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 Audit and Control

NOTICE OF ADOPTION

Budgets, Financial and Strategic Operation Plans of the Metropolitan Transportation Authority

I.D. No. AAC-36-03-00004-A
Filing No. 1412
Filing date: Dec. 23, 2003
Effective date: Jan. 7, 2004

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

Action taken: Addition of Part 202 to Title 2 NYCRR.

Statutory authority: New York Constitution, art. X, section 5; and State Finance Law, section 8(14)

Subject: The format of, supporting documentation for, and monitoring of, the budgets and financial plans, and the format of financial information in strategic operation plans.

Purpose: To prescribe specific requirements for the format of the MTA's budget, financial plan and certain financial information in its strategic operation plan, the documentation to be prepared with release of the budgets and financial plans and the periodic monitoring and reporting required during each fiscal year in connection with the budgets and financial plans.

Text or summary was published in the notice of proposed rule making, I.D. No. AAC-36-03-00004-P, Issue of November 19, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Mitch Morris, Department of Audit and Control, 110 State St., 14th Fl., Albany, NY 12236, (518) 473-4138, e-mail: mmorris@osc.state.ny.us

Assessment of Public Comment

The Notice of Revised Rule Making was published on November 19, 2003. The following is a summary of the written comment received by the Office of the State Comptroller (OSC) within the thirty day comment period, concerning the proposed revised rule and OSC's response to that comment.

Comment: The NYPIRG Straphangers Campaign submitted a comment indicating that it "strongly supports" the proposed revised rule. The comment stated that the proposed revised rule "would provide officials and the public with a more detailed and complete picture of the MTA's finances." The comment highlighted several provisions in the proposed revised rule "as particularly key", including those relating to: the inclusion of debt service estimates in MTA budgets and plans; the preparation of a debt affordability statement; the identification of planned transactions that would shift resources from one year to another; and the issuance of monthly projections to monitor the MTA's budgets and plans.

The comment also suggested that further regulations "may be in order" in the future if certain "deficiencies persist." The comment specifically raised concerns as to the detail provided in reporting on programs to eliminate projected gaps, the absence of performance indicators and projected impacts on service and information on how MTA goals may be achieved for less cost.

Response: The comment was supportive and no change in the proposed revised rule was made based on the comment. OSC intends to closely monitor the implementation of the adopted rule and consideration may be given to future amendments to the adopted rule, as appropriate on a case by case basis.

Banking Department

EMERGENCY RULE MAKING

Budget Planners/Delegation of Certain Activities

I.D. No. BNK-01-04-00005-E
Filing No. 1409
Filing date: Dec. 23, 2003
Effective date: Dec. 23, 2003

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

Action taken: Addition of Part 404 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-C, section 587

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

Specific reasons underlying the finding of necessity: L. 2002, ch. 629, which became effective on April 7, 2003, made substantial changes to the conduct of the business of budget planning in this state. Amendments made to art. 12-C of the New York Banking Law and art. 28-B of the New York General Business Law necessitated the emergency adoption of Part 402 of the Superintendent's Regulations on that date.

It has come to the attention of the Banking Department that many licensed budget planners utilize third party entities to assist them in distributing the monies of debtors to their creditors. Likewise, many applicants for a budget planning license have indicated in their application that they intend to conduct their budget planning activities in a similar fashion. This type of "outsourcing", in which an entity other than the licensee which has a contract for budget planning services with a debtor has access to or controls the monies of debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature. The rule is proposed in order to provide protection to debtors when a third party "outsourcer" is used in the process of paying debtor funds to creditors of the debtors. Specifically, if the third party "outsourcer" is another budget planner licensed under art. 12-C of the New York Banking Law, the amount of that licensee's bond or assets placed on deposit, as the case may be, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly distributed to their creditors, must be increased to reflect the additional amount of debtors funds that it has access to or controls as a result of its "outsourcing" activities. However, if the licensed budget planner which utilizes another licensed budget planner as an "outsourcer" places assets on deposit pursuant to section 580(4) of the Banking Law in an amount sufficient to cover the debtors funds that the licensed "outsourcer" has access to or controls, then the licensed "outsourcer" would not be required to obtain a surety bond in a greater amount, or place additional assets on deposit to cover the additional amount of debtors funds that it has access to or controls, as a result of its outsourcing activities. In such case, the monies of debtors would be fully protected by the original licensee's asset deposit.

If the third party "outsourcer" is not a licensed budget planner in New York State, the issue of the safety of the monies of the debtors becomes more paramount as an entity unregulated by and probably unknown to the Banking Department will have access to or control of the monies of debtors. In such case, unless the licensed budget planner places assets on deposit sufficient to cover the debtors funds that the non-licensed "outsourcer" has access to or controls, the non-licensed "outsourcer" would be required to place assets on deposit sufficient to protect the monies of the debtors that it has access to or controls as a result of its "outsourcing" activities.

