

# RULE MAKING ACTIVITIES

---

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

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

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

---

---

## Department of Agriculture and Markets

---

---

### NOTICE OF ADOPTION

#### Food Offered for Sale in Retail Food Stores

**I.D. No.** AAM-40-03-00006-A  
**Filing No.** 250  
**Filing date:** March 2, 2004  
**Effective date:** March 17, 2004

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

**Action taken:** Amendment of Part 271 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16(1), 18(2), (6) and 214-b

**Subject:** Food offered for sale in retail food stores.

**Purpose:** To ensure that food offered for sale in retail food stores is safe for human consumption.

**Text or summary was published** in the notice of proposed rule making, I.D. No. AAM-40-03-00006-P, Issue of October 8, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** J. Joseph Corby, Division of Food Safety and Inspection, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-4492

#### Assessment of Public Comment

The Department received comments from the United States Food and Drug Administration (FDA), the New York State Department of Health and the Food Industry Alliance of New York, Inc. Each of these comments expressed support for the proposed amendments. The Department agrees with these comments.

In addition, the Department received a comment from Wegmans Food Markets Inc. The comment expressed support for the proposed amendments, but also requested that provisions in the Federal Food Code governing the reheating of unsliced portions of roast beef be added to the amendments. The Department will consider the amendment in a future rule making proceeding.

---

---

## Department of Audit and Control

---

---

### NOTICE OF EXPIRATION

The following notice has expired and can not be reconsidered unless the Department of Audit and Control publishes a new notice of proposed rule making in the *NYS Register*.

#### Committee on Investor Repsonsibility

I.D. No.	Proposed	Expiration Date
AAC-35-03-00003-P	September 3, 2003	March 1, 2004

---

---

## Environmental Facilities Corporation

---

---

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

#### Access to Public Records Law

**I.D. No.** EFC-11-04-00026-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 repeal Part 2601 and add a new Part 2601 to Title 21 NYCRR.

**Statutory authority:** Public Officers Law, section 87

**Subject:** Access to Public Records Law.

**Purpose:** To amend and repeal outdated information and make the EFC regulations more consistent with the New York State Freedom of Information Law.

**Text of proposed rule:** A new Part 2601 to Title 21 of the Official Compilation of Codes Rules and Regulations of the State of New York is proposed to read as follows:

§ 2601.1 Designated officers

The designated records access officer of the corporation is the following:

Director of Corporate Communications, or if there is no such Director, the officer designated by the President of the Corporation as such.

Request for access and review of complete records may be made to the above records access officer.

§ 2601.2 Location of officer

The designated records access officer may be contacted at 625 Broadway, Albany, New York 12207-2997.

§ 2601.3 [repealed]

§ 2601.4 Request for other public records.

Requests for access and review of public records must be made in writing at the office of the corporation at 625 Broadway, Albany, New York 12207-2997 on any working day from the hours of 8:30 a.m. to 12 noon and 1 p.m. to 4:45 p.m.

§ 2601.5 Inspection and copying location.

Public records will be made available for public inspection and copying at the corporate headquarters indicated in Section 2601.2 of this Part.

§ 2601.6 Charges

A charge of twenty five cents per copy page will be made. There will be no charges for:

- (a) certifying that a record cannot be found;
- (b) certifying to the correctness of a record;
- (c) public inspection of a record.

§ 2601.7 [repealed]

§ 2601.8 Denial of access

The records access officer upon denying access to a request for records deemed exempted from disclosure by the law, shall explain in writing the reason for such denial. The written denial shall advise the person requesting access of his or her right to appeal to the individual designated to hear appeals. Upon failure to locate records, the records access officer shall certify that the agency is not the custodian for the records, or that the records of which the corporation is a custodian for the records, or that the records of which the corporation is a custodian cannot be found after diligent search.

§ 2601.9 Description to be furnished

The corporation shall respond to a written request reasonably describing the records sought within five business days of receipt thereof. Whenever possible, a person requesting records should supply information regarding dates and file designations or other information helpful in describing the records sought.

§ 2601.10 Acknowledgments

If the corporation does not provide or deny access to records sought within five business days of receipt of a request, the corporation shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied.

§ 2601.11 Failure to respond

If the corporation fails to respond to a request for access to records within five business days of receipt of a written request, such failure shall be deemed a denial of access. Any person denied access to records may appeal within thirty days of a denial.

§ 2601.12 Appeals: time and content

The time for deciding an appeal shall commence upon receipt of a written appeal identifying:

- (a) the date and location of a request for records
- (b) the records that were denied; and
- (c) the name and return address of appellant.

§ 2601.13 Appeals: transmission to COG

The corporation shall transmit to the Committee on Open Government copies of all appeals upon receipt thereof. Such copies shall be addressed to:

Committee on Open Government  
Department of State  
41 State Street  
Albany, New York 12231-0001

The individual designated to hear appeals shall inform the appellant and the committee of his determination within seven business days of receipt of an appeal.

§ 2601.14 Appeals: where to file

Any applicant denied access to a record may appeal such denial, pursuant to the procedure heretofore described, by directing such appeal to the General Counsel, New York State Environmental Facilities Corporation, 625 Broadway, Albany, New York 12207-2997.

§ 2601.15

Subject matter of the New York State Environmental Facilities Corporation files is maintained in the following manner:

- (a) administrative files;
- (b) financial information;
- (c) loans and investments;
- (d) accounting;
- (e) operations;
- (f) program records;
- (g) retired programs; and
- (h) EFC Board of Director's files.

The records access officer will assist applicants to identify the location of records.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeffrey M. Lanigan, Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997, (518) 402-6924, e-mail: lanigan@nysefc.org

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

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

**Consensus Rule Making Determination**

The proposed rules establish new procedures for the New York State Environmental Facilities Corporation (the "corporation") in connection with responding to requests for access to public records under N.Y.C.R.R. Part 2601. The current regulations are outdated because they, *inter alia*, do not designate the correct designated records access officer and list written records access forms which are not used by the corporation. A summary of these express terms is as follows:

- 1) Proposed new section 2601.1 designates the Director of Corporate Communications as the corporation's records access officer.
- 2) Proposed new section 2601.2 eliminates Room 538 from the location of the records access officer.
- 3) Section 2601.3 concerning requests by news media for employment records is repealed.
- 4) Section 2601.4 concerns requests for other public records and eliminates Room 538 as the locations for requests for access and review of public records.
- 5) Section 2601.5 eliminates Room 538 from the inspection and copying location.
- 6) Section 2601.7 concerning forms is repealed.
- 7) Section 2601.8 concerns procedures for denial of access to records by the corporation.
- 8) Section 2601.9 concerns descriptions of records to be provided by the requesting party.
- 9) Section 2601.10 concerns acknowledgement of a receipt of a request for records by the corporation.
- 10) Section 2601.11 concerns the corporation's failure to respond to a request for records.
- 11) Section 2601.12 concerns the timing and content for appealing the corporation's denial of access to records.
- 12) Section 2601.13 concerns the transmittal of appeals to the Committee on Open Government and informing it of its decision with regard to appeals.
- 13) Section 2601.14 concerns where the person requesting record should file their appeal.
- 14) Section 2601.15 concerns subject matter files of the corporation.

The corporation has determined that this is a consensus rule making under SAPA Section 202(1)(b)(i) and, therefore, no person is likely to object to the rule as written.

**Job Impact Statement**

It is apparent from that the text of the rule, which merely changes EFC procedures for responding to requests for access to records that there will be no adverse impacts on jobs and employment opportunities.

## Department of Health

### NOTICE OF ADOPTION

#### Adult Day Health Care Regulations

**I.D. No.** HLT-44-03-00003-A

**Filing No.** 248

**Filing date:** Feb. 27, 2004

**Effective date:** March 17, 2004

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

**Action taken:** Repeal of Parts 425, 426 and 427; addition of new Part 425 and amendment of Parts 711 and 713 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 2803(2), 2807(3) and 2808

**Subject:** Adult day health care regulations.

**Purpose:** To ensure that individuals receive adult day health care when appropriate and that providers are accountable for providing necessary and appropriate care.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-44-03-00003-P, Issue of November 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:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqa@health.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

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

#### Bathing Beaches

**I.D. No.** HLT-11-04-00024-P

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

**Proposed action:** Amendment of Subpart 6-2 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225

**Subject:** Bathing beaches.

**Purpose:** To clarify the definition of "bathing" and after hours activities on bathing beaches and include additional bacteriological indicator organisms for use in assessing beach water quality.

**Text of proposed rule:** Section 6-2.2(d) is amended to read as follows:

(d) Bathing shall mean to become partially or totally immersed in water and shall include swimming, wading and diving, but shall exclude fishing, scuba diving and surfboarding.

Section 6-2.15(a) is amended to read as follows:

(a) No bathing beach shall be maintained or operated on any body of water when the water quality is determined by the permit-issuing official to constitute a potential hazard to health if used for bathing.

To determine if the water quality constitutes a potential hazard to health requiring closure of the beach, the permit-issuing official shall consider one or a combination of any of the following items: results of a sanitary survey; historical water quality model for rainfall and other factors; verified spill or discharge of contaminants affecting the bathing area; and water quality standards specified in this section.

Section 6-2.15(c) is repealed and replaced with a new 6-2.15(c) as follows:

(c) *Bacteriological Quality.* The following bacteriological indicator levels shall be used when determining acceptability of water quality for bathing beaches.

(1) Based on a single sample, the upper value for the density of bacteria shall be:

- (i) 1,000 fecal coliform bacteria per 100 ml; or
- (ii) 61 enterococci per 100ml for freshwater; or
- (iii) 104 enterococci per 100ml for marine water; or
- (iv) 235 *E. coli* per 100ml for freshwater (*E. coli* is not to be used as an indicator in marine water).

(2) Based on the mean of the logarithms of the results of the total number of samples collected in a 30 day period, the upper value for the density of bacteria shall be:

- (i) 2,400 total coliform bacteria per 100ml; or
- (ii) 200 fecal coliform bacteria per 100ml; or
- (iii) 33 enterococci per 100ml for freshwater; or
- (iv) 35 enterococci per 100ml for marine water; or
- (v) 126 *E. coli* per 100ml for freshwater (*E. coli* is not to be used as an indicator in marine water).

(3) When the above described levels are exceeded, the permit-issuing official shall cause an investigation to be made to determine the source or sources of pollution and, along with other factors described in Section 6-2.15(a) determine if the beach shall be closed.

Section 6-2.16(a) is amended to read as follows:

(a) All areas of an operator's property that are adjacent to the designated public beach area and are accessible to the public for entry into the water for bathing shall be supervised or patrolled during hours of operation. [Swimming] Bathing shall be prohibited where required supervision is not provided.

Section 6-2.16(b) is amended to read as follows:

(b) Operators must maintain signs stating the hours during which public bathing is allowed, and that [entry into the water] bathing at other times is prohibited.

Section 6-2.16(d) is amended to read as follows:

(d) No boating, water skiing, fishing, or surfboarding shall be permitted in the [swimming and] bathing [areas] area during the hours bathing is allowed. Separate areas for the above activities may be designated by floating lines and buoys.

Section 6-2.19 items 4.11.1, 4.11.1.1, and 4.11.1.2 are repealed and replaced with a new 4.11.1 through 4.11.5 as follows:

4.11.1 *Bacteriological quality.* Based on the mean of the logarithms of the results of 5 or more samples collected in a 30 day period, the upper value for the density of bacteria shall be:

- 4.11.1.1 2,400 total coliform bacteria per 100 ml; or
- 4.11.1.2 200 fecal coliform bacteria per 100 ml; or
- 4.11.1.3 33 enterococci per 100 ml for freshwater; or
- 4.11.1.4 35 enterococci per 100 ml for marine water; or
- 4.11.1.5 126 *E. coli* per 100 ml for freshwater (*E. coli* is not to be used as an indicator in marine water)

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

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

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

#### Regulatory Impact Statement

Statutory Authority:

The Public Health Council has the authority, subject to the approval of the Commissioner of Health, under Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations, to be known as the State Sanitary Code (the Code). Section 225(5) of the PHL provides that the Code may deal with matters affecting the security of life or health of the people of the State of New York.

Legislative Objectives:

The proposed regulations further the legislative objective of protecting the public's health and safety by clarifying the definition of bathing and after hours activities on bathing beaches and including additional bacteriological indicator organisms for use in assessing beach water quality.

Needs and Benefits:

The current regulation defines "bathing" as ". . . to become partially or totally immersed in water." The intent of the definition is to address wading and swimming activities. However, this has been misinterpreted to include fishing, scuba diving and surfboarding. As a result of the misinterpretation, activities such as surf fishing and surfboarding have been prohibited at areas not operated as beaches and/or at beaches during hours of the day when not open to bathing. The proposed amendments clarify the intent by further defining activities to be regulated as bathing and specifying activities to be excluded as bathing.

Federal Public Law 106-284 was signed on October 10, 2000. This law is also known as the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act). The legislation amended the Federal Water Pollution Control Act (also known as the Clean Water Act or CWA). The BEACH Act amended Section 303 of the CWA (33 U.S.C.

1313) which now requires coastal and Great Lakes states, by April 10, 2004, to adopt the Environmental Protection Agency's (EPA's) recommended water quality criteria and standards for pathogen and pathogen indicators (enterococcus and E. coli). Amended Section 303 of the CWA further directs EPA to propose and promulgate such standards for states that fail to do so.

To comply with this mandate the proposed amendments include the addition of enterococcus and E. coli to the existing bacteriological indicators organisms specified in the regulation to assess water quality at bathing beaches.

The EPA awarded the New York State Department of Health, \$366,000 for FFY's 2001-2002 and 2002-2003 for implementation of the BEACH Act provisions. An additional \$359,215 is being awarded for FFY 2003-2004. The majority of this money is distributed to the 9 local health departments that regulate coastal and/or Great Lakes beaches and is used for beach water quality monitoring purposes.

If the regulation is not amended to include these 2 indicator organisms, as noted above, EPA can promulgate such standards but will no longer provide funding to the State for the beach water quality monitoring.

#### Costs:

##### Cost to State Government:

There will be no additional costs to the State other than costs associated with printing and distribution of the amended code.

##### Costs to Local Government:

There will be no additional costs to municipally operated bathing facilities. There will be no additional costs to city and county health departments to enforce the revised code.

##### Costs to Regulated Parties:

There will be no additional costs to regulated parties resulting from the clarification of the definition of bathing. There will be no additional costs to regulated parties who continue to use total or fecal coliforms as the bacteriological indicator organism. For those that select enterococcus or E. coli the costs will remain approximately the same or may be slightly less.

##### Paperwork:

No new paperwork requirements are created by this amendment.

##### Local Government Mandates:

The proposed amendments do not impose a new program, duty or responsibility on any county, city, town, village, school district, fire district or other special district. City and county health departments will be responsible for enforcing the amended regulations as part of their existing program responsibilities.

##### Duplication:

This regulation does not duplicate any existing state or local regulations.

##### Alternatives Considered:

One alternative considered was to make no changes. This alternative was rejected based on misinterpretation of the definition of bathing resulting in restriction of certain activities, such as fishing and surfboarding, at areas not operated as beaches and/or at beaches during hours of the day when not open to bathing. Additionally, if no change is made to the bacteriological indicators for water quality, the EPA will promulgate such standards for NYS.

##### Federal Standards:

Currently, no federal law governs the operation of bathing facilities, and regulatory standards vary widely from state to state nationwide. However, the BEACH Act amendments authorize the EPA to promulgate water quality criteria for bacteria for those coastal and Great Lakes states that fail to adopt EPA's standards.

##### Compliance Schedule:

Compliance can be achieved immediately.

#### **Regulatory Flexibility Analysis**

##### Effect on Small Business and Local Government:

There are approximately 1,622 regulated bathing beaches in the State. There are 769 bathing beaches operated by municipalities (towns, villages, cities and school districts). The remainder are operated by various small business entities. Typical regulated bathing beaches representing small businesses includes those owned/operated by hotels, motels and campgrounds (525 beaches) and children's camps (328 beaches).

##### Reporting and Recordkeeping:

The amended regulation does not impose any additional reporting or recordkeeping requirements.

##### Professional Services:

No additional professional services are required by the amendments.

##### Compliance Costs:

There will be no additional costs to regulated parties resulting from the clarification of the definition of bathing. There will be no additional costs to regulated parties who continue to use total or fecal coliforms as the bacteriological indicator organism. For those that select enterococcus or E. coli the costs will remain the same or may be slightly less.

##### Economic and Technological Feasibility:

No new equipment/devices are required by the proposed amendments.

##### Minimizing Adverse Economic Impact:

There will be no adverse economic impact.

##### Small Business and Local Government Participation:

A meeting and discussions were held with the New York City Departments of Parks and Health and Mental Hygiene to discuss proposed amendments to the regulation and solicit input.

#### **Rural Area Flexibility Analysis**

##### Effect on Rural Areas:

There are approximately 1,622 regulated bathing beaches in the State. There are 769 bathing beaches operated by municipalities (towns, villages, cities and school districts). The remainder, are operated by hotels, motels, campgrounds and children's camps many of which are located in rural counties and rural areas throughout the state. The proposed amendments primarily affect non-bathing activities at New York City owned/operated waterfronts.

##### Reporting, Recordkeeping and Other Compliance Requirements/Professional Services:

The amended regulation does not impose any additional reporting or recordkeeping requirements.

##### Compliance Costs:

There will be no additional costs to regulated parties resulting from the clarification of the definition of bathing. There will be no additional costs to regulated parties who continue to use total or fecal coliforms as the bacteriological indicator organism. For those that select enterococcus or E. coli the costs will remain the same or may be slightly less.

##### Minimizing Adverse Impact on Rural Areas:

There are no adverse impacts on rural areas.

##### Rural Area Participation:

Because the proposed amendments primarily affect non-bathing activities at New York City owned/operated waterfronts and, because there will be no impact on bathing beach operators in rural area by the inclusion of two additional bacteriological indicator organisms to choose from for monitoring, no outreach to the regulated community representing interests in rural areas was conducted.

#### **Job Impact Statement**

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities.

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

### **Emergency Ambulance Service Vehicles**

**I.D. No.** HLT-11-04-00025-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 800.26 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3032

**Subject:** Emergency ambulance service vehicles.

**Purpose:** To allow the EMS agencies greater flexibility in the deployment of personnel and vehicles to medical emergencies in the pre-hospital environment.

**Text of proposed rule:** Section 800.26 is amended to read as follow:

Section 800.26 [Emergency] *Equipment requirements for emergency ambulance service vehicles [equipment requirements] other than an ambulance.*

*The governing authority of any ambulance service which, as a part of its response system, utilizes emergency ambulance service vehicles other than an ambulance to bring personnel and equipment to the scene, must have policies in effect for equipment, staffing, individual authorization, dispatch and response criteria, and maintain appropriate insurance coverage.*

[Any emergency ambulance service vehicle (other than an ambulance) shall be equipped and supplied with:]

(a) A waiver of the equipment requirements for emergency ambulance service vehicles may be granted by the Department when the service provides an acceptable plan to the Department demonstrating how appropriate staff, equipment and vehicles will respond to a call for emergency medical assistance. The affected Regional EMS Councils will be solicited for comment on the service's waiver request.

(b) Any emergency ambulance service vehicle other than an ambulance shall be equipped and supplied with [(a) Emergency care equipment consisting of:] emergency care equipment consisting of:

- (1) 12 sterile 4 inches x 4 inches gauze pads;
- (2) adhesive tape, three rolls assorted sizes;
- (3) six rolls conforming gauge bandage, assorted sizes;
- (4) two universal dressings, minimum 10 [by] inches x 30 inches;
- (5) six [five inches by nine inches] 5 inches x 9 inches (minimum size) sterile dressings or equivalent;
- (6) one pair of bandage shears;
- (7) six triangular bandages;
- (8) sterile normal saline in plastic container (½ [litre] liter minimum) within the manufacturer's expiration date;
- (9) one air occlusive dressing;
- (10) one liquid glucose or equivalent;
- (11) disposable sterile burn sheet;
- (12) sterile obstetric [O.B.] kit;
- (13) blood pressure [sphygmomanometers] sphygmomanometers cuff in adult and pediatric sizes and stethoscope;
- (14) three rigid extrication collars capable of limiting movement of the cervical spine. These collars shall include small, medium and large adult sizes; and
- (15) carrying case for essential equipment and supplies.

(c) [b]Oxygen and resuscitation equipment consisting of:

(1) portable oxygen with a minimum 350 liter capacity with pressure gauge, regulator and flow meter medical "D" size or larger. The oxygen cylinder must contain a minimum of 1000 [PSI pressure;] pounds per square inch.

(2) manually operated self-refilling bag valve mask ventilation devices in pediatric and adult sizes with a system capable of operating with oxygen enrichment and clear adult, and clear pediatric size masks with air cushion;

(3) four individually wrapped or boxed oropharyngeal airways in a range of sizes for pediatric and adult patients [child through adult individually wrapped or boxed];

(4) two each: disposable non-rebreather oxygen masks, and disposable nasal cannula individually wrapped;

(5) portable suction equipment capable, according to the [manufacturers] manufacturer's specifications, of producing a vacuum of over 300 m.m. Hg when the suction tube is clamped and including two plastic [Yankauer wide] large bore rigid pharyngeal suction tips, individually wrapped; and

(6) pen light or flashlight.

(d) [c] A two-way voice communications enabling direct communication with the agency dispatcher and the responding ambulance vehicle on frequencies other than citizens band.

(e) [d] Safety equipment consisting of:

- (1) six flares or three U.S. Department of Transportation approved reflective road triangles;
- (2) one battery lantern in operable condition; and
- (3) one Underwriters' Laboratory rated five pound ABC fire extinguisher or any extinguisher having a UL rating of 10BC.

(f) [e] Extrication equipment consisting of:

(1) one short backboard or equivalent capable of immobilizing the cervical spine of a [sitting] seated patient. The short backboard shall have at least two 2[" inches x 9[" inches long web straps with fasteners unless straps are affixed to the device; and

(2) one blanket.

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

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

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

**Consensus Rule Making Determination**

Statutory Authority:

The authority for promulgating this regulation amendment is contained in Article 30, Section 3032 of the New York State Public Health Law. Article 30 authorizes the State Emergency Medical Services Council (SEMSCO), to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to implement the purposes and provisions of Article 30 of the Public Health Law.

Basis:

The proposed amendments conform the State regulation to State law as amended by Chapter 463 of the Laws of 2001. These amendments, not only do not impose any burden on any party, they allow the local EMS an increased flexibility in determining the best and most appropriate emergency response to meet system needs. These amendments do not exceed or expand the statutory requirements, therefore a consensus regulatory adoption is appropriate.

**Job Impact Statement**

A Job Impact Statement is not included because the nature and purpose of these amendments make it clear that they will not have a substantial adverse impact on jobs and employment opportunities. Currently ambulance services that operate emergency ambulance service vehicles have to meet specific equipment and supply requirements. The proposed amendment will allow the ambulance services develop plans that will allow them to be flexible to configure and assign their vehicles to meet the local EMS personnel, deployment and patient needs.

---



---

## Industrial Board of Appeals

---



---

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

**Form and Content of Petition**

**I.D. No.** IBA-11-04-00002-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 72.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Form and content of petitions filed with the board in an application for a stay from a notice of a dangerous condition, issued pursuant to Labor Law, section 200(2).

**Purpose:** To standardize the form and content of the caption to a petition.

**Text of proposed rule:** Section 72.3 Form and content of petition.

The petition shall:

(a) contain a caption in the following form:

STATE OF NEW YORK  
[DEPARTMENT OF LABOR]  
INDUSTRIAL BOARD OF APPEALS

..... X

In the Matter of the Application of:  
(insert name of applicant) .....

*Applicant,*

For a stay to permit use after issuance of an  
"unsafe notice" by the Commissioner of Labor  
declaring unsafe and prohibiting the use of  
(identify subject in issue)

[Applicant,]

- against -

The Commissioner of Labor,

Respondent.

..... X

(b) state the address of the applicant;

(c) state the address and location of the machinery, equipment, device or area which is the subject of the notice;

- (d) describe the machinery, equipment, device or area prohibited to be used;
- (e) describe the manner in which the machinery, equipment, device or area is used or operated;
- (f) state whether the persons using the machinery, equipment, device or area have any special training or competence and the extent of their supervision, if any;
- (g) annex a complete copy of the notice sought to stayed, including copies of any other orders, notices and supporting documents issued in connection therewith;
- (h) state the facts showing why the notice is erroneous or unreasonable and, where possible, submit affidavits or other reliable, relevant evidence to justify a stay;
- (i) set forth the relief requested; and
- (j) be signed and verified by applicant or an authorized representative.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 form and contents of petitions filed with the board, pursuant to Labor Law section 101, in an application for a stay from a notice of a dangerous condition ("Unsafe Notice"), issued by the Commissioner of Labor pursuant of Labor Law section 200(2). This amendment will standardize the format and content of the caption used to identify the petition, to be similar in design and appearance with the captions already in use by the board, pursuant to section 66.3 of the board's rules.

It is the board's determination that amending this rule to standardizes the form and content of the caption to a petition, without altering any of the requirements of the form or content of the petition itself, it 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 updates and standardizes the form and content of the caption to be used in a petition filed with the board pursuant to Labor Law section 101. 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 standardizes the format to be used in a petition's caption, 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**

**Form and Content of Petition**

**I.D. No.** IBA-11-04-00003-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 71.4 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Form and content of petitions filed with the board pursuant to Labor Law, section 677.

**Purpose:** To standardize the form and content of the caption to a petition.

**Text of proposed rule:** Section 71.4 Form and content of petition.

The petition shall:

- (a) contain a caption in the following form:

STATE OF NEW YORK  
[DEPARTMENT OF LABOR]  
INDUSTRIAL BOARD OF APPEALS

..... X  
:  
In the Matter of the Petition of: :  
(insert name of Petitioner) :  
:  
Petitioner, :  
:  
To review under Section 677 of the :  
Labor Law an Order to Comply with :  
Minimum Wage Order No. . . . . or :  
Regulation. . . . . :  
:  
[Petitioner,] :  
:  
- against - :  
:  
The Commissioner of Labor, :  
:  
Respondent. :  
..... X

- (b) state the address of the petitioner;
- (c) attach a complete copy of the compliance order in issue;
- (d) state clearly and concisely the grounds on which the order in issue is alleged to be incorrect, improper, unreasonable or invalid;
- (e) state any other material or relevant facts;
- (f) set forth with particularity the relief requested; and
- (g) be signed by the petitioner or his authorized representative.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 form and contents of petitions filed with the board, pursuant to Labor Law section 101, in an appeal from minimum wage compliance orders relating to farm workers (Labor Law section 677). This amendment will standardize the format and content of the caption used to identify the petition, to be similar in design and appearance with the captions already used in proceedings before the board, pursuant to section 66.3 of the board's rules. The amendment changes only the caption of the petition, and not any of the requirements for the content of the petition.

It is the board's determination that amending this rule to standardizes the form and content of the caption to a petition, without altering any of the provisions concerning the requirements for the form or content of the petition itself, it 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 updates and standardizes the form and content of the caption to be used in a petition filed with the board pursuant to Labor Law section 101. 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 standardizes the format to be used in a petition's caption, 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**

**Appeals Filed with the Board**

**I.D. No.** IBA-11-04-00004-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 71.1 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Application of the board’s rules to appeals filed with the board pursuant to Labor Law, section 677.

**Purpose:** To delete an obsolete notation.

**Text of proposed rule:** Section 71.1 Application.

(a) The provisions of this Part shall apply to the filing, processing, hearing, consideration and determination of an appeal from minimum wage compliance orders pursuant to article 19-A.

[NOTE: Appeals from minimum wage compliance orders issued under Article 19, formally taken under this Part, are now taken as proceedings under section 101. See section 658, as amended, effective 8/29/80, and sections 218, as amended, and section 219.]

(b) See Part 65 of this Subchapter for general rules of procedure and practice not specified in this Part.

(c) Article 19-A provides that minimum wage standards shall apply to farm workers. Minimum wage orders and regulations established by the Commissioner of Labor pursuant to article 19 and 19-A of the Labor Law are administered and enforced by the Commissioner of Labor through the Division of Labor standards of the Department of Labor. In order to effectuate those functions, the division is required to make an initial determination respecting the interpretation and application of the provisions of an applicable wage order and regulations. If the division concludes that an employer has failed to conform with a minimum wage order or a regulation, or with a provision of article 19-A, it serves an order directing the employer to comply therewith and, when pertinent, to make payment to the Commissioner of Labor, who will disburse according to law, any underpayment of wages alleged to be due to employees named in a schedule annexed to the compliance order. If a party deems that such an order is incorrect, redress is available by filing a petition under section 677 as prescribed in this Part.

(d) 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. The petitioner and the Commissioner of Labor 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 of which it may properly take official notice.

(e) The commencement of such a proceeding does not stay an order to comply involving an alleged underpayment of wages, unless the employer provides security or obtains a waiver of security as prescribed in section 657 or 676.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 677, in an appeal from minimum wage compliance orders relating to farm workers. This amendment will delete language in a notation in section 71.1, subdivision (a), 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, 1981. 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 1981. 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 (22) 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, 1981. 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**

**Form and Content of Petition**

**I.D. No.** IBA-11-04-00005-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 70.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Form and content of petitions filed with the board in an appeal from minimum wage orders and regulations issued pursuant to Labor Law, sections 657 and 676.

**Purpose:** To standardize the form and content of the caption to a petition.

**Text of proposed rule:** Section 70.3 Form and contents of petition.

The petition shall:

(a) contain a caption in the following form:

STATE OF NEW YORK  
[DEPARTMENT OF LABOR]  
INDUSTRIAL BOARD OF APPEALS

..... X

In the Matter of the [p]Petition:  
(insert name of petitioner)

Petitioner,

To review under Section (657 or 676) of the  
Labor Law:

(state minimum wage order or regulation to be reviewed)

[Petitioner.]

- against -

The Commissioner of Labor,

Respondent.

..... X

(b) state the address of the petitioner;

(c) identify or set forth the wage order or regulation in issue;

(d) state whether the petitioner is an aggrieved person in interest, as defined in section 657 or 676, and show the nature of the interest and the respects in which the petitioner is aggrieved;

(e) state clearly the grounds on which the wage order or regulation being challenged is contrary to law;

(f) show any other material facts, by affidavit or other reliable relevant evidence, to support the petitioner’s contentions and the relief requested;

(g) specify with particularity the precise relief requested; and

(h) be signed by petitioner, or authorized representative.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 form and contents of petitions filed with the board, pursuant to Labor Law section 101, in an appeal from the applicability of an industry wide minimum wage order or regulation issued by the Commissioner of Labor pursuant to Labor Law Article 19, sections 657 and 676. This amendment will standardize the format and content of the caption used to identify the petition, to be similar in design and appearance with the captions already in use by the board, pursuant to section 66.3 of the board's rules.

It is the board's determination that amending this rule to standardize the form and content of the caption to a petition, without altering any of the requirements of the form or content of the petition itself, it 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 updates and standardizes the form and content of the caption to be used in a petition filed with the board pursuant to Labor Law section 101. 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 standardizes the format to be used in a petition's caption, 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

Content of Petition

I.D. No. IBA-11-04-00006-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 69.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Application of the board's rules.

Purpose: To suggest form and content of petitions filed with the board.

Text of proposed rule: Section 69.3 Content of petition.

(a) The petition shall state what dispensation is desired, what action was taken before and by the Commissioner of Labor, and the facts which the appellant claims to justify the dispensation.

(b) No special form is required. The following form is a suggestion:

STATE OF NEW YORK [DEPARTMENT OF LABOR] INDUSTRIAL BOARD OF APPEALS

Defense Emergency Act Appeal Petition

by (Insert name of Appellant)

1. Appellant is (a resident of, residing at) (a New York corporation with office at) engaged in

(insert address)

(state nature of business)

(insert plant address)

at

2. The following dispensation is desired:

(insert date)

3. Application therefor was made on to the Commissioner of Labor, who has taken the following action:

4. The facts justifying the dispensation are:

(Type name of Appellant)

(Signature of Appellant or authorized representative)

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 suggested form and content for petitions filed with the board, in an appeal of an order issued by the Commissioner of Labor, pursuant to article 5 of the Defense Emergency Act. This amendment will standardize the format and content of the caption used to identify the petition, to be similar in design and appearance with the captions already in use by the board, pursuant to section 66.3 of the board's rules.

It is the board's determination that amending this rule to standardize the form and content of the caption to a petition, without altering any of the provisions of the rule concerning the requirements of the form or content of the petition itself, it 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 standardizes the suggested form and content of the caption to be used in a petition filed with the board pursuant to an appeal under the Defense Emergency Act, without changing any provision of the rule concerning the requirements for the content of the petition 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 merely standardizes the format to be used in a petition's caption, 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

Construction of Petition

I.D. No. IBA-11-04-00007-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 69.4 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Construction of petition; no answer required.

Purpose: To correct a typographical error.

Text of proposed rule: Section 69.4 Construction of petition; no answer required.

(a) The petition shall be deemed to ask for such relief as may be just and proper.

(b) All allegations of fact in the petition shall be deemed controverted by the Commissioner of Labor unless expressly admitted. No answer shall be required.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 how the petition is to be construed, and states that all allegations of fact shall be deemed to be controverted by the Commissioner of Labor, so that no answer is required to be served or filed by the Commissioner. This provision serves to assist in the speedy resolution of any petitions filed with the board, in an appeal of an order issued by the Commissioner of Labor, pursuant to article 5 of the Defense Emergency Act. This amendment will merely correct a typographical error in subdivision (a), by inserting the word "for", and thereby making the rule easier to read and understand, with making any actual change in the rule itself.

It is the board's determination that amending this rule to correct a typographical error, and thereby making the rule easier to read and understand, without altering the rule itself, it will make the administrative process 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 is to correct a typographical error, by inserting the word "for" into section 69.4, subdivision (a). This change will make the rule easier to read and understand, without changing any part of 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 merely corrects a typographical error, making the rule easier to read and understand, and does not change the rule itself, 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**

**Procedures for Commencing a Proceeding**

**I.D. No.** IBA-11-04-00008-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 68.2 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Procedures for commencing a proceeding objecting to the registration of union labels, brands and marks, or to revoke such a registration if granted improperly or obtained fraudulently.

**Purpose:** To delete reference to the use of a no longer existing form, and add a reference directing parties to follow the format set forth in Part 66 of this Subchapter.

**Text of proposed rule:** Section 68.2 How proceeding to be commenced.

(a) After objection to registration is filed (see section 68.1(c) of this Part), or if revocation of a registered device is sought, such proceeding is initiated by the filing of a petition with the board. Thereafter a hearing is held at which interested parties are afforded full opportunity to present any evidence which may be relevant or have a bearing upon the issues raised in the petition.

(b) A proceeding under this Part shall be commenced by filing with the board, at its Albany office, the original and three conformed copies of a petition [on forms provided by the board and] executed in accordance with the [instructions thereon or accompanying the same] provisions of Part 66 of this Subchapter.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 how to commence a proceeding under this section, concerning an objection to the registration of union labels, brands and marks, or for the revocation of such a registration, if granted improperly or obtained fraudulently, pursuant to section 208 of the Labor Law. This proposal will amend the rule to delete a reference to the use of a no longer existing form, and by adding a reference directing the parties to comply with the procedural processes as set forth in Part 66 of this Subchapter.

It is the board's determination that amending this rule to delete a reference to the use of a no longer existing form, and by adding a reference directing the parties to comply with the procedural processes as set forth in Part 66 of this Subchapter, 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 amends the rule to delete a reference to the use of a no longer existing form, and to add a reference directing parties to follow the procedural processes as set forth in Part 66. 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 amends the rule to delete a reference to the use of a no longer existing form, and adds a reference directing parties to comply with the procedural processes as set forth in Part 66 of this Subchapter, 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**

**Registration and Revocation Proceedings for Union Labels, Brands and Marks**

**I.D. No.** IBA-11-04-00009-P

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

**Proposed action:** This is a consensus rule making to amend section 68.1 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Registration and revocation proceedings for union labels, brands and marks.

**Purpose:** To update the current mailing addresses.

**Text of proposed rule:** Section 68.1 Application.

(a) The provisions of this Part relate to board proceedings pursuant to Section 208 of the Labor Law for objections to the registration of union labels, brands and marks, and to revoke such a registration if granted improperly or obtained fraudulently.

(b) See Part 65 of this Subchapter for general rules of procedure and practice not specified in this Part.

(c) Registration proceedings. (1) Practically every labor organization has adopted a device in the nature of a label or mark to identify the products of its members. Section 208 authorizes the registration of such devices by the Commissioner of Labor.

(2) The rules and forms governing the registration and filing of such labels, brands and marks may be obtained from the Commissioner of Labor's office located in Building 12, State Office Building Campus, Albany, N.Y., 12240, or at [Two World Trade Center, New York, N.Y.] 345 Hudson Street, New York, New York 10014. Notice of the filing of such application shall be given by the commissioner to interested persons and unions in such manner as the commissioner shall by rule prescribe.

(3) Within 20 days following such notice by the commissioner, any union or aggrieved person may submit to the commissioner a written objection to the registration of the device. If no objection is submitted, the commissioner may register the device and issue a certificate of registration.

(4) Objections duly filed with the commissioner are promptly referred to the board for a determination on whether the registration should be granted or denied.

(5) The board may deny registration of a device on any of the following grounds:

- i. That the union or association of employees filing the application for registration is not a bona fide union;
- ii. That the union or association of employees filing the application for registration is not the rightful owner thereof;
- iii. That the union or association of employees filing the application for registration has made misrepresentations concerning the device; or
- iv. That the device sought to be registered by the union or association of employees is so similar to a device previously registered by a union or association of employees that it is calculated to deceive.

(d) Revocation proceedings. Section 208, subdivision 4, provides:

“4. On petition of a union or aggrieved person, the registration of any device may be revoked by the board if it determines that the registration was granted improperly or was obtained fraudulently.”

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 applicability of this Part to registration and revocation proceedings for union labels, brands and marks, pursuant to section 208 of the Labor Law. This amendment will update the current mailing addresses for the NYS Department of Labor, correcting the Albany office address and adding the zip code, and replacing the New York City address, from the World Trade Center, to the current Hudson Street address.

It is the board's determination that amending this rule to update and correct the current mailing addresses of the NYS Department of Labor, 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 updates the current mailing addresses for the NYS Department of Labor. 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 updates the current mailing addresses for the NYS Department of Labor, without revising any existing provisions of the rule, 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**

#### **Applications**

**I.D. No.** IBA-11-04-00010-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 67.2 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 104

**Subject:** Application of board's rules.

**Purpose:** To update and simplify the procedure to be used in filing an application pursuant to Labor Law section 104, by authorizing the filing of either the original or a conformed copy of the proposed corporate documents, and eliminating the need to submit a second copy of the application.

**Text of proposed rule:** Section 67.2 Applications; how and where made.

(a) Every application for approval of a corporate document shall be made by submitting to the board at its Albany office:

(1) a letter requesting approval;

(2) the original [and one] or a conformed copy of all of the duly executed documents which are required to be filed in the Office of the Secretary of State of the State of New York;

(3) notification from the Office of the Secretary of State that the proposed name is available, or the letter of a licensed attorney stating that name availability has been verified by a search of the records of the Secretary of State, except if the document refers to an existing New York corporation and does not involve a change of name; and

(4) such other materials and data pertinent to the application.

(b) If an individual, trade or corporate name or a part thereof forms a part of a proposed corporate title, the applicant shall also file a consent to the use of such corporate title. If the incorporation is of an existing unincorporated group or association, the applicant must also file or attach to the document the affidavit required by Section 402(b), Not-for-Profit Corporation Law.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 how and where an application for approval of certain corporate documents can be filed with the board, pursuant to Labor Law section 104. This amendment will update and simplify the procedure to be used in filing an application pursuant to Labor Law section 104, by authorizing the filing of either the original or a conformed copy of the proposed corporate document, and eliminating the need to submit a second copy of the application.

It is the board's determination that amending this rule to update and simplify the procedure for the filing of an application for approval of certain corporate documents with the board pursuant to Labor Law section 104 will assist the applicants with the administrative process, making the process be 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 updates and simplifies the procedure to be used in filing an application pursuant to Labor Law section 104, by authorizing the filing of either the original or a conformed copy of the proposed corporate document, eliminating the need to submit a second copy of the application. 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 simplifies existing board procedures, and eliminates the need for filing duplicate copies of applications with the board, 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 of the Board's Rules**

**I.D. No.** IBA-11-04-00011-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 67.1 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 104

**Subject:** Application of board's rules.

**Purpose:** To update the application of the board's rules for applications filed pursuant to Labor Law, section 104.

**Text of proposed rule:** Section 67.1 Application.

(a) The provisions of this Part shall apply to the filing, processing, hearing, consideration and determination of an application for approval of corporate documents pursuant to section 104 of the Labor Law. See Part 65 of this Subchapter for general rules of procedure and practice not specified in this Part.

(b) If it is the purpose or one of the purposes of a corporation to form an organization of wage earners for their mutual betterment, protection and advancement; the regulation of hours of labor, working conditions or wages; or the performance, rendition or sale of services as labor consultant, or as an advisor on labor-management relations, arbitrator or negotiator in labor-management disputes; or if the corporate name contains certain words or phrases as set forth in Section 404(j) of the Not-for-Profit Corporation Law or Sections 201(b) and 301(a)(6) of the Business Corporation Law; the board's approval is required for the filing with the Department of State of the State of New York of any of the following instruments:

(1) any certificate of incorporation, certificate of change and amendment, restated certificate of incorporation, certificate of consolidation, certificate of dissolution of a domestic not-for-profit (formerly membership) corporation, or a statement and designation of a foreign nonprofit corporation for authority to do business in this State, and amendments thereof;

(2) any certificate of incorporation, certificate of change and amendment, restated certificate of incorporation, certificate of merger or consolidation of a business corporation or application of a foreign business corporation for authority to do business in this State.

*NOTE:* The Board's jurisdiction is provided for in:

1. Not-For-Profit Corporation Law, Section 404(j).
2. Business Corporation Law, Section 201(b), 301(a)(6).

(c) *Labor Law* Section 104 states:

104. Corporate instruments; inquiry by board. Whenever any corporate instrument is submitted to the board for approval in accordance with the requirements of any statute, the board shall make such inquiry as it may deem advisable, and shall order a hearing, if necessary, in accordance with such rules as it shall prescribe, to determine whether or not the purposes of the proposed corporation are in all respects consistent with public policy and the Labor Law, and whether the corporate name is in all respects consistent with its purposes and activities or tends to be misleading. Notice of the time and place of such hearings shall be given to the applicant and to such other persons as the board may determine.

The board's statutory function is quasi-judicial rather than merely ministerial in nature. In discharging this function, the board investigates every application to determine whether the aims, structure and proposed internal management of the applicant are consistent with the public policy and Labor Law of the State. The phrase consistent with public policy and the Labor Law in the above sections of the law, denotes a legislative mandate to the board to approve incorporation only of those proposed corporate organizations whose activities and operations will not adversely affect or exert any prejudicial influence upon the State labor policy as expressed in the State and Federal laws, the decisions of the courts, and official administrative pronouncements.

(d) Every corporate document submitted for approval is examined by the board's legal staff to determine its legal sufficiency. Thereafter, an investigation is made to ascertain if a public hearing is necessary. If a public hearing is held, persons and organizations who may be interested in or affected by the granting of an approval are invited to submit written comments and to attend the hearing. At the conclusion of the hearing, the applicant and objectors, if any, may, at the discretion of the hearing officer or the board, be permitted to file briefs.

(e) If the board grants approval of the document, a resolution of approval is appended to the [original] submitted document and returned to the applicant for filing in the Office of the Secretary of State of the State of New York.

(f) Board approval of documents for the dissolution of such corporations requires proof that dissolution of the corporation is essential to preserve the interests of its members and will not be injurious to the public. Such proof might include: evidence establishing that a corporation is inactive and the probability of its reactivation is remote; that the purpose or purposes for which the corporation was formed have become frustrated; that the corporate assets are in danger of being dissipated; that the corporation cannot continue to function because of a paralyzing failure of management and it is reasonably inferable that such condition cannot be remedied.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 board's rules to certain corporate documents filed with the board pursuant to Labor Law section 104. This amendment will clarify and simplify the application of the board's rules. The amendment clarifies that a reference to Section 104, found at subdivision (c), is to a section of the Labor Law, and at subdivision (e), recognizes that the board will now accept other than an original corporate document for review. Because this proposal clarifies without altering a subdivision of the existing rules, and recognizes that the board will now accept other than an original corporate document for review, it will eliminate the concern of many applications that their original documents might be lost or damaged in transit.

It is the board's determination that amending this rule to clarify and simplify the application of the board's rules for the filing of an application for approval of certain corporate documents, pursuant to Labor Law section 104, 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 updates and simplifies the application of the board's rules for filing an application pursuant to Labor Law section 104. The amendment clarifies that a reference to Section 104, found at subdivision (c), is to a section of the Labor Law, and at subdivision (e), recognizes that the board will now accept other than an original corporate document for review. 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 clarifies a subdivision of the existing rules, and recognizes that the board will now accept other than an original corporate document for review, eliminating the concern of many applications that their original documents might be lost or damaged in transit, 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

### Inspection and Reproduction of Documents

I.D. No. IBA-11-04-00012-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 65.52 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Inspection and reproduction of documents.

**Purpose:** To clarify that the inspection and reproduction of any board documents will take place in the board's Albany office, and that any costs will be as set forth under section 73.5 of this Subchapter, concerning costs under F.O.I.L.

**Text of proposed rule:** Section 65.52 Inspection and reproduction of documents.

(a) Subject to the provisions of law governing public disclosure of information and the provisions of Part 73 of this Subchapter, any person may, at the offices of the board in Albany, inspect and copy any document filed in any proceeding.

(b) Costs shall be borne by such person, in accordance with section 73.5 of this Subchapter.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative requirements for any person who seeks to inspect or reproduce any document filed in any proceeding with the board. The rule states that such inspection and reproduction is subject to the provisions of law governing public disclosure of information and the provisions of Part 73 of this Subchapter, and that costs shall be borne by such person. This amendment will clarify that persons seeking to inspect or reproduce documents under the provisions of the law governing the public disclosure of information, may do so at the board's principal office, in Albany, and that any costs shall be borne by such person, in accordance with section 73.5.

It is the board's determination that amending this rule to clarify that persons seeking to inspect or reproduce documents under the provisions of the law governing the public disclosure of information, as set forth in Part 73 of this Subchapter, may do so at the board's principal office, in Albany, and that any costs shall be borne by such person, in accordance with section 73, without changing any provision of the rule, will make the administrative process more easier understood, and thus 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 clarifies that persons seeking to inspect or reproduce documents under the provisions of the law governing the public disclosure of information, as set forth in Part 73 of this Subchapter, may do so at the board's principal office, in Albany, and that any costs shall be borne by such person, in accordance with section 73.5. 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 clarifies that persons seeking to inspect or reproduce documents under the provisions of the law governing the public disclosure of information, as set forth in Part 73 of this Subchapter, may do so at the board's principal office, in Albany, and that any costs shall be borne by such person, in accordance with section 73, 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**

#### **Joint Hearing of Proceedings**

**I.D. No.** IBA-11-04-00013-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 65.48 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Joint hearing of proceedings.

**Purpose:** To clarify that joint hearing may be held where the same or similar facts are involved.

**Text of proposed rule:** Section 65.48 Joint hearing of proceedings.

The board may, by resolution, direct that two or more proceedings, [growing] *arising* out of the same or similar set of facts, be heard together, without consolidation, provided that no substantial right is thereby prejudiced.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative criteria that the board will use in determining when two or more proceedings may be heard together, without being consolidated. This amendment will clarify the criteria, by substituting the word "growing" in place of the word "arising". Most of the petitions filed with the board are filed by non-attorneys, who are representing themselves. This word change will make the regulation easier to understand, thereby clarifying the rule, without changing any provision of the rule making.

This amendment will clarify the already existing criteria for determining when two or more proceedings will be heard together, without being consolidated. By replacing an arcane word with one easier to understand, the administrative process will be more effective and efficient, and 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 clarifies the criteria that the board will use in determining when two or more proceedings may be heard together, by replacing the word "growing", with the word "arising". 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 clarifies the board's criteria, by replacing one word with a similar, but more specific term, without making any substantive change to the rule, 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**

#### **Standards of Conduct**

**I.D. No.** IBA-11-04-00014-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 65.46 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Standards of conduct.

**Purpose:** To clarify that the applicable and appropriate standards of conduct before the board are the same as applicable in the courts of the State of New York.

**Text of proposed rule:** Section 65.46 Standards of conduct.

All persons appearing in any proceeding shall conform to the standards of [ethical] conduct required in the courts of the State of New York.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 standard of conduct for all persons appearing before the board. The rule states that all persons appearing before the board will adhere to the same standards of ethical conduct required in the courts of the State of New York. This proposed rule clarifies that the standard of conduct to be followed by all persons appearing before the board are the same as those standards required in the courts of the State of New York. The phrase "standards of ethical conduct", in the current rule, is not used in the rules governing conduct before the state courts. The code of conduct for the state courts is listed under a different title, as the Code of Professional Responsibility (22 NYCRR Part 1200). The board has determined that, deleting the word "ethical", acts to clarify the generic phrase "standard of conduct", clarifying that the board does not have its own standard, but is referencing the standard used in the state courts.

It is the board's determination that amending this rule to state that the standards of conduct for persons appearing before the board are the same as the standards of conduct for persons appearing before the courts of the State of New York, will clarify the rule, without changing any provision of the rule, will make the administrative process more understandable, and thus 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 clarifies that the standards of conduct to be followed by all persons appearing before the board are the same as those standards of conduct required in the courts of the State of New York. 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 clarifies that the standards of conduct to be followed are the same as those required in the courts of the State of New York, 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**

**Exhibits**

**I.D. No.** IBA-11-04-00015-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 65.35 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Exhibits.

**Purpose:** To clarify that a copy of each exhibit being offered into evidence at a hearing must be given by the offering party to any other parties, and the board.

**Text of proposed rule:** Section 65.35 Exhibits

(a) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party by whom the exhibit is offered.

(b) In the absence of objection by another party, exhibits shall be admitted into evidence as part of the record, unless excluded by the board upon proper ground.

(c) Unless the board finds it impractical, a copy of each exhibit shall be [given to the other parties] *provided by the offering party to the other parties, and the board.*

(d) All exhibits offered, but denied admission into evidence, shall be identified as in subdivision (a) of this section and shall be placed in a separate file designated for rejected exhibits.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative requirement that a party who wishes to offer a document into evidence at the hearing, is responsible for providing a copy of each document to the other parties, and to the board, at the time of the hearing. Most petitions filed with the board are filed by non-attorneys, who are representing themselves. These petitioners are unfamiliar with the Civil Practice Laws and Rules, and often fail to provide copies of documents. This results in an interruption to, and a delay in the course of the hearing, as brief recesses are needed to allow the party to make photocopies. All parties are provided with a physical copy of the board's rules upon the initiation of each proceeding. The board has determined that, inasmuch as a copy of these rules are the major, if not sole source of

guidance for most petitioners, that it would be helpful to clarify this requirement, that they are responsible for providing copies of any documents they may wish to offer as evidence, thereby allowing the hearing to proceed in a more efficient, and effective, manner.

It is the board's determination that amending this rule to clarify that, unless the board finds it impractical, a copy of each exhibit being offered for evidence in an administrative hearing shall be provided by the offering party to the other parties, and the board, without changing any provision of the rule, 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 clarifies that, unless the board finds it impractical, a copy of each exhibit being offered for evidence in an administrative hearing shall be provided by the offering party to the other parties, and 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 clarifies that a copy of each exhibit being offered for evidence in an administrative hearing shall be provided by the offering party, 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**

**Filing of Briefs; Oral Argument at Hearing**

**I.D. No.** IBA-11-04-00016-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 65.36 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Filing of briefs and proposed findings with the board; oral argument at the hearing.

**Purpose:** To clarify that the hearing officer shall fix a reasonable time period for the filing of any briefs, and delete the provision that such time period may not exceed 30 days.

**Text of proposed rule:** Section 65.36 Filing of briefs and proposed findings with the board; oral argument at hearing.

Any party shall be entitled, upon request, to a reasonable period before the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusion of law, or both, with the board. The hearing officer [may] *shall* fix a reasonable period of time for such filing[, but such period may not exceed 30 days from the close of the hearing].

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative requirement for the filing of post hearing briefs, setting forth a party's proposed findings of fact and law for the board's consideration. The rule states that a hearing officer "may" fix a reasonable time for the filing of such briefs, but not to exceed thirty (30) days after the date of the hearing. It has been the board's observation that most parties request more time for the filing of briefs than this rule allows. It is the board's determination that parties should usually be given a reasonable period of time in which to serve a file a post hearing brief, after having an opportunity to review the hearing transcript, which often takes more than thirty (30) days to be produced. This amendment will direct the hearing

officer to set a reasonable time frame for the filing of post hearing briefs, by deleting the requirement that the time period is not to exceed thirty (30) days, which the board has determined is not sufficient, while also clarifying that the hearing officer is responsible for setting the time period.

It is the board's determination that amending this rule to extend the time period for the filing of post-hearing briefs, and by clarifying that the hearing officer "shall", instead of "may", fix a reasonable period of time for such filing, and deleting the limitation on such time frame, previously set as not to exceed thirty (30) days, will clarify the rule, 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 amends the time period for the filing of post-hearing briefs, by clarifying that the hearing officer "shall", instead of "may", fix a reasonable period of time for such filing, and deleting the limitation on such time frame, previously set as not to exceed thirty (30) days. 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 clarifies that a hearing officer "shall" fix a reasonable time for the filing of any post-hearing briefs, and deletes the time period limitation of thirty (30) days, 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**

#### **Deposition in Lieu of Oral Testimony**

**I.D. No.** IBA-11-04-00017-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 65.34 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Deposition in lieu of oral testimony; application; procedures; form; rulings.

**Purpose:** To clarify that any request for the deposition of a witness in lieu of oral testimony will only be allowed in exigent circumstances.

**Text of proposed rule:** Section 65.34 Deposition in lieu of oral testimony; application; procedures; form; rulings.

(a) *A deposition in lieu of oral testimony ordinarily will not be allowed, except in exigent circumstances.* An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as the officer). Such application shall be filed with the board, with proof of service thereof on all other parties. If the application is granted, the board shall make and serve on the parties an order which specifies the name of the witness whose deposition is to be taken and the time, place and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the State of New York, or of the place where the examination is held.

(c) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath or affirmation by all parties appearing, and the questions asked of and answers given by the witness shall be recorded verbatim and reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer, who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposi-

tion may be used as fully as though signed. The officer shall immediately deliver an original and four copies of the transcript, together with his certificate, in person or by certified mail to the board at its Albany office.

(d) The board shall rule upon the admissibility of the deposition or any part thereof.

(e) The right to object to any error or irregularity that does not comply with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

(f) If the parties so stipulate in writing, the disposition may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative requirement for a party who wishes to take a witness's testimony by deposition, before the hearing, instead of during the actual hearing itself. This amendment will reinforce the board's determination that depositions in lieu of oral testimony, at the administrative hearing, ordinarily will not be allowed, except in exigent circumstances. The board recognizes that there are exceptional circumstances that may make it impossible for a witness to be physically present at a hearing. And that under such circumstances, it would be preferable to allow a witness to testify by deposition, rather than not testify at all. But the board also recognizes that testimony presented at the hearing is preferable, as it better allows the board to judge a witness's credibility, and better allows for cross examination, and redirect examination, of the witness, based upon information that may not have been available to the parties, or to the board, until the actual hearing. This amendment will clarify that that depositions in lieu of oral testimony at the administrative hearing, ordinarily will not be allowed, except in exigent circumstances, by having the rule so state, in the very first sentence.

It is the board's determination that amending this rule to clarify that depositions, in lieu of oral testimony at the administrative hearing, ordinarily will not be allowed, except in exigent circumstances, will clarify the rule, without changing any provision of the rule, making 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 clarifies that depositions in lieu of oral testimony, at the administrative hearing, ordinarily will not be allowed, except in exigent circumstances. 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 clarifies that depositions in lieu of oral testimony, at the administrative hearing, ordinarily will not be allowed, except in exigent circumstances, 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**

#### **Failure to Appear at a Scheduled Administrative Hearing**

**I.D. No.** IBA-11-04-00018-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 65.24 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Failure to appear at a scheduled administrative hearing.

**Purpose:** To clarify that any request for reinstatement must be made within five days after the scheduled hearing date.

**Text of proposed rule:** Section 65.24 Failure to appear.

(a) Subject to the provisions of subdivision (c) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the board and to request board review pursuant to section 65.41 of this Part.

(b) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing [date].

(c) The board, upon a showing of good cause, may excuse such failure to appear and in such event the hearing will be reopened.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative requirement for a party who failed to appear at a scheduled, formal administrative hearing. The rule states that a party's failure to appear shall be deemed a waiver of all rights except the rights to be served with a copy of the decision of the board, and the right to request reconsideration under section 65.41. The rule also allows a party to request reinstatement, if the request is received within five (5) days of the hearing date absent extraordinary circumstances, and upon a showing of good cause, in which event the hearing would be reopened. This amendment will clarify the already existing time frame, of five (5) days, during which a party must request reinstatement, by standardizing the format of these rules by stating all numbers within the rule both numerically and alphabetically.

It is the board's determination that amending this rule to standardize the format of these rules by stating all numbers within the rule both numerically and alphabetically, will clarify the rule, without changing any provision of the rule, 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 merely clarifies the already existing time frame, of five (5) days, during which a party must request reinstatement, following a failure to appear at a scheduled administrative hearing, absent any extraordinary circumstances. 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 only clarifies the time frame for a party to make a request for reinstatement, following a failure to appear at an administrative hearing, based upon non-extraordinary circumstances, 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**

**Postponement of a Scheduled Administrative Hearing**

**I.D. No.** IBA-11-04-00019-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 65.23 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Postponement of a scheduled administrative hearing.

**Purpose:** To amend, from three to seven days, the amount of time in advance that a party must request a non-emergency postponement of a scheduled administrative hearing.

**Text of proposed rule:** Section 65.23 Postponement.

(a) Postponement of a hearing ordinarily will not be allowed.

(b) Except in the case of an emergency or in unusual circumstances, no request for postponement will be considered unless received in writing at least [three (3)] seven (7) days in advance of the time set for the hearing.

(c) No postponement shall be allowed without board approval.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative requirements for a party seeking to postpone a previously scheduled, formal administrative hearing, in a proceeding filed with the board, pursuant to Labor Law section 101. The scheduling of a formal administrative hearing usually takes place several months before the hearing date, and requires the coordination of a number of people, to include the hearing officer, the parties and their respective representatives, the court reporter, and the witnesses, some who may have been subpoenaed. The rule currently requires that a party make a non-emergency based request for a postponement a minimum of three (3) days before the start of the scheduled hearing date. The amendment will change the three (3) day period to a seven (7) day period, for non-emergency based requests. An emergency can occur at any time, and is always a valid basis for a postponement. But the majority of requests for postponement are not based upon emergencies, they are based upon scheduling conflicts. This amendment will require parties seeking a postponement to make their request sufficiently in advance for the board to consider and reply, without inconveniencing the other participants, who may have to make travel arrangements, and adjust their own work schedules, to appear at the hearing. The board has determined that this amendment will encourage parties to make their requests for postponement in a more timely manner.

It is the board's determination that amending this rule to change the period of time before which a party must request a non-emergency based request for a postponement of a formal administrative hearing, from three (3) day period to a seven (7) day period, 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 amends the time frame, from three (3) to seven (7) days, before which a party must request a non-emergency based postponement of a previously scheduled, formal administrative 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 only amends the time frame, from three (3) to seven (7) days, before which a party must request a non-emergency based postponement of an administrative 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**

**Withdrawal of Petition or Application**

**I.D. No.** IBA-11-04-00020-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 65.15 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Withdrawal of petition or application.

**Purpose:** To simplify the procedure to be used in withdrawing a petition or application previously filed with the board, by recognizing that any party may withdraw an appeal at any time, and removing the procedural requirement that a party must apply for approval to withdraw.

**Text of proposed rule:** Section 65.15 Withdrawal of Petition or Application.

At any stage of a proceeding, a party may withdraw his petition or application, subject to the approval of the Board. [The application for leave to withdraw shall show that there will be no substantial prejudice to the parties, the affected employees or the public.]

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 administrative requirements for a party seeking to withdraw their petition or application, 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 procedural requirements to be followed, by deleting the requirement that the party file an application for leave to withdraw, showing that there will be no substantial prejudice to the parties, the affected employees or the public. The board has determined that this application for withdrawal requirement is overly burdensome, and inconsistent with a party's right to cease pursuing an appeal, at any time and upon any terms acceptable to the party itself.

It is the board's determination that amending this rule to simplify the administrative requirements for a party to withdraw its petition or application, thereby ending the proceeding, 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 simplifies the procedure to be used by a party in withdrawing a petition or application, previously filed with 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 simplify the administrative requirements to be followed by a party in withdrawing their petition or application, 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**

#### **Form of Pleadings**

**I.D. No.** IBA-11-04-00021-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 65.11 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Form of pleadings.

**Purpose:** To simplify the format to be used for any pleading filed with the board.

**Text of proposed rule:** 65.11 Form.

(a) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading must contain [a caption] *information*

sufficient to identify the parties and include the board's docket number, if assigned.

(b) Pleadings and other documents (other than exhibits) shall be *legible, preferably* typewritten or printed, double-spaced, on letter-size opaque paper (approximately 8½ × 11 inches).

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 standard for the format to be used for any pleadings 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 format to be used for any pleading filed with the board, by deleting the requirement for a formal caption, and the requirement that the document must be typewritten. Instead, the proposal will substitute the requirements that the pleading must be legible, and must contain information sufficient to identify the parties and the assigned docket number. This amendment will allow the parties to concentrate more of their efforts on the factual, instead of the procedural, issues in the proceeding.

It is the board's determination that amending this rule to simplify the format to be used for any pleading filed with the board, by deleting the requirement for a formal caption, or that the document must be typewritten, and substituting a requirement that the pleading must be legible, and must contain information sufficient to identify the parties and the assigned docket number, will make the administrative process more easier, 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 simplifies the required format to be used for any pleading filed with the board in a proceeding pursuant to Labor Law section 101. 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 format to be used for any pleading filed with the board, 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**

#### **Computation of Time Periods**

**I.D. No.** IBA-11-04-00022-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 65.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Computation of time periods prescribed within the rules.

**Purpose:** To standardize response time periods and introduce into the rules an addition to the CPLR which recognizes service of interlocutory papers by overnight delivery services.

**Text of proposed rule:** § 65.3 Computation of time.

(a) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(b) When the period of time prescribed or allowed is less than seven (7) days, Saturdays, Sundays and legal holidays shall be excluded in the computation.

(c) Where a period of time prescribed by these rules (except in the case of petitions required to commence a proceeding) is measured from the service of a paper, and service is by mail, [three] five (5) days shall be added to the prescribed period.

(d) Where a period of time prescribed by these rules (except in the case of petitions required to commence a proceeding) is measured from the service of a paper, and service is by overnight delivery service, one (1) day shall be added to the prescribed period.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 computation of time to be used for the service and filing of papers in proceedings before the board. The rule is modeled after the New York Civil Practice Laws and Rules (CPLR). The rule reflects the requirements that existed for the filing and service of papers in civil actions filed under the CPLR, in place when the rule was last amended. But while the CPLR has been modified since 1982, the rule has not. The proposed rule making will standardize response time periods in the rules, and introduce into the rules a recent addition to the CPLR (Section 2103(b)(6)), which recognizes service of interlocutory papers by overnight delivery services. The remainder of the proposed changes are to add language such that all numbers are set forth both numerically and alphabetically, which the board has determined improves the readability of the rule.

It is the board's determination that by amending this rule to reflect the changes that have taken place in the CPLR will assist all parties with the administrative process, making the process be more efficient, and allowing the parties to focus more on substance than style, 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 will standardize response time periods in the rules, and introduce into the rules an addition to the CPLR (Section 2103(b)(6)), which recognizes service of interlocutory papers by overnight delivery services. It is apparent from the nature and purposes of the amendment that it will not have an impact on jobs and/or employment opportunities. Because this technical amendment does not substantively revise existing provisions governing the form and content of petitions filed with the board, 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 of the Board's Rules**

**I.D. No.** IBA-11-04-00023-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 65.1 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Application of the board's rules.

**Purpose:** To emphasize and clarify that, in applying the board's rules to proceedings filed pursuant to Labor Law section 101, time period which have been prescribed by statute cannot be extended.

**Text of proposed rule:** Section 65.1 Application.

(a) This Part shall apply to the filing, processing, hearing, consideration and determination of every proceeding wherein they may be relevant and appropriate.

(b) When no substantial right is prejudiced thereby, the board may on its own motion or that of any party, suspend the application of any provision of these rules in a specific proceeding, or waive compliance therewith.

*Note: (Time periods prescribed by statute cannot be extended.)*

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Two Empire State Plaza, 20th Fl., Albany, NY 12223, (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 applicability of the board's rules. The rule states that the rules apply to the filing, processing, hearing, consideration and determination of every proceeding wherein they may be relevant and appropriate, and further state that, where no substantial right is prejudiced thereby, the board may on its own motion or that of any party, suspend the application of any provision of the rules in a specific proceeding, or waive compliance therewith. The majority of proceedings initiated before the board are prepared and filed by non-attorneys. Many of these non-attorneys, and also a few attorneys, read these provisions as stating that the board may suspend the application of any provisions of these rules and assume that includes any statutory provisions, which are repeated in the rules. A number of proceedings are commenced with a request that the board suspend the application of the rule setting forth that petitions must be filed within sixty (60) days of the date of the event being appealed from, which is the statute of limitations set forth in the Labor Law at section 101(1). This amendment will emphasize, and clarify, that the board cannot extend time periods prescribed by statute.

It is the board's determination that amending this rule to emphasize and clarify that the board cannot extend time periods prescribed by statute will assist all parties with the administrative process, making the process be more efficient, and timely, 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 emphasizes, and clarifies, that time periods prescribed by statute for proceedings filed with the board pursuant to Labor Law section 101 cannot be extended. 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 does not revise any existing provisions governing proceedings filed with the board, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

## Insurance Department

### EMERGENCY RULE MAKING

#### Rules Governing Individual Group Accident and Health Insurance Reserves

**I.D. No.** INS-11-04-00001-E

**Filing No.** 247

**Filing date:** Feb. 26, 2004

**Effective date:** Feb. 26, 2004

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

**Action taken:** Repeal of Part 94 and addition of new Part 94 (Regulation 56) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1304, 1308, 4217 and 4517

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

**Specific reasons underlying the finding of necessity:** Regulation No. 56 was originally effective August 18, 1971 in its present form and has not been substantively amended since that time. In the intervening 31 years, the National Association of Insurance Commissioners has adopted new reserving tables for individual and group disability income insurance policies, popularly referred to as the Commissioners Disability Tables ("CDT"). The current CDT was adopted in 1986 and is used widely across the country as the standard for holding reserves for individual and group disability insurance policies. It reflects both modern morbidity and claims experience and the judgment of actuaries and regulators who are knowledgeable about the current state of the disability insurance market.

However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, e.g., 11 NYCRR Part 94.1(a)(4)(iii)(A)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the more recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to consumers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standards will help to ensure that such insurers remain financially capable of paying claims as they come due.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on December 31, 2003. The filing date for the March 31, 2004 quarterly statement is May 15, 2004. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

**Subject:** Rules governing individual and group accident and health insurance reserves.

**Purpose:** To prescribe rules and regulations for valuation of minimum individual and group accident and health insurance reserves including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

**Substance of emergency rule:** The following is a summary of the substance of the rule:

Section 94.1 lists the main purposes of the regulation including implementation of sections 4217(d), 4517(d) and 4517(f) of the Insurance Law and prescribing rules for valuing certain accident and health benefits in the life insurance policies.

Section 94.2 is the applicability section. This section applies to both individual policies and group certificates. The regulation applies to all life insurers, fraternal benefit societies, and accredited reinsurers doing busi-

ness in the State of New York. It applies to all statutory financial statements filed after its effective date.

Section 94.3 is the definitions section.

Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

Section 94.5 sets forth the general requirements and minimum standards for unearned premium reserves.

Section 94.6 sets forth the general requirements and minimum standards for contract reserves.

Section 94.7 concerns increases to, or credits against reserves carried, arising from reinsurance agreements.

Section 94.8 prescribes the methodology of adequately calculating the reserves for waiver of premium benefit on accident and health policies.

Section 94.9 provides that a company shall maintain adequate reserves for all individual and group accident and health insurance policies that reflect a sound value being placed on its liabilities under those policies.

Section 94.10 provides the specific standards for morbidity, interest and mortality.

Section 94.11 allows for a four-year period for grading into the higher reserves beginning with year-end 2003 for insurers for which higher reserves are required because of this Part.

Section 94.12 establishes the severability provision of the regulation.

**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 May 25, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Theresa Marchon, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

#### Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the adoption of Regulation No. 56 (11 NYCRR 94) is derived from sections 201, 301, 1304, 1308, 4217, and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(d) provides that reserves for all individual and group accident and health policies shall reflect a sound value placed on the liabilities of such policies and permits the superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for these types of policies.

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the superintendent to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers licensed to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the superintendent to

specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the current regulation, absent the emergency regulation, provides no guidance related to certain coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

Additionally, the current regulation, absent the emergency regulation, requires higher reserves than necessary for certain individual accident and health insurance policies. This emergency regulation, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

#### 4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

#### 5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

#### 6. Paperwork:

The regulation imposes no new reporting requirements.

#### 7. Duplication:

The regulation does not duplicate any existing law or regulation.

#### 8. Alternatives:

The only significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this emergency regulation, which would result in different reserve requirements for those life insurers licensed in New York.

#### 9. Federal standards:

There are no federal standards in the subject area.

#### 10. Compliance schedule:

Beginning with year-end 2003, where the requirements of this regulation produce reserves higher than those calculated at year-end 2002, the insurer may linearly interpolate, over a four year period, between the higher reserves and those calculated based on the year-end 2002 standards. Insurers must be in full compliance with this Part by year-end 2006. This allows insurers subject to the regulation ample time to achieve full compliance, since this regulation has been adopted on an emergency basis since December 31, 2002.

### **Regulatory Flexibility Analysis**

#### 1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurance companies licensed to do business in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the

definition of small business, because there are none which are both independently owned and have under one hundred employees.

#### 2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

### **Rural Area Flexibility Analysis**

#### 1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

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

The regulation establishes reserve requirements for individual and group accident and health policies and establishes standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

#### 3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

#### 4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

#### 5. Rural area participation:

The regulation was drafted after consultation with member companies of the Life Insurance Council of New York (LICONY). A copy of the draft was distributed to LICONY in November, 2002. Additional changes were made to the text of the regulation based on changes made to the NAIC's Health Insurance Reserves Model Regulation in December 2003 and a revised draft of the regulation was distributed to LICONY in January 2004. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 2004 issue of the *State Register*.

### **Job Impact Statement**

#### Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting reserves for insurers. Most insurers will be able to reduce reserves and a few may need to increase reserves but this is unlikely to impact jobs and employment opportunities.

#### Categories and number affected:

No categories of jobs or number of jobs will be affected.

#### Regions of adverse impact:

This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

#### Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

#### Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

---



---

## Department of Motor Vehicles

---



---

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

#### Drivers' Schools

**I.D. No.** MTV-11-04-00028-P

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

**Proposed action:** This is a consensus rule making to amend Part 76 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 394(8)

**Subject:** Drivers' schools.

**Purpose:** To eliminate the fixed expiration date of June 30th for driving school instructor certificates and establish Sept. 30th as the date of expiration for such certificates.

**Text of proposed rule:** Subdivision (e) of section 76.15 is amended to read as follows:

(e) Instructors' certificates shall be valid until the 30th day of [June] *September* next following the date of issuance. Upon renewal, the commissioner may, in his discretion, issue a renewal which shall be valid for a two-year period.

**Text of proposed 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

**Data, views or arguments may be submitted to:** Deborah V. Dugan, Assistant Counsel, 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

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

#### Consensus Rule Making Determination

Vehicle and Traffic Law § 394(8)(a) was amended on October 22, 2002 to eliminate the fixed expiration date of June 30th for driving school instructor certificates. The law currently provides that such certificates "shall be valid until the date of expiration prescribed by the commissioner."

The intent of the proposed rule is to establish September 30th as the date of expiration for driving school instructor certificates.

The Department has determined that no person is likely to object to this rulemaking. Establishing September 30th as the expiration date for driving school instructor certificates will improve and expedite the renewal process, which will benefit driving schools and instructors. The proposed rule would not impair or abridge any rights currently afforded a person who is certified by the Department as a driving school instructor. Since this proposed rulemaking merely addresses the expiration date for instructor certificates and would not affect the substantive rights of instructors or driving schools, it is submitted as a consensus rulemaking.

#### Job Impact Statement

No job impact statement is submitted, because the Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

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

#### Westchester County Motor Vehicle Use Tax

**I.D. No.** MTV-11-04-00029-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 29.12(a) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Westchester County motor vehicle use tax.

**Purpose:** To increase the tax.

**Text of proposed rule:** Subdivision (a) of section 29.12 is amended to read as follows:

(a) Westchester County. The County Board of the County of Westchester adopted Local Law 17-1990, which was approved by the County Executive on September 24, 1990, which was amended by Local Law 2-2004, as approved by the County Executive on February 24, 2004, adding a new Chapter 288 to the Laws of Westchester County to establish a Westchester County motor vehicle use tax. The Commissioner of Finance of Westchester County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part [on August 1, 1991.] for the collection of such tax on original registrations made on and after [August 1, 1991] *June 1, 2004* and upon the renewal of registrations expiring on and after [October 1, 1991] *July 1, 2004*. The Commissioner of Finance is the appropriate fiscal officer and the County Attorney is the appropriate legal officer of the County of Westchester referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be [\$5] \$15 per annum on such motor vehicles weighing 3500 lbs. or less and [\$10] \$30 per annum for such motor vehicles weighing in excess of 3500 pounds. The tax due on trucks, buses and other commercial motor vehicles used principally in connection with a business carried on within the county, except when owned and used in connection with the operation of a farm by the owner or tenant thereof, for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law shall be [\$10] \$30 per annum.

**Text of proposed 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

**Data, views or arguments may be submitted to:** Ida L. Traschen, Associate Counsel, 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

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

#### Consensus Rule Making Determination

This proposed regulation would amend 15 NYCRR Part 29.12(a) to provide for an increase in the Westchester County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

Westchester County already has a use tax in effect. Pursuant to the authority contained in Chapter 8 of the Laws of 2004 and Local Law 2-2004, the Commissioner is required to collect an increased tax. The tax shall be fifteen dollars per annum on passenger vehicles weighing 3,500 pounds or less, \$30 for passenger vehicles weighing more than 3,500 pounds and \$30 dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Westchester County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

#### Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the collection of the Westchester County Use Tax by DMV shall have no impact on job opportunities in New York State.

## Division of Probation and Correctional Alternatives

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

#### Interstate/Intrastate Transfer and Related Supervision Rule

**I.D. No.** PRO-11-04-00027-EP

**Filing No.** 249

**Filing date:** March 1, 2004

**Effective date:** March 1, 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 transfers and guarantee appropriate recordkeeping of fingerprintable probationers.

**Subject:** Interstate/intrastate transfer and related supervision rule.

**Purpose:** To regulate interstate and intrastate transfers.

**Text of emergency/proposed rule:** Section 349.3 General Requirements for the transfer of supervision of all probationers.

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.*

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:

(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;

(vi) where applicable, subject's current employer and prospective employer if different; and

(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-residence 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. 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 as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 29, 2004.

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

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

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

#### Regulatory Impact Statement

##### 1. Statutory Authority:

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, 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 probation agencies and received overwhelming support and no strong opposition.

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**

Regulatory Flexibility Analysis for Small Businesses and Local Governments

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 Executive Committee Representatives of the Council of Probation Administrators and we have circulated and submitted comments on a prior draft of this regulatory reform for all probation directors and the State Probation Commission. This latest draft incorporates a few additional changes to address and clarify certain procedural provisions.

**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

---



---

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

**Revised Cost Studies by Champlain Telephone Company**

**I.D. No.** PSC-11-04-00030-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Champlain Telephone Company requesting a modification to, or alternatively, the waiver of, a specific aspect of the commission's Dec. 22, 2003 order.

**Statutory authority:** Public Service Law, sections 94, 107 and 110

**Subject:** Revised cost studies to the New York Intrastate Access Pool, Inc.

**Purpose:** To waive an aspect of the Dec. 22, 2003 order.

**Substance of proposed rule:** On December 22, 2003, the Public Service Commission issued an Order requiring the Champlain Telephone Company to submit revised cost studies to the New York Intrastate Access Pool, Inc. to exclude disallowed expenses reported in 2001 and 2002. On January 30, 2004 the Champlain Telephone Company submitted a petition requesting a modification to, or alternatively, the waiver of that requirement.

**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.

(94-C-0095SA26)

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

**Interconnection of the Networks between Verizon New York Inc. and Covista Inc.**

**I.D. No.** PSC-11-04-00031-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Covista Inc. a/k/a Covista of New York Inc. for approval of an interconnection agreement executed on Feb. 4, 2004.

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

**Subject:** Interconnection of the networks between Verizon New York Inc. and Covista Inc. a/k/a Covista of New York Inc. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon New York Inc. and Covista Inc. a/k/a Covista of New York Inc.

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

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

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

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

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

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

(04-C-0143SA1)

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

**Interconnection of the Networks between Cassadaga Telephone Corporation and DFT Local Service Corporation**

**I.D. No.** PSC-11-04-00032-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Cassadaga Telephone Corporation and DFT Local Service Corporation for approval of a mutual traffic exchange agreement executed on Feb. 13, 2004.

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

**Subject:** Interconnection of the networks between Cassadaga Telephone Corporation and DFT Local Service Corporation for local exchange service and exchange access.

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

**Substance of proposed rule:** Cassadaga Telephone Corporation and DFT Local Service Corporation have reached a negotiated agreement whereby Cassadaga Telephone Corporation and DFT Local Service Corporation will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

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

(04-C-0192SA1)

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

**Interconnection of the Networks between Dunkirk and Fredonia Telephone Company and DFT Local Service Corporation**

**I.D. No.** PSC-11-04-00033-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 Dunkirk and Fredonia Telephone Company and DFT Local Service Corporation for approval of a mutual traffic exchange agreement executed on Feb. 13, 2004.

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

**Subject:** Interconnection of the networks between Dunkirk and Fredonia Telephone Company and DFT Local Service Corporation for local exchange service and exchange access.

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

**Substance of proposed rule:** Dunkirk and Fredonia Telephone Company and DFT Local Service Corporation have reached a negotiated agreement whereby Dunkirk and Fredonia Telephone Company and DFT Local Service Corporation will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

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

(04-C-0193SA1)

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

**Submetering of Electricity by RBNB Wall Street Owner LLC**

**I.D. No.** PSC-11-04-00034-P

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

**Proposed action:** The Public Service Commission is considering a request filed by RBNB Wall Street Owner LLC to submeter electricity at 63 Wall St., New York, NY.

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

**Subject:** Case 26988—submetering of electricity for new master metered residential rental units owned or operated by private or government entities.

**Purpose:** To permit electric submetering at 63 Wall Street in New York City.

**Substance of proposed rule:** The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private or government entities according to established guidelines. The Owner at 63 Wall Street, New York, NY, RBNB Wall Street Owner LLC, has submitted a proposal to master meter and submeter this residential complex that is undergoing renovations. The total electric building usage for this complex will be master metered and each residential unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at 63 Wall Street, New York, NY.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(04-E-0148SA1)

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

**Schedule for Gas Service by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-11-04-00035-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 4.

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

**Subject:** Service Classification Nos. 3, 4 and 8.

**Purpose:** To restate all rates in S.C. Nos. 3 and 8 in cents per 100 cubic feet of gas and to cancel S.C. No. 4.

**Substance of proposed rule:** Orange and Rockland Utilities, Inc. proposes changes to S.C. Nos. 3 and 8 applicable to interruptible sales and interruptible transportation service, respectively. The revisions restate all rates for S.C. Nos. 3 and 8 in cents per 100 cubic feet of gas (Ccf). Currently, customers taking service under these classes are billed at rates expressed in dollars per 1,000 cubic feet of gas (Mcf). The company also proposes to cancel S.C. No. 4 applicable to the transportation of gas to large volume customers (greater than 5,000 Mcf per year) since all S.C. No. 4 service agreements expired by September 4, 2001.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(04-G-0196SA1)

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

**Residential Distributed Generation Rates**

**I.D. No.** PSC-11-04-00036-P

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

**Proposed action:** The commission will consider whether to adopt rates and other requirements for residential distributed generation service and related matters.

**Statutory authority:** Public Service Law, sections 66(12) and 72

**Subject:** Residential distributed generation rates.

**Purpose:** To consider rates and terms of service for residential distributed generation.

**Substance of proposed rule:** The Commission will consider whether to adopt rates and related provisions related to the provision of residential distributed residential generation service and related matters.

**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.  
(02-M-0515SA14)

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

**Deferral of Extraordinary Expenses by United Water New Rochelle Inc.**

**I.D. No.** PSC-11-04-00037-P

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

**Proposed action:** The commission is considering a petition of United Water New Rochelle Inc. for permission to defer \$770,542 in extraordinary expenses.

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

**Subject:** To defer \$770,542 in extraordinary expenses.

**Purpose:** To resolve the amount to be deferred for subsequent recovery from customers.

**Substance of proposed rule:** By letter dated January 21, 2004, United Water New Rochelle Inc. requested Commission approval to defer \$770,542 in extraordinary expenses. The company proposes to amortize these costs to an expense account in its next general rate filing. The Commission may approve, modify, or reject, in whole or in part the request of United Water New Rochelle Inc.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(04-W-0075SA1)

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

**Transfer of Real Property by Aquarion Water Company of New York, Inc.**

**I.D. No.** PSC-11-04-00038-P

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

**Proposed action:** The Public Service Commission is considering a petition filed by Aquarion Water Company of New York, Inc. for approval of the transfer of a parcel of real property located at 25 Willett Ave., Village of Port Chester, Westchester County for the sum of \$750,000.

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

**Subject:** Transfer of a parcel of real property.

**Purpose:** To approve the transfer.

**Substance of proposed rule:** On February 18, 2004, Aquarion Water Company of New York, Inc. filed a petition for approval of the transfer of a parcel of real property located at 25 Willett Avenue, Village of Port Chester, Westchester County for the sum of \$750,000. The Commission

may approve or reject, in whole or in part, or modify the company's petition.

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

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

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

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

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

(04-W-0200SA1)