the receiving department consents and that sending department take all necessary steps to ensure fingerprinting, DNA testing and Sex Offender Registration are completed prior to transfer and that orders of protection are provided with application papers in a timely manner.
- Several provisions will establish better intrastate transfer procedures by prohibiting transfers whenever there exists pending criminal charge(s) in the sending jurisdiction except under certain enumerated circumstances, and disallowing transfers involving sex offenders and domestic violence where a probationer is not a resident of the receiving jurisdiction at the time of sentencing or disposition until the receiving jurisdiction has had sufficient opportunity to investigate the prospective transfer and verify actual residence prior to the probationer's movement to the receiving jurisdiction.
- Fingerprinting provisions will help ensure that all enumerated cases, subject to fingerprinting laws are indeed fingerprinted prior to leaving the original jurisdiction. Fingerprinting guarantees notification to the probation department of record of any new arrest. Further, it is important to law enforcement that criminal history records are accurate.
- DNA collection is recognized as a vital law enforcement investigatory and prosecutorial tool as technology provides for positive identification of offenders. It has proven instrumental in solving previously unsolved crimes and in assisting defense in their efforts to prove their client's innocence.

- Sex Offender registration helps ensure that offenders are registered in a timely fashion and that risk assessments are conducted, and that appropriate law enforcement agencies are notified. Through registration and risk assessment, the public and/or entities with vulnerable populations may have access to certain information that is timely and accurate.
- New language which will require affording the receiving department the opportunity to investigate enumerated sex offenses and those involving domestic violence of nonresidents will promote victim safety, enhance supervision and as a result foster community safety.
- The change in our supervision rule as to reporting requirements merely clarifies a previous written communication on this subject to guarantee that the Division of Probation and Correctional Alternatives has a more comprehensive database of individuals under probation supervision.

These proposed amendments strengthen and clarify procedural requirements in the area of interstate and intrastate transfer and offender compliance with the new fingerprinting, DNA collection and sex offender registration provisions. These amendments will serve the additional important functions of enhancing public and victim safety, promoting offender accountability, ensuring continuity of services, and establishing better safeguards in the transfer process.

4. Costs:

These changes are procedural in nature and will require some training. However, we do not foresee these proposed reforms leading to significant additional costs to probation departments. Clearly, any minimal costs are significantly outweighed by increased public safety interests and offender accountability provided by these new provisions.

5. Local government mandates:

The proposal establishes new procedures for interstate and intrastate transfers and clarifies supervision reporting. It imposes clear duties upon sending and receiving probation departments to facilitate transfers consistent with offender accountability and public safety. The Division circulated earlier drafts to the Executive Committee of the Council of Probation Administrators, (the statewide professional association of probation administrators) and a final draft subsequently to all probation agencies. We incorporated in these emergency amendments certain verbal suggestions earlier raised by probation professionals to address problems which they previously experienced in this area and to clarify certain provisions. For example, additional language was added to establish that a sending probation department shall take all necessary steps to ensure fingerprinting, DNA testing, and Sex Offender Registration, where applicable, are completed prior to transfer and that indication of actions taken be included in transfer papers. To promote offender accountability and compliance, language was added to establish that the probationer must agree to comply with any conditions imposed by the receiving court and to be subject to any other fees or surcharges authorized by law. To emphasize this importance, additional language was included to require any receiving probation department recommending additional conditions to seek to calendar the case with the receiving court for modification of such conditions within 20 business days and to recognize the ability of the receiving probation department to request and the authority of the receiving court to modify conditions during the term of supervision. Due to numerous requests across the state, the Division reinstated a past regulatory time frame requirement with respect to intrastate transfer processing and the outside time period when the transfer becomes effective because prior flexibility in this area with respect to a receiving department's processing of cases has led to excessive delays in response to transfer requests and concerns as to continuity of supervision. We also modified prior draft language to establish that this 60 calendar day time period commences on the date the transfer paperwork is received by the receiving department rather than when judicially signed so that receiving department's are not adversely affected by mail delays.

Overall, the Division has received favorable support from probation agencies that these new standards are manageable and consistent with good professional practice. New York City has previously commented on an earlier draft and raised some points that we referenced above and which were incorporated in these emergency amendments. Other perceived workload issues raised reflected a misunderstanding of what was being required. For example, there was a misconception that probation itself was responsible for undertaking fingerprinting activities rather than facilitating and documenting efforts to promote compliance in applicable cases. Where probationers are subject to fingerprinting, DNA, and/or Sex Offender Registration requirements, the Division does not believe it is unreasonable or burdensome for probation as the supervising agency to take a

stronger role in ensuring compliance of these requirements. Additionally, their concern over the time frame with respect to calendaring a case for modifying conditions was not valid as our regulatory amendment language refers to seeking to calendar within this time period not requiring the actual calendar date occur during this time frame. The Division disagreed with other NYC concerns that a few of these regulatory amendments would be burdensome. For example, we believe their perception that providing information "pertaining to others living in the household is a substantial workload increase if required in all cases" is inaccurate, as such information is routinely gathered in the course of investigatory and/or supervision services and is clearly outweighed by its intrinsic value to a receiving probation department. Similarly, comments surrounding workload concerns arising from our regulatory language of factors that may be considered when determining suitability to transfer are also misplaced as they are illustrative in terms of good professional practice and not essential verification requirements. Other comments raised by NYC reflected resistance to change internal procedures and are outweighed by the importance of court notification and offender accountability.

6. Paperwork:

The proposed rule will not lead to additional paperwork. In an effort to assist in identifying critical information, the Division redesigned interstate and intrastate forms to capture new requisite information.

7. Duplication:

This proposed rule does not duplicate any State or Federal law or regulation. It clarifies and reinforces certain laws with respect to Sex Offender Registration, DNA, and fingerprinting to promote compliance.

8. Alternatives:

In view of the need to ensure uniformity in transfer procedures, establish stronger minimum standards to promote offender accountability and protect public and victim safety, regulation in this area is critical and no other alternatives were determined appropriate.

9. Federal standards:

There are federal standards governing interstate transfers of probationers and Sex Offender registration, and this regulation requires local probation departments to adhere to these requirements.

10. Compliance schedule:

Through prompt dissemination and because amendments are not unduly burdensome, local departments should be able to immediately implement these amendments.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses is not required by Section 202-a of the State Administrative Procedure Act, no small business recordkeeping requirements, needed professional services, or compliance requirements will be imposed on small businesses.

Any impact a local government is addressed in both the Regulatory Impact Statement and the Rural Area Flexibility Analysis.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-four local probation departments are located in rural areas and will be affected by the proposed rule.

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

The proposed rule strengthens procedural requirements and improves probation practice, yet should not impose significant additional local probation costs. There are no professional services likely to be needed in any rural area to comply with proposed rule changes. Recordkeeping and compliance provisions will improve transfer operations and offender accountability, thus enhancing public safety.

3. Costs:

There are no significant additional costs or new annual costs required to comply with the proposed rule changes. Clearly, any minimal costs, are significantly outweighed by increased public safety interests and offender accountability provided by these new provisions.

4. Minimizing adverse impact:

The proposed rule amendments will have no adverse impact on rural areas.

5. Rural area participation:

DPCA has discussed the proposed rule changes with the Executive Committee of the Council of Probation Administrators, which include a cross-section of urban, rural, and suburban jurisdictions, and we have circulated and submitted comments on a prior draft of this regulatory

reform to all probation directors and the State Probation Commission. The current emergency regulatory amendments incorporate numerous verbal and written suggestions from probation professionals, including rural entities, across the state to address problems which probation departments experience in the area of interstate and intrastate transfers and supervision reporting and to clarify certain procedural provisions. Details of many of these changes are highlighted in the regulatory impact statement. Moreover, DPCA did not find differences between urban, rural, and suburban jurisdictions as to issues raised or suggestions for change.

Job Impact Statement

A job impact statement is not being submitted with the proposed rule because it will have no adverse effect on private or public jobs or employment opportunities. The revisions are procedural in nature and clarify interstate and intrastate work responsibilities and functions that are consistent with good professional practice. These changes are not onerous in nature and can be implemented through correspondence and training of probation staff.

Public Service Commission

ERRATUM

PSC-24-04-00008-P—Initial Tariff Schedule by National Aqueous Corporation and PSC-24-04-00009-P—Water Rates and Charges by National Aqueous Corporation published in the June 16, 2004 New York *State Register* has been revised. The effective date of National Aqueous Corporation's Escrow Account Statement No. 1 is October 1, 2004 not January 1, 2005.

NOTICE OF ADOPTION

Lightened Regulation by Flat Rock Wind Power, LLC

I.D. No. PSC-18-02-00024-A

Filing date: June 17, 2004

Effective date: June 17, 2004

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

Action taken: The commission, on May 5, 2004, adopted an order in Case 02-E-0362, approving Flat Rock Wind Power LLC's (Flat Rock) request for lightened regulation as an electric corporation.

Statutory authority: Public Service Law, sections 2(13), (22), 61, 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 79, 80, 80(11), 81, 82, 82-a, 83, 84, 85, 88, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118 and 119-b

Subject: Lightened regulation.

Purpose: To allow Flat Rock to be lightly regulated as an electric corporation.

Substance of final rule: The Commission approved lightened regulation for Flat Rock Wind Power LLC's (Flat Rock) proposed wind powered generating facility, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-E-0362SA1)

NOTICE OF ADOPTION

Natural Gas Transmission, Distribution and Gathering Line Facilities**I.D. No.** PSC-29-03-00007-A**Filing No.** 730**Filing date:** June 16, 2004**Effective date:** June 16, 2004

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

Action taken: Amendment of Parts 10 and 255 of Title 16 NYCRR.**Statutory authority:** Public Service Law, sections 65(1) and 66(1)**Subject:** Natural gas transmission, distribution and gathering line facilities.**Purpose:** To bring the commission's pipeline safety regulations into compliance with recent amendments to 49 CFR part 192.**Substance of final rule:** The Commission adopted amendments to Title 16 Parts 10 and 255 of the Official Compilation of Codes, Rules and Regulations of the State of New York to comply with the current federal pipeline safety regulations contained in Title 49, Code of Federal Regulation, Part 192, transportation of natural and other gas by pipeline.**Final rule compared with proposed rule:** No changes.**Text of rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204**Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement because the changes are non-substantial. The changes merely corrected clerical errors and do not alter the rule's purpose, meaning or effect.

Assessment of Public Comment

The agency received no public comment.
(02-G-0134SA1)

PROPOSED RULE MAKING
HEARING(S) SCHEDULED**Adjustment of Rates by Corning Natural Gas Corporation****I.D. No.** PSC-27-04-00024-P

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

Proposed action: The commission is considering a petition from Corning Natural Gas Corporation (CNG) concerning whether to grant, modify, deny, in whole or in part, CNG's petition to implement temporary rates, to the extent the commission deems necessary, to adjust the allocation of joint and common costs between CNG and unregulated affiliates, to permit CNG to treat as current income incentive amounts for having pursued financial integrity measures, to suspend the annual amortization of certain pension and OPEB over-collections, to recalculate the average cost of natural gas in storage, and to use credits and other revenues as offsets to any rate increases.**Statutory authority:** Public Service Law, sections 65(1), 66(12), 72 and 114**Subject:** Adjustment of rates.**Purpose:** To ensure that CNG continues to provide safe and adequate natural gas services.**Public hearing(s) will be held at:** 9:00 a.m. on Sept. 1, 2004 at Three Empire State Plaza, Albany, NY.**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.**Interpreter Service:** Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.**Substance of proposed rule:** The Commission is considering a petition from Corning Natural Gas Corporation (CNG) concerning whether to grant, modify, deny, in whole or in part, CNG's petition to implement temporary rates, to the extent the Commission deems necessary, to adjust the allocation of joint and common costs between CNG and unregulated affiliates, to permit CNG to treat as current income incentive amounts for having pursued financial integrity measures, to suspend the annual amorti-

zation of certain pension and OPEB over-collections, to recalculate the average cost of natural gas in storage, and to use credits and other revenues as offsets to any rate increases.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204**Data, views or argument may be submitted to:** Jaelyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530**Public comment will be received until:** five days after the last scheduled public hearing.**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

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

(02-G-0003SA4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Interconnection Agreement between Verizon New York Inc. and Various Verizon Wireless Affiliates****I.D. No.** PSC-27-04-00008-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 modification filed by Verizon New York Inc. and various Verizon wireless affiliates to revise the interconnection agreement effective on Jan. 20, 1997.**Statutory authority:** Public Service Law, section 94(2)**Subject:** Inter-carrier agreements to interconnect telephone networks for the provisioning of local exchange service.**Purpose:** To amend interconnection agreement.**Substance of proposed rule:** The Commission approved an Interconnection Agreement between Verizon New York Inc. and Various Verizon Wireless Affiliates in January 1997. The companies subsequently have jointly filed amendments to add provisions to govern the exchange of toll free service access code calls between the Parties. The Commission is considering these changes.**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204**Data, views or arguments may be submitted to:** Jaelyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

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

(97-C-0248SA3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Interconnection Agreement between Verizon New York Inc. and Various Verizon Wireless Affiliates****I.D. No.** PSC-27-04-00009-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 modification filed by Verizon New York Inc. and various Verizon wireless affiliates (f/k/a Upstate Cellular Network d/b/a Frontier Cellular) to revise the interconnection agreement effective on Feb. 20, 1997.**Statutory authority:** Public Service Law, section 94(2)**Subject:** Inter-carrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Various Verizon Wireless Affiliates (f/k/a Upstate Cellular Network d/b/a Frontier Cellular) in February 1997. The companies subsequently have jointly filed amendments to add provisions to govern the exchange of toll free service access code calls between the Parties. The Commission is considering these changes.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(97-C-0941SA3)

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

Interconnection Agreement between Conversent Communications of New York, LLC and Verizon New York Inc.

I.D. No. PSC-27-04-00010-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 Conversent Communications of New York, LLC and Verizon New York Inc. and for approval of an interconnection agreement executed on April 20, 2004.

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: Conversent Communications of New York, LLC and Verizon New York Inc. have reached a negotiated agreement whereby Conversent Communications of New York, LLC and Verizon 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 for the term of an underlying agreement.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-C-0679SA1)

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

Interconnection Agreement between Verizon New York Inc. and Think 12 Corporation d/b/a Hello Depot

I.D. No. PSC-27-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Think 12 Corporation d/b/a Hello Depot for approval of an interconnection agreement executed on April 7, 2004.

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: Verizon New York Inc. and Think 12 Corporation d/b/a Hello Depot have reached a negotiated agreement whereby Verizon New York Inc. and Think 12 Corporation d/b/a Hello Depot will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until April 6, 2006, or as extended.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-C-0693SA1)

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

Interconnection Agreement between Verizon New York Inc. and Diversified Telecom Corporation NY

I.D. No. PSC-27-04-00012-P

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

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

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: Verizon New York Inc. and Diversified Telecom Corporation NY have reached a negotiated agreement whereby Verizon New York Inc. and Diversified Telecom Corporation NY will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-C-0694SA1)

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

Interconnection Agreement between Verizon New York Inc. and ATD Communications, Ltd.

I.D. No. PSC-27-04-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and ATD Communications, Ltd. for approval of an interconnection agreement executed on April 13, 2004.

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: Petition of Verizon New York Inc. and ATD Communications, Ltd. have reached a negotiated agreement whereby Verizon New York Inc. and ATD Communications, Ltd. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

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

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

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

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

(04-C-0695SA1)

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

Interconnection Agreement between Verizon New York Inc. and Buffalo Lake Erie Wireless Systems Company, L.L.C.

I.D. No. PSC-27-04-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York and Buffalo-Lake Erie Wireless Systems Company, L.L.C. for approval of an interconnection agreement executed on Jan. 23, 2004.

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: Verizon New York Inc. and Buffalo-Lake Erie Wireless Systems Company, L.L.C. have reached a negotiated agreement whereby Verizon New York Inc. and Buffalo-Lake Erie Wireless Systems Company, L.L.C. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

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

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

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

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

(04-C-0696SA1)

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

Interconnection Agreement between Verizon New York Inc. and Neutral Tandem-New York, LLC

I.D. No. PSC-27-04-00015-P

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

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

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: Verizon New York Inc. and Neutral Tandem-New York, LLC have reached a negotiated agreement whereby Verizon New York Inc. and Neutral Tandem-New York, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

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

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

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

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

(04-C-0697SA1)

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

Interconnection Agreement between Verizon New York Inc. and Great America Networks, Inc.

I.D. No. PSC-27-04-00016-P

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

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

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: Verizon New York Inc. and Great America Networks, Inc. have reached a negotiated agreement whereby Verizon

New York Inc. and Great America Networks, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

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

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

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

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

(04-C-0698SA1)

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

Delivery Rates by New York State Electric & Gas Corporation

I.D. No. PSC-27-04-00017-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 120—Electricity to become effective Jan. 1, 2005.

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

Subject: Delivery rates.

Purpose: To redesign delivery rates.

Substance of proposed rule: New York State Electric & Gas Corporation has made a tariff filing to redesign its delivery rates for S.C. Nos. 1 and 2 to become effective January 1, 2005. The filing is made pursuant to the Commissions Order Directing Rate Design and Revenue Allocation, in Case 01-E-0359, issued November 22, 2002. The Commission may approve, modify or reject the filing in whole or in part.

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

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

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

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

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

(01-E-0359SA15)

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

Rate Enrollment Rules and Procedures by New York State Electric & Gas Corporation

I.D. No. PSC-27-04-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 120—Electricity to become effective Oct. 1, 2004.

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

Subject: Rate enrollment rules and procedures.

Purpose: To establish rate enrollment period rules and procedures.

Substance of proposed rule: New York State Electric & Gas Corporation (NYSEG) has made a tariff filing to establish rules and procedures for rate option selections and changes applicable to the second commodity period of NYSEG's electric rate plan to become effective October 1, 2004. The Commission may approve, modify or reject the filing in whole or in part.

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

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

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

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

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

(01-E-0359SA14)

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

Street Lighting by New York State Electric & Gas Corporation

I.D. No. PSC-27-04-00019-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 New York State Electric & Gas Corporation to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 121—Electricity to become effective Oct. 1, 2004.

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

Subject: Street lighting.

Purpose: To revise street lighting tariff provisions.

Substance of proposed rule: New York State Electric & Gas Corporation has made a tariff filing to revise its street lighting tariff provisions to become effective October 1, 2004. The filing is being made to resolve the concerns raised by the Commission in its order issued August 29, 2002 in Case 02-E-1061 and help to ensure proper street lighting billing and expeditious response to customers' requests. The Commission may approve, modify or reject the filing in whole or in part.

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.

(02-E-1061SA1)

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

Surcharge to Collect Revenues Lost by Rochester Gas and Electric Corporation

I.D. No. PSC-27-04-00020-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, or modify in whole or in part, a petition filed by Rochester Gas and Electric Corporation to implement a surcharge in accor-

dance with Ordering Clause 5 of the commissioner's order adopting provisions of joint proposals with conditions, issued May 20, 2004, in Case Nos. 03-E-0765 and 02-E-0198.

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

Subject: Lost revenues.

Purpose: To permit Rochester Gas and Electric Corporation to collect revenues lost as a result of delaying the implementation of the retail access surcharge from May 1, 2004 to May 28, 2004.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify in whole or in part, a petition filed by Rochester Gas and Electric Corporation in accordance with Ordering Clause 5 of the Commission's Order Adopting Provisions of Joint Proposals with Conditions, issued May 20, 2004, in Case Nos. 03-E-0765 and 02-E-0198 to implement a surcharge to collect revenues lost as a result of delaying the implementation of the retail access surcharge (RAS) from May 1, 2004 to May 28, 2004 and any other related matters. The Company provided an estimate of the lost revenues for the period May 1, 2004 through May 27, 2004 and proposed a methodology to recover said revenues from all applicable electric service customers during the billing months of September 2004 through December 2004. The Company also proposed to supplement the current petition with actual lost revenues once the billing data for the period May 1, 2004 through May 27, 2004 become available, and recalculate the proposed surcharge accordingly.

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

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

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

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

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

(03-E-0765SA2)

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

Cessation of Electric Service by the Village of Springville

I.D. No. PSC-27-04-00021-P

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

Proposed action: The commission is considering a petition from the Village of Springville municipal electric utility requesting that it be permitted to cease providing service to two customers located outside its franchised service territory. The commission may adopt, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 65(1)-(3) and 66(1)-(3), (5), (8), (10), (12), 68 and 70

Subject: Cessation of electric service.

Purpose: To approve cessation of electric service.

Substance of proposed rule: The Commission is considering a petition from the Village of Springville municipal electric utility requesting that it be permitted to cease providing service to two customers located outside its franchised service territory. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

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

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

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

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

(04-E-0733SA1)

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

Project Financing, Transfer of Ownership Interest, Waiver of Filing Requirements and Lightened Regulation by Pinelawn Power LLC

I.D. No. PSC-27-04-00022-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Pinelawn Power LLC ("Pinelawn") requesting approval of: (1) the issuance of equity and/or long-term debt of up to \$140,000,000 (including a sale-leaseback or lease-leaseback arrangement with an industrial development agency (IDA)) to finance the construction of a electric generating facility in the Town of Babylon; (2) the transfer of approximately 90 percent of the ownership interest in it (now held by Harbinger Pinelawn LLC) to Harbinger Independent Power Fund II, LLC; (3) the waiver of certain filing requirements; (4) lightened regulation of it as an electric corporation operating in the competitive wholesale market.

Statutory authority: Public Service Law, sections 4(1), 69, 70 and 110

Subject: Project financing, transfer of ownership interest, waiver of filing requirements and lightened regulation.

Purpose: To provide for beneficial actions in connection with the financing and transfer associated with Pinelawn's proposed project.

Substance of proposed rule: By petition filed June 10, 2004, Pinelawn seeks a certificate of public convenience and necessity authorizing the construction and operation of an electric generating facility in the town of Babylon, Suffolk County. In connection with this licensing proceeding, Pinelawn also requests the approval of the financing and transfer transactions discussed above, as well as the waiver of certain filing requirements and an order providing for lightened regulation.

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

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

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

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

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

(04-E-0734SA1)

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

Fuel Adjustment Clause by the City of Jamestown

I.D. No. PSC-27-04-00023-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by the City of Jamestown to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 6—Electricity to become effective Oct. 1, 2004.

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

Subject: Fuel adjustment clause.

Purpose: To approve revisions to the fuel adjustment clause.

Substance of proposed rule: The City of Jamestown has made a tariff filing to revise its Fuel Adjustment Clause to cover increased costs due to the implementation of New York State's new rules regarding sulfur dioxide and nitrogen oxide emissions and rules recently proposed by the United States Environmental Protection agency, to become effective October 1, 2004. The Commission may approve, modify or reject the filing in whole or in part.

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

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

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

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

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

(04-E-0746SA1)

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

Release of Deferred Revenues by Corning Natural Gas Corporation

I.D. No. PSC-27-04-00025-P

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

Proposed action: The commission is considering a petition from Corning Natural Gas Corporation and whether the company should be permitted to treat as current income an incentive amount that was deferred under the company's current rate plan. The commission may approve, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 65(1), 66(12), 72 and 114

Subject: Release of deferred revenues for treatment as current income.

Purpose: To approve the release of deferred revenues.

Substance of proposed rule: The Commission is considering a petition from Corning Natural Gas Corporation and whether the company should be permitted to treat as current income an incentive amount that was deferred under the company's current rate plan. The Commission may approve, modify or reject, in whole or in part the relief requested.

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

Data, views or arguments may be submitted to: 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.

(02-G-0003SA5)

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

Low-Income Aggregation Program by Orange and Rockland Utilities, Inc.

I.D. No. PSC-27-04-00026-P

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

Proposed action: The commission is considering whether to approve, modify or reject, in whole or in part, the petition of Orange and Rockland Utilities, Inc. (Orange and Rockland or the company) to modify its Low-Income Aggregation Program, and implement a pilot program for direct load control.

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

Subject: Low-Income Aggregation Program and Pilot Direct Load Control Program.

Purpose: To modify the Low-Income Aggregation Program and implement a Pilot Direct Load Control Program.

Substance of proposed rule: The Commission is considering the petition of Orange and Rockland Utilities, Inc. to modify its low-income aggregation program. The petition also seeks to implement a pilot program for direct load control. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

Data, views or arguments may be submitted to: 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.

(02-G-1553SA4)

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

Proposed Methodology by Rochester Gas and Electric Corporation

I.D. No. PSC-27-04-00027-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Rochester Gas and Electric Corporation to implement a proposed methodology to surcharge or refund revenue changes in accordance with Ordering Clause 5 of the commission's order adopting provisions of joint proposals with condition in Case 03-G-0766, issued and effective May 20, 2004.

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

Subject: Proposed methodology to surcharge or refund revenue changes.

Purpose: To approve, modify or reject a proposed methodology.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Rochester Gas and Electric Corporation in accordance with Ordering Clause 5 of the Commission's Order Adopting Provisions of Joint Proposals with Condition in Case 03-G-0766, issued and effective May 20, 2004. The company has proposed a methodology to surcharge or refund revenue changes on a class-by-class basis that result from delaying the implementation of tariff amendments required by Ordering Clause 3 of that Order and any other related matters. The Company is also proposing a methodology to recover the change in calculated gas expense resulting from its updated gas Factor of Adjustment, which accounts for lost and unaccounted for gas. Finally, the Company proposed to supplement the current petition with actual lost revenues once the billing data for the period May 1, 2004 through May 27, 2004 becomes available, and recalculate the proposed charges accordingly.

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-0766SA2)

State University of New York

NOTICE OF ADOPTION

Articles of Organization of the Student Assembly

I.D. No. SUN-15-04-00008-A

Filing No. 725

Filing date: June 23, 2004

Effective date: July 7, 2004

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

Action taken: Amendment of Part 341 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b)

Subject: Policies of the Board of Trustees of the State University of New York governing the articles of organization of the student assembly.

Purpose: To make changes in certain structural features and organizational rules of the student assembly in order to increase effectiveness of the University-wide student governance organization.

Text or summary was published in the notice of proposed rule making, I.D. No. SUN-15-04-00008-P, Issue of April 14, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Edward Engelbridge, Assistant Vice Chancellor for University Life, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5116, e-mail: engelbed@sysadm.suny.edu

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Supplemental Security Income Benefits

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

Filing No. 724

Filing date: June 22, 2004

Effective date: July 7, 2004

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

Action taken: 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: Supplemental security income (SSI) benefits.

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 final 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. Except as provided in subdivisions (k) and (l) of section 352.3 of this Part, 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. A shelter supplement plan under paragraph (3) of subdivision (a) of this section may include provisions for treatment of SSI family members that differ from the requirements of section 352.2(b) of this Part, but such provisions shall be no more restrictive.*

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 *pro rata* 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 pro rata 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.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 352.2(b) and 352.3(l).

Text of 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

Revised 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, social services district plans may include alternate, less restrictive provisions for treatment of SSI family members.

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 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.

Revised 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 pro rata 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 gross savings of \$30 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. Changes have been made to the regulations as originally published in response to objections expressed.

Revised 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 pro rata 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 gross savings of \$30 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

Although changes were made to the proposed amendments, the changes do not require that the job impact statement be revised.

Assessment of Public Comment

TEMPORARY ASSISTANCE PRORATION IN MIXED TEMPORARY ASSISTANCE (TA)/SUPPLEMENTAL SECURITY INCOME (SSI) FAMILIES AND RELATED CHANGES

Sixty-one individuals, organizations, social services districts and New York State Assembly members took the opportunity to comment during the public comment period for proposed Office of Temporary and Disability Assistance (Office) regulations to 18 NYCRR 352.2(b), 352.3(k)(3), 352.3(l), 352.30 (a) and (f), and 352.31(a)(2). The proposed changes affect how the Office determines the need of persons in receipt of TA when they reside with persons who would otherwise be required to apply for assistance except that they are receiving SSI or additional State payments. The proposed changes for which comments were received would (1) prorate the amount attributable to the needs of the TA household when the family includes an SSI member, (2) would hold non-TA dwelling unit members responsible for their share of the actual shelter cost when the TA household is requesting a shelter supplement in excess of the local department of social services (LDSS) shelter allowance maximums and (3) would change the penalty for refusal to apply for or accept SSI from an incremental to a pro rata penalty. In response to public comments, we have deleted the second item above, as discussed in comment number 10 below.

Two commenters were in full support of the regulations.

Two commenters were neutral.

Fifty-seven commenters objected to the regulations for one or more reasons.

18 NYCRR 352.2(b), 352.30(a) and (f)

1. Comment: Fifty-seven commenters objected on the grounds that the reduction to the non-SSI family members' TA would cause great financial hardship to poor families, particularly those with smaller families.

Response: OTDA acknowledges the difficulties experienced by families with disabled members. However, we do not see any logical basis for treating families residing with disabled or elderly persons in receipt of SSI considerably more favorably than identical families residing with disabled or elderly persons in receipt of other forms of disability or old age payments, such as Social Security Disability, Railroad Retirement benefits, veteran's assistance disability benefits, etc. The TA income of the family will go down under the proposed changes but the total income of the family will remain far above that of the same size family with a disabled member who receives these other forms of payments.

2. Comment: Thirteen commenters said that the proposed regulations are illegal and inconsistent with Social Services Law (SSL) section 131-c.

Response: OTDA does not agree. Under the proposed regulations, SSI individuals are not required to apply, be included in the family unit and have their income counted as would be required if SSL section 131-c were applicable.

Nothing in SSL section 131-c provides for the "invisibility" of a family member who is not required to be included in the assistance unit, and SSL section 131-c expressly is inapplicable to persons in receipt of SSI or additional State payments. SSL 131-c simply requires social services districts to include certain persons in the household for purposes of determining eligibility, benefits and income. The presence in a residence of family members who are not subject to the requirements of SSL section 131-c or who are prohibited from receiving TA is generally not ignored, particularly when those individuals have income. One example is when an ineligible alien parent reports income. In such a case, when the income of the non-applying or ineligible person is more than that person's pro rata share of the needs, both the person's needs and income are considered in determining the TA assistance unit's eligibility.

Thus, the general rule is that we prorate whenever family relationships and responsibilities make it reasonable to expect a sharing of expenses. SSI "invisibility" has always been an exception, albeit that in practice we had expanded the rule beyond its federal underpinnings.

Two federal statutes have together been referred to as the "invisibility rule". Section 412 of the Social Security Act (SSA) addressed proration, and Section 402(a)(24) of the Social Security Act prohibited the inclusion of SSI recipients and their income in Aid to Families with Dependent Children households. Both of these statutes were repealed in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

SSL 131-c was enacted in response to the federal provisions formerly found in Section 402(a)(38), of the SSA which required states to include in the household the parents or siblings of any minor applying for assistance unless otherwise required to be excluded by federal law. In order to comply with Section 402(a)(24) of the SSA, SSL section 131-c did not compel SSI recipients (along with their income) to be included in the household.

SSL section 131-c did not make any provision with respect to proration of grants when an SSI recipient resides in the household. The applicable federal law, Section 412 of the SSA as it existed prior to PRWORA, generally permitted reasonable proration of AFDC grants, but prohibited it with respect to an SSI recipient who received a reduced SSI benefit by reason of "living in the household of another" (a federal reduction that is imposed when the SSI recipient is not paying a full share of household expenses). The requirements of Section 412 were addressed only in regulation.

The principle underlying the federal rule was that any economies of scale achieved by sharing expenses were negated if the AFDC family was supporting the non-paying SSI recipient and if a reduction had already been imposed on the SSI recipient. In that case, a further reduction on the AFDC side would have excessively burdened the household. New York State made provision for broad compliance with Section 412 of the SSA through its regulations without regard to a determination whether the SSI recipient was "living in the household of another".

The factual basis for the invisibility rule no longer exists, since SSA's regulations now provide for a full SSI grant when a recipient resides with a family in receipt of public assistance; i.e., the SSI recipient receives full federal benefits because it is presumed that he or she is paying a fair share of household expenses. The statutory basis for the invisibility rule no longer exists as well, since SSA sections 402(a)(24) and 412 have been repealed.

Contrary to the commenters' claims, in New York State the proration aspect of the invisibility rule was reflected only in State regulations and no statutory bar exists to the proposed regulation.

3. Comment: One commenter wrote that the proposed change may be constitutionally suspect as it seems to discriminate indirectly against people with disabilities by providing households with a lesser benefit than households that include other exempt individuals.

Response: We disagree that households with other exempt individuals receive a higher benefit. If, for example, an ineligible alien parent declared income, the income of the parent that exceeded his or her share of the needs would count against the assistance unit.

4. Comment: Twelve commenters wrote that families with an SSI member are already affected by a reduction in income since SSL section 209 provides for a lower SSI State supplemental payment when the SSI recipient is living with others.

Response: OTDA agrees that SSL section 209 has that effect regarding the State supplemental payment. However, we believe that this fact supports the regulation. Just as economies of scale reduce the costs of the SSI recipients' expenditures, they also reduce the costs of the TA recipients. We also note that the federal portion of the SSI benefit is the same amount available to the individual and is not reduced because the SSI individual lives with other family members.

5. Comment: Fourteen commenters wrote that the regulations do not take into account that families with an SSI member have additional financial needs related to the disabled person's condition.

Response: The basic items that are covered by the SSI grant (shelter, utilities, food, clothing and incidentals) are generally not greater than those of a TA recipient, although the SSI grant is significantly larger. (In fact, the SSI grant for one person is larger than the grant for three TA recipients in most counties in the State.) Although the SSI individual may have other needs related to disability, the SSI grant itself is for basic living needs. Additional equipment, training, and other needs are or should be covered by medical assistance, Office of Vocational and Educational Services For Individuals With Disabilities, the Commission for the Blind or other programs.

6. Comment: Eight commenters wrote that an increase in the instances of homelessness or institutionalization and the associated costs might eliminate the State share of the savings projected to result from the proposed changes.

Response: The families that will see a reduction due to prorating are still covered by New York State's extraordinary system of arrears payments and various shelter supplementation provisions, and these measures can help these families avoid homelessness.

7. Comment: One commenter was neutral but said that systems (Welfare Management System [WMS] and the Automated Budgeting Eligibil-

ity Logic [ABEL]) should be reviewed to insure correct budgeting and classification of the SSI person.

Response: Agree. That work is being done.

8. Comment: Seven commenters wrote that very few other states have changed the policy of considering the SSI individual as invisible to the TA family. One state extended invisibility to family members in receipt of Social Security Disability and other disability benefits.

Response: OTDA called several states and most continue to treat SSI as they did under the AFDC program, while several states take into consideration the presence of SSI recipients. However, under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), states have the ability to design their own Temporary Assistance to Needy Families (TANF) programs. New York State will differ not only in this respect but also in areas such as its large number of additional allowances, its relatively high benefit amounts, a generous earned income disregard and support for working families such as the State earned income tax credit.

18 NYCRR 352.3(k)(3)

9. Comment: Four commenters wrote that the proposed regulations would be especially hard on families with and HIV/AIDS member.

Response: The proposed regulations were never intended to change the budgeting that applies to HIV/AIDS under 18 NYCRR 352.3(k). Section 352.3(k) is included in the package for technical corrections only. However, we have added the specific exclusion to 18 NYCRR 352.2(b) for clarity.

18 NYCRR 352.3(l)

10. Comment: Four commenters objected for one or more reasons to the proposed section 352.3(l), which requires non-public assistance members of the household to be responsible for their pro rata share of the actual rent expense when the public assistance household is requesting a rent supplement in excess of the maximums. The commenters objected because it would require a pro rata contribution from the non-public assistance person(s) in the household without regard to income; it is inconsistent with 18 NYCRR 370.10(e)(5) which requires a pro rata contribution not to exceed 30%; it limits district flexibility in designing a local shelter supplement plan; and, the elimination of the income ceiling to the contribution can result in the SSI individual having an obligation of 40% or more for rent.

Response: We agree with most of these concerns. Although we disagree with the first basis for objection, all the comments taken together regarding this provision have convinced us to delete the proposed change to section 352.3(l). We have added language clarifying the application of section 352.2(b), which would permit social services districts to make alternate provisions in their shelter supplement plans that are no more restrictive for treatment of SSI family members when the public assistance household is receiving a supplement.

18 NYCRR 352.30(f)

11. Comment: One commenter objected to the changes to section 352.30(f) on the basis that the wording is vague and open to different interpretations regarding who would be exempt from applying for SSI based on their physical or emotional inability to apply for SSI. The commenter believed that this wording would lead to increased work for the social services workers who would have to defend their negative action without appropriate guidelines.

Response: We do not agree. Section 352.30(f) has long contained the language that the commenter finds troubling, and a penalty for non-cooperation without good cause (physical or emotional inability to comply). However, the penalty applied to ADC and was an incremental sanction. The regulatory changes will apply the penalty to public assistance households regardless of category and will result in the same financial impact, a pro rata reduction, as if the family member applied for and accepted SSI.

In all the years that the regulation has been on the books, we do not recall the issue of the wording ever being raised as a problem by social services districts or anyone else.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Temporary and Disability Assistance publishes a new notice of proposed rule making in the *NYS Register*.

Temporary Shelter Supplements

I.D. No.	Proposed	Expiration Date
TDA-24-03-00001-EP	June 18, 2003	June 17, 2004