The proposal also contains provisions relating to the contractual relationship between the licensed budget planner and the service provider, which give protection to debtors who may be adversely affected if the contract between the licensee and the service provider is terminated.

The primary legislative objective of ch. 629 is to provide greater consumer protection to New York residents who contract with licensed budget planners for budget planning services. Accordingly, considering the foregoing, emergency adoption of this proposal is necessary and appropriate.

Subject: Regulation of budget planning activities.

Purpose: To conduct the business of budget planning when the licensees use the services of third party entities in making payments of debtor funds to creditors of the debtors.

Text of emergency rule: *PART 404*

BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES

(Statutory authority: Banking Law, § 587)

§ 404.1 Definitions.

For purposes of this Part:

(a) The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.

(b) The term "licensee" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individual or entity that has a 10% or more ownership interest in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

§ 404.2 Explanatory note.

Section 580.4 of Article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under Article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to Section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law Section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law Section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law Section 580.4.

§ 404.3 Servicing By a Licensee Service Provider.

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the licensee service provider.

(2) A description of the services to be provided by the licensee service provider.

(3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by the licensee service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the Superintendent confirming that the Super-

intendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under Section 404.3(c) of this Part.

§ 404.4 Servicing By A Non-Licensee Service Provider.

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the non-licensee service provider.

(2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

(1) The non-licensee service provider gives the Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under Section 404.4(c)(2) of this Part, have been provided to the Superintendent, and the licensee receives written notice from the Superintendent confirming that the Superintendent has received all such information.

§ 404.5 Termination of Agreements or Contracts.

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) A licensee shall immediately notify the Superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.

§ 404.6 Compliance.

Compliance with this Part shall be required on or before March 18, 2004.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 21, 2004.

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

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

EMERGENCY RULE MAKING

Budget Planners

I.D. No. BNK-01-04-00006-E
Filing No. 1410
Filing date: Dec. 23, 2003
Effective date: Dec. 24, 2003

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

Action taken: Repeal of Part 402 and addition of new Part 402 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-C, section 587

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

Specific reasons underlying the finding of necessity: L. 2002, ch. 629 is effective April 7, 2003. Provisions of chapter 629 include the enactment of amendments to art. 12-C of the New York Banking Law and art. 28-B of the New York General Business Law that relate to the business of budget planning. Art. 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in section 455 of art. 28-B of New York's General Business Law.

As a result of the amendments to art. 12-C of the New York Banking Law, the operations of entities currently licensed in New York to conduct the business of budget planning may be extensively affected, on or after April 7, 2003. In addition, due to the amendment of section 455 of art. 28-B of New York's General Business Law, the operations of out-of-state entities that will be newly subject to New York's licensing requirements in order to conduct the business of budget planning with New York residents will be similarly affected.

Specifically, the amendments to the rule known as Part 402 of Title 3 NYCRR, include new requirements established by ch. 629, as well as expanded regulatory requirements developed by the Banking Department, the majority of which are intended to effectuate stronger consumer protection for existing and potential clients of licensed budget planners. In addition, the amendments to Part 402 include various requirements currently imposed on licensed budget planners under existing law and Superintendent's Regulations, as well as administratively. Accordingly, the amendments to Part 402 establish a significantly broader regulatory scheme pursuant to which licensees and potential licensees will be required to conduct the business of budget planning.

The primary legislative objective of chapter 629 is to provide greater consumer protections to clients of licensed budget planners. Such protections are provided in various ways, including the regulation of out-of-state entities engaging in budget planning activities with residents of this State. Industry representatives have informed the Banking Department that a significant number of out-of-state entities are expected to seek licenses under the Banking Law to conduct the business of budget planning. Therefore, it is paramount that not only current licensees be made aware of the expanded regulatory requirements prior to the effective date of chapter 629 in order that their business operations, especially those aspect of their operations that provide consumer protections conform to the new statutory and regulatory standards, but that potential licensees from out-of-state and in-state be put on notice as well. Accordingly, emergency adoption of this rule is necessary.

Subject: Regulation of budget planning activities.

Purpose: To set forth the regulatory requirements and standards of operation for entities licensed under art. 12-C of the Banking Law to conduct the business of budget planning.

Text of emergency rule: Part 402 is repealed and a new Part 402 is added to read as follows:

PART 402
BUDGET PLANNERS
(Statutory authority: Banking Law, § 587)

§ 402.1 Definitions.

For purposes of this Part:

(a) The term "control party" shall mean any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee.

(b) The term "director" shall mean any member of the governing board of the licensee whether designated as a director, officer, trustee, manager, governor or by any other title.

(c) The term "capital certificate" shall have the same meaning as is set forth in Article 5 of the New York Not For Profit Corporation Law.

(d) The term "debtor" shall mean an individual who enters into a contract with a licensee while the individual is a New York resident.

(e) The term "licensee" shall mean any entity licensed pursuant to Article 12-C of the New York Banking Law.

§ 402.2 Application for a license.

(a) Application form. Application for a license shall be made upon a form provided by the New York State Banking Department ("Banking Department"). Each application shall be signed by every individual or entity that will be a control party if a license is granted.

(b) Application procedure. Applications should be delivered to the New York State Banking Department, Attn: Licensed Financial Services Division, and must be accompanied by check payable to the order of "Superintendent of Banks of the State of New York", for an investigation fee in the statutory amount. The application shall include the following information:

(1) The exact name and the address of the applicant and its date of incorporation.

(2) The name and the complete business and residential address and occupation of each director, whether or not a member of the governing board, and any other individual who supervises the daily operations of the applicant.

(3) The complete address where the business of the applicant is to be conducted, showing the street and number, if any, post office and building and room number, if any, the office building and room number, if any, and the municipality, county and state.

(4) If the applicant engages in the business of budget planning, as defined in Section 455(1) of the New York General Business Law, in another state(s), identify such state(s) and provide the name and address of the regulatory agency, if any.

(5) A copy of the applicant's filing receipt, certified by the Secretary of State of New York, or, for out of state budget planners, a certificate of qualification to do business certified by the Secretary of State of New York.

(6) A copy of the applicant's bylaws.

(7) Letter of Tax Exemption from the Internal Revenue Service indicating 501(c)(3) tax status, if applicable.

(8) Charities Registration Statement from the State of New York Office of the Attorney General, Charities Bureau.

(9) Schedule providing the following information with respect to each control party: name, prospective corporate title with licensee, employer's name, occupation and title, business address, and residential address.

(10) The name and residence of each holder of capital certificate whether voting or non-voting and/or subvention certificate.

(11) Documentation demonstrating that a director, whether or not a member of the governing board, of such applicant has at least one year of experience in financial services or related fields applicable to budget planning. The superintendent may require that a director have more than one year experience if it is determined that such enhanced experience is in accordance with the purposes of Article 12-C of the New York Banking Law.

(12) A set of completed fingerprint cards must be submitted by each individual who signs the application. In the case of an applicant which is not a natural person, each control party shall submit completed fingerprint cards.

(13) A background report prepared by an independent licensed private investigation firm for every applicant. In the case in which an individual is signing an application on behalf of an applicant that is not a natural person, a background report shall be prepared for both such individual and the entity for which he or she is signing the application.

(14) A description of the services that will be provided to the debtor by the applicant citing specifically the topics to be discussed and the related timeframes involved.

(15) A litigation affidavit prepared for each applicant.

(16) A statement of merit describing the proposed operation including but not limited to: 1) a list of all fees to be charged by the applicant 2) the sources of funding and financing available to the applicant and 3) a business plan which describes in detail the budgeting, educational, and counseling services to be offered; the policies and procedures governing each such service including the curriculum to be utilized to provide the educational services; the person(s) responsible for administering each such service and the training to be provided to employees engaged in the rendering of each such service.

(17) The applicant's financial statements for the past three years or, for new corporations, a pro-forma financial statement. Financial statements shall include a balance sheet, a statement of revenues and expenses, and a statement of cash flows.

(18) A copy of the contract to be used with debtors or potential debtors which shall at a minimum include:

(i) a complete list of the debtor's obligations to be adjusted, including the name of each creditor;

(ii) the total fees agreed to for such services, including any adjustments for estimated available rebates from creditors, provided that nothing in this subdivision shall require a licensee to share rebates with its clients;

(iii) the commencement and termination date of the contract;

(iv) a pro forma statement of the total fees to be charged, including expected available rebates from creditors, expressed as a percentage of the total obligations, principal and interest to be adjusted under such contract.

(19) Such other pertinent information as the superintendent may require.

§ 402.3 Services to be provided by licensee.

(a) Every licensee shall make an initial assessment of the potential debtor's financial situation taking into account at a minimum, the potential debtor's available and projected income and the existence of other liquid assets as well as the potential debtor's indebtedness to determine if it is in the best economic interest of the potential debtor to enter into a budget planner contract. If not, the licensee shall recommend that the potential debtor seek legal or other appropriate advice as to other alternatives, including bankruptcy.

(b) Every licensee shall provide adequate budgeting, educational and counseling services directly to the debtor, consistent with the purposes of Article 12-C of the New York Banking Law.

(c) Upon receipt of funds from the debtor, the licensee shall promptly transmit such funds, less any contractual fees which are due and owing to it from the debtor, to the creditor(s).

§ 402.4 Duration of qualifier experience.

If at any time the licensee ceases to be in compliance with the requirement of section 580.1(e) of the New York Banking Law, it shall notify the superintendent within ten calendar days of such noncompliance. Within three calendar days of making such notification, the licensee shall submit to the superintendent, the name and qualifications of any other director, whether or not a member of the governing board, who has been engaged by the licensee to satisfy the requirements of section 580.1(e).

§ 402.5 Provision for surety bond.

(a) Except as provided in section 402.6 below, every licensee shall file with the superintendent a corporate surety bond in the principal amount of $250,000, or such larger or smaller amount as the superintendent may require. If the licensee is notified that a larger bond is required, such larger bond shall be in full force within 30 days. A copy of the larger bond shall be submitted to the superintendent. The corporate surety bond required by the section shall be issued by a bonding company or insurance company authorized to do business in this State. The form of the bond shall be obtained from the Licensed Financial Services Division of the Banking Department.

(b) Such bond shall be in favor of the superintendent. The bond, or deposit agreement entered into pursuant to section 402.7 below, shall contain substantially the following language: "The proceeds of this [bond/deposit agreement] shall constitute a trust fund in favor of the superintendent to be used exclusively to reimburse payments by debtors that have not been properly distributed to creditors or to reimburse fees determined by the superintendent to be improperly charged or collected and, in the event of the insolvency, liquidation or bankruptcy of such licensee, to pay outstanding banking department examination costs and assessments."

(c) Within 90 days of the effective date of Banking Law Section 580, as amended by Chapter 629 of the laws of 2002, which date is April 7, 2003, each licensee shall comply with the provisions of this section.

§ 402.6 Deposit of assets in lieu of surety bond; assets eligible for deposit.

(a) A licensee, in lieu of obtaining a bond pursuant to this Part, may keep on deposit with such banks, savings banks, savings and loan associations, trust companies, private bankers, national banks, federal savings banks, or federal savings and loan associations in this State, as such licensee may designate and the superintendent may approve, interest-bearing bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district, or instrumentality of this State or guaranteed by this State, or dollar deposits. The amount of the deposit shall be $250,000 (based on the lower of principal amount or market value), or such larger or smaller amount as the superintendent may require.

(b) In addition to the assets described in paragraph (a) of this section, the following assets are eligible for deposit for purposes of this Part:

(1) commercial paper payable in dollars in the United States provided such paper is accorded the highest rating of a rating service designated by the Banking Board pursuant to section 61.1 of Part 61 of this Title. In the event that an issue of commercial paper is rated by more than one designated rating service, it must have the highest rating of each;

(2) negotiable certificates of deposit that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation;

(3) banker's acceptances that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation;

(4) bonds which have an investment grade rating from either Moody's Investors Services, Inc., Standard & Poor's Corporation or Fitch Investors' Service, Inc.; and

(5) such other assets as approved by the superintendent upon written application.

(c) If the superintendent determines that an asset which otherwise qualifies under subdivisions (1) through (5) of this section is valued for purposes of this Part at less than the amount otherwise required by this Part, the superintendent shall so notify the licensee which shall thereafter value such asset for purposes of this Part as directed by the superintendent.

(d) Within 90 days of the effective date of Banking Law Section 580, as amended by Chapter 629 of the laws of 2002, which date is April 7, 2003, each licensee shall comply with the provisions of this section.

§ 402.7 Deposit agreement; certificate of licensee.

A licensee, which elects to deposit assets of the type listed in section 402.6, shall execute with an approved depository a deposit agreement, which shall be in the form prescribed by the Licensed Financial Services Division of the Banking Department. An executed copy of such deposit agreement shall be filed with the superintendent. As part of the deposit agreement, the licensee shall agree that prior to the release or substitution of any pledged assets subject to the deposit agreement, the licensee shall file a certificate with the depository which shall specify the following:

(a) the complete title of each pledged asset being withdrawn;

(b) the complete title of each pledged asset being deposited in place thereof;

(c) the interest rate, series, serial number (if any), face value, maturity date, call date, principal amount and market value of each replacement pledged asset;

(d) the aggregate principal amount of all such replacement pledged assets;

(e) the amount, if any, of the funds being withdrawn or deposited; and

(f) a certification that any pledged assets being deposited in exchange for pledged assets being withdrawn comply as to type with the provisions of section 402.6, and that, after giving effect to the exchange, the aggregate of all pledged assets remaining on deposit by the licensee, based in the case of such pledged assets upon the principal amount or market value, whichever is lower, shall be $250,000, or such larger or smaller amount as the superintendent may require.

§ 402.8 Reports of changes in directors, bylaws and certificate of incorporation of licensee.

(a) The licensee shall notify the superintendent in writing, within 10 days of the following:

(1) the name and address of any director or individual who supervises the daily operations of the licensee who terminates or alters his or her status with the licensee; and

(2) the name of any individual who becomes associated with the business of the licensee as a director or any new individual who supervises the daily operations of the licensee. Any new director or individual shall also furnish a resume. The superintendent may request other information and documentation from the licensee in determining whether to approve any such director or individual. If the superintendent objects to any new director or individual, the superintendent shall notify the licensee of such objection setting forth the reasons therefore.

(b) If the superintendent finds that a proposed new director, who is not a control party, fails to meet the standards set forth in section 581 of the New York Banking Law, the superintendent may prohibit such person from serving in any capacity on behalf of the licensee or, in the case of an application for a change of control, deny such application. The superintendent may request other information and documentation from the licensee in determining whether to approve any such director. If the superintendent objects to any new director, the superintendent shall notify the licensee of such objection setting forth the reasons therefore.

(c) The licensee shall submit to the superintendent changes to its bylaws or certificate of incorporation within 30 days of such change.

§ 402.9 Debtors contact with licensees and Banking Department.

(a) Every licensee must establish either (i) a toll-free number or (ii) a phone number which may be called "collect" for the purpose of enabling debtors to make inquiries of or complaints to the licensee. Every debtor must be informed, in writing, of this phone number and the Banking Department's toll-free phone number at the time he or she executes the contract.

(b) Every licensee shall furnish to the debtor at least quarterly a periodic statement of account on which the Banking Department's toll-free telephone number, 1-800-522-3330, shall be set forth conspicuously in at least ten point bold type.

§ 402.10 Right of debtors to rescind contract.

(a) Every contract between a licensee and a debtor must provide that the debtor may rescind the contract until midnight of the third business day after the day on which the debtor signed the contract. The licensee shall expressly inform every debtor of such provision prior to or simultaneously with the execution of the contract.

(b) Notice of rescission is effective when it is given in writing to the licensee by the debtor.

(c) Notice of rescission, if given by mail, shall be deemed given when deposited in a mailbox with the correct address and proper postage.

(d) If a debtor exercises the right of rescission within the timeframe specified in this section, the licensee shall promptly return to the debtor all fees associated with the contract that were paid to it by the debtor. Such fees shall not include reasonable counseling fees imposed on debtors separate and apart from the execution of a budget planner contract.

§ 402.11 Term and termination; assignment.

(a) Every contract between a licensee and a debtor shall be limited to a payment period not to exceed 60 months.

(b) Every contract between a licensee and a debtor shall contain a provision which states that the debtor may terminate the contract upon 10 days written notice to the licensee without any fee or penalty. Upon receiving such notice, the licensee shall return to the debtor all monies received from the debtor which are in its possession. No licensee shall communicate any derogatory information about a debtor to a creditor based solely on the fact that a debtor has terminated his or her contract with the licensee. Derogatory information does not include notification that the debtor is no longer a client.

(c) Every contract between a licensee and a debtor shall contain a provision which states that the contract may not be assigned without the written consent of the debtor.

§ 402.12 Unfair or deceptive acts or practices.

No licensee shall seek to avoid compliance with this Part by any device, subterfuge or pretense whatsoever.

§ 402.13 Reports to be filed with the superintendent.

(a) Each licensee shall annually, on or before the first day of February, furnish a report containing the following information and documentation, which shall be certified as accurate by a control party:

(1) Number of clients nationwide and number of debtors in the preceding calendar year;

(2) Number of new clients nationwide and number of new debtors in the preceding calendar year;

(3) For debtors, a schedule of fees charged, including initial fee, monthly fee and specific details as to how these fees are computed;

(4) The agreement utilized for debtors if it has been modified since the date of application or subsequently and has not been previously submitted.

(b) Each licensee shall, on a quarterly basis, report to the superintendent the highest daily amount of debtor funds held by the licensee for disbursement to creditors. This information shall be certified as accurate by a control party and shall be provided by no later than 10 business days after the end of the preceding quarter.

(c) Each licensee shall, within 90 days of the close of the licensee's fiscal year, submit an independently audited financial statement to the superintendent.

§ 402.14 Changes to licensee's fee structure.

Any modification of the licensee's fee structure for debtors shall require that the licensee notify the superintendent in writing of the proposed change(s) at least thirty calendar days prior to implementation. The superintendent shall review the fee structure taking into consideration the expenses of the operation, the financial status of the debtor(s) and such other factors as the superintendent shall deem relevant. The licensee may implement the modified fee structure unless the superintendent disapproves of the change(s) in writing within thirty days of notification of the proposed change(s) unless such time period is extended in writing by the superintendent.

§ 402.15 No commingling of licensee's funds.

(a) Accounts established by the licensee to maintain debtor(s) funds must be held in the title of "Budget Planner as Agent for the Benefit of Principal(s) (i.e. Debtor(s))." The licensee must maintain, at all times, debtor records in such a manner as to make ascertainable the interests of the debtors, i.e., the records must sufficiently identify the deposit balance of each debtor on any given day.

(b) Accounts must be maintained in a New York branch of a bank, savings bank, savings and loan association, trust company, private banker, national bank, federal savings bank, or federal savings and loan association.

§ 402.16 Licensee's privacy policy.

Each licensee shall comply with the privacy provisions contained in Title V of the "Gramm-Leach-Bliley Act" of 1999, which is found in 15 United States Code Section 6801 et seq., and the regulations promulgated thereunder by the Federal Trade Commission, which are found in Title 16, Code of Federal Regulations, Part 313 et seq. 15 United States Code Section 6801 et seq. and Title 16, Code of Federal Regulations referred to herein, may be viewed at the New York State Banking Department, located at One State Street, New York, NY 10004 and the Department of State located at 41 State Street, Albany, NY 12231. The United States Code is published by the Office of the Law Revision Council of the House of Representatives. This publication is for sale by the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328. The Code of Federal Regulations is published by the Office of the Federal Register; National Archives and Records Administration. The Code of Federal Regulations is for sale by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-0001.

§ 402.17 Office Display.

(a) Every licensed budget planner shall display in full public view at both its principal office and any branch office in New York State, a sign(s) which shall be no less than 20 inches wide and 12 inches high with letters one-half inch in size indicating:

(1) the name and principal address of the licensee;

(2) that the budget planner is licensed and regulated by the New York State Banking Department; and

(3) that if a debtor has any inquiries or complaints, he or she may call the Banking Department's toll-free number, 1-800-522-3330, write to the New York State Banking Department, c/o Consumer Services Division, One State Street, New York, New York 10004, or submit a complaint filed electronically via the Banking Department's website at www.banking.state.ny.us.

(b) The sign required in subdivision (a) of this section must be in the English language and in any other predominant language(s) spoken by the debtors of the licensee.

(c) The above information shall be conspicuously displayed in at least ten point bold type in the appropriate language(s) on the front page of every contract with every debtor.

§ 402.18 Change of location.

A licensee seeking to change the location of one of its offices must give written notice to the superintendent at least 30 days prior to such change. The notice shall:

(a) state the reason(s) for the change;

(b) provide a projection of any increased expenses which may be incurred; and

(c) state the extent, if any, to which the licensee intends to increase fees to its debtors as a result of the change in location.

If the superintendent determines that there is no reasonable objection to such change of location, the superintendent shall attach a rider to the license setting forth the change in location.

§ 402.19 Reports of arrests, convictions, etc.

A written report shall be made to the superintendent of any arrest, indictment or conviction (including any plea bargaining agreement) of any control party, director, or employee of the licensee, for the violation of any law within 10 days after such arrest, indictment or conviction becomes known to the licensee.

§ 402.20 Reports of misconduct. Every licensee shall submit a report to the superintendent immediately upon the discovery of any of the events listed in Part 300 of the superintendent's regulations. Such report shall be submitted as set forth in Part 300.

§ 402.21 Books and records.

(a) Every licensee shall keep its books and records in a manner which will allow the superintendent to determine whether the licensee is complying with article 12-C of the Banking Law. Every licensee shall preserve its books and records for inspection for a minimum of three years. Specifically, every licensee shall establish and maintain the following to be kept readily available for review by the superintendent:

(1) All rejected debtor application files which shall contain all documentation relating to the applications. A list of rejected files shall be maintained.

(2) All cancelled debtor application files which shall contain all documentation relating to the applications. A list of cancelled files shall be maintained.

(3) A correspondence folder to contain all correspondence to and from the Banking Department, or copies thereof.

(4) A separate file for all written debtor complaints to contain the original complaint, documentation of actions taken and any related correspondence.

(5) A current business plan which describes in detail the budgeting, educational and counseling services offered; the policies and procedures governing each service including the curriculum utilized that provides the educational and counseling services; the person(s) responsible for administering each such service and the training provided to employees engaged in the rendering of each such service.

(b) Ledgers. Each licensee shall maintain a general ledger and such subsidiary ledgers as is necessary to accurately record all assets, liabilities, net assets, income and expenses, and contingencies. Such ledgers shall be posted at least monthly. As of the end of each month a trial balance shall be prepared and kept readily available for inspection by Banking Department personnel.

(c) In the event the licensee conducts business in more than one state, New York debtor files are to be kept separate from the individual client files of other states. Upon request, the New York client files are to be made readily available to the superintendent or the superintendent's duly appointed representative.

(d) In the event that books and records are maintained at a location that is not within the dominion and control of the licensee, the licensee shall provide the superintendent with a written authorization to examine, have access to, and retain copies of all its books and records relating to its budget planning business.

§ 402.22 Licensee's return of unused debtor funds.

The licensee must demonstrate a 'good faith effort' to locate and refund any monies to the debtor that, for whatever reason, cannot be sent to a creditor.

§ 402.23 Effective date.

The effective date of these amendments to Part 402 shall be April 7, 2003.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 21, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking

Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

2. Legislative objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in the consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of persons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature, among other things, addressed financial and experience standards, contractual conditions, advertisement parameters and public representations made by licensed budget planners.

Notably, the amendments to Article 12-C intended to increase consumer protections for the Debtors who contract with licensed budget planners include, but are not limited to: a) requiring licensed budget planners to obtain a surety bond to be used to reimburse Debtors for payments that may not have been properly distributed to their creditors, or to reimburse fees determined by the superintendent to be improperly charged or collected; b) specifying that a written contract is required between a licensee and a Debtor and that it must specify all debts and all creditors, disclose the fees agreed to for the services, include the commencement and termination dates of the contract, disclose the settlement terms in the event of cancellation of the contract or prepayment of the debt, disclose the Debtor's statutory right to rescind the contract, and set forth the terms under which payments are to be made by the Debtor; c) specifying prohibited practices, which include prohibiting any media advertisement that is false or deceptive, prohibiting the use of the title "budget planner" or "licensed budget planner" or the term "budget planning" in any public advertisement, business card or letterhead by any person or entity, other than a licensee; and d) prohibiting the licensee from commingling monies received from Debtors with funds associated with the operation of the budget planning business.

In addition to the amendments to Article 12-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed New Part 402 sets forth a comprehensive framework for the regulation of entities licensed under Article 12-C of the New York Banking to conduct the business of budget planning. New Part 402 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law and Article 28-B of New York's General Business Law.

3. Needs and benefits:

Proposed New Part 402 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. In response to the recent legislation in this area, the rule facilitates the stricter regulation of budget planning activities to provide more consumer protections for the clients of licensed budget planners. Notably, in this regard, Section 455 of Article 28-B of New York's General Business Law was recently amended to require the licensing of out-of-state entities that enter into budget planning contracts with New York residents. Since the out-of-state entities that enter into budget planning contracts with New York residents are now subject to the same licensing requirements as the in-state entities that enter into similar contracts, the reporting/disclosure, recordkeeping and compliance requirements that make up New Part 402 will also apply to these entities. Having regulatory standards now applicable to the in-state as well as the out-of-state entities in budget planning contracts with New York residents, will provide the increased consumer protections envisioned by the Legislature otherwise not previously afforded to New York residents, party to budget planning contracts with the out-of-state entities.

Budget Planning is a regulated financial service in this state. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services.

While the proposed rule is primarily needed because its provisions provide for the greater consumer protections envisioned by the Legislature with respect to the business of budget planning, the rule is also needed in the form proposed because it sets forth more effectively, the regulatory requirements and standards of operation for New York licensed budget planners. Specifically, certain reporting/disclosure, recordkeeping and compliance requirements that make up new Part 402 are currently imposed on licensed budget planners under the following: a) Article 12-C or other provisions of New York's Banking Law and General Business Law; b) current Superintendent's regulations; or c) as administrative requirements of the Banking Department. However, to the extent that certain requirements are mandated elsewhere, they have been purposefully brought together under the proposed new Part 402, along with the necessary new requirements resulting from the recent legislative amendments. This was done to enable licensed budget planners to understand, in a clear and concise way, the scope of the activities that they are permitted to partake in, as well as those activities that are prohibited, in addition to the reporting/disclosure, recordkeeping and other compliance requirements that they must adhere to.

It is the Banking Department's belief that the rule as proposed is necessary to eliminate any confusion that licensed budget planners may have with respect to the regulatory framework within which they must conduct their business. Notably, the rule has been updated to provide clarity in that it sets forth definitions as well as all of the new reporting/disclosure, recordkeeping and compliance requirements that are reflective of the increased consumer protections afforded to clients of budget planners based on recently enacted legislation intended for that purpose. At the same time, the proposed rule is reflective of reporting/disclosure, recordkeeping and other requirements currently followed by licensed budget planners.

4. Costs:

(a) Costs to State Government: None.

Any and all additional examination costs that may be incurred by the Banking Department as a result of the requirement to regulate and supervise out-of-state persons or entities newly licensed in New York to conduct the business of budget planning will be borne by the licensees.

(b) Costs to Local Government: None.

(c) Costs to Regulated Entities:

Reporting/Disclosure and Recordkeeping

The proposed rule contains certain recordkeeping and reporting/disclosure requirements not currently required of licensed budget planners either under New York's Banking Law, the Superintendent's regulations, or administratively by the Banking Department. It is anticipated that costs will be incurred by the regulated entities to comply with the new requirements, but that the costs will be minimal. In particular, most of the information newly required by the proposed rule to be maintained and reported is of the type likely to already be maintained by the licensees for their management and operational purposes. For example, for examination and supervisory purposes, the proposed rule requires that licensees maintain general ledgers, subsidiary ledgers, and individual client files. In addition, the rule requires licensees to report certain information regarding changes in fee structure, and the number of New York clients, and the amount of client funds held by the licensee for disbursement to creditors. These types of records and information are fundamental to the operation of a budget planning business. As such, they should be readily available for reporting/disclosure as required by proposed new Part 402. The annual cost of continued compliance should also be minimal for the same reason.

Budgeting, Educational and Counseling Services

The proposed rule requires licensed entities to provide adequate budgeting, educational and counseling services directly to their clients, consistent with the purposes of Article 12-C of the New York Banking Law. It is anticipated that there will be minimal, if any new costs to the current licensed budget planners to provide these services. Specifically, most, if not all of the current New York State licensed budget planners are already presumed to be providing some type of educational services to their clients, since they are Type B not-for-profit corporations formed for an educational purpose under New York's Not-for-Profit Corporation Law.

Recent information obtained from the current licensees indicates that all but two of the licensees already provide some educational counseling to consumers. The licensees that do not provide educational counseling indicated that it could cost them up to approximately $1000 to provide educational pamphlets for clients. It is possible, however, that the current licensees may incur some additional costs to perhaps reorganize or make additional plans to provide the level of budgeting, educational and counseling services required by this rule, in the event that such services currently offered by the licensees do not satisfy the requirement.

For entities that will be newly licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning, it is possible that they will incur some costs to comply with this requirement. This may be particularly true for the out-of-state entities seeking New York budget planning licenses, if in the course of their current businesses, they do not provide the budgeting, educational and counseling services referred to above. However, since the Banking Department has no way of knowing for certain how many such out-of-state entities will seek and obtain budget planning licenses under Article 12-C, much less the extent to which any such entities currently have budgeting, educational and counseling services in place, it is impossible to estimate the costs that may be incurred in this area.

Establishment of Toll Free Number or "Collect" Calling Number

The proposed rule requires licensed budget planners to establish either a toll free number or a phone number that may be called on a "collect" basis. This requirement was put in place to facilitate the ease with which clients who are in budget planning contracts with licensees may make inquiries of, or complaints to, the licensee. With respect to the current licensees, they reported that prior to the recent amendments to the budget planning laws and the proposal of this rule, they already had in place a toll free number system for client calls. Therefore, there should be no new costs to the current licensed budget planners in this respect.

The Banking Department is unable to estimate what the cost will be for future licensees to comply with this requirement for the following reasons. First, as the Banking Department understands the billing arrangements for the establishment of toll free numbers, rates to establish such are negotiable based upon, among other things, the particular service provider, and the services that a company may already obtain with the provider. Second, the cost per minute for such a call is negotiable as well. Finally, the volume of calls made either to a toll free number or on a "collect" basis to a particular licensee is not certain. Therefore, based on factors that are unknown, it is not possible to develop an estimate of the costs for such calling arrangements.

d) Costs to the Banking Department for Implementation and Continued Administration of the Rule: Since out-of-state persons or entities that enter into contracts with New York residents for budget planning services will now have to be licensed under Article 12-C of New York's Banking Law, the Banking Department may incur certain initial administrative costs with respect to the processing of applications, and the providing of regulatory services by Banking Department staff for these newly licensed entities. It is not possible to estimate these costs at this time since the Banking Department is not certain of the number of such new licensees.

5. Local government mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

Under the proposed rule, licensed budget planners will have to comply with existing reporting/disclosure and recordkeeping requirements in addition to newly established reporting/disclosure and recordkeeping requirements. The newly established requirements include providing to the Superintendent the following, as described in the proposed rule: a) a business plan that details the budgeting, educational, counseling services to be offered to clients; b) documentation demonstrating that at a minimum one required individual in the employ of the licensee has at least one year of experience in financial services, or a related field that is applicable to the business of budget planning, and notification of changes with respect to the person meeting such qualifications; c) a copy of the deposit agreement with respect to assets on deposit in lieu of obtaining a bond; d) notice of changes in by-laws or certificates of incorporation; e) the number of clients nationwide and the number of new clients nationwide, both to be given on an annual basis; f) the highest daily amount of debtor funds held by the licensee for disbursement to creditors for the licensees New York budget planning business, to be given quarterly; g) changes to the licensees fee structure; h) a written report of any arrest or conviction of any individual who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the licensee; and i) a list of states in which they conduct the business of budget planning and the name and address of the applicable regulator for those states.

In addition, a new requirement in the proposed rule mandates that licensed budget planners furnish certain information to the clients of their New York budget planning businesses, including quarterly statements of account. Licensed budget planners who choose to keep assets on deposit in lieu of obtaining a surety bond, are also required to file a certificate with their depository prior to the release of, or substitution of, any pledged asset on deposit specifying the details of assets being deposited or withdrawn.

With respect to recordkeeping, the newly established requirements under the proposed rule mandate that licensed budget planners maintain certain records for review by the Superintendent including the following: a) rejected application files; b) cancelled client application files; c) general and subsidiary ledgers; d) monthly trial balances; and e) separate client files for the New York budget planning business.

The addition of new reporting/disclosure recordkeeping and compliance requirements set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees in furtherance of the legislative objective to provide more consumer protections for clients of licensed budget planners.

7. Duplication:

The proposed New Part 402 repeals the existing regulation at the State level with respect to licensed budget planners and adds a new regulation at the State level with respect to licensed budget planners. As is more fully explained in the Needs and Benefits discussion contained herein, New Part 402 repeals the existing regulation at the State level and adds a new regulation because the rule was needed in the form proposed because it sets forth, in one place, in a clear and concise way, the scope of the activities that budget planners are permitted to partake in, as well as those activities that are prohibited, in addition to the reporting/disclosure, recordkeeping and other compliance requirements that they must adhere to. The Banking Department believes that this will eliminate confusion that licensed budget planners may have with respect to the regulatory framework within which they must conduct their business.

8. Alternatives:

(a) Proposal – During the drafting of the proposed rule, the Banking Department asked the law firm of Traiger & Hinckley LLP to comment on the proposal. The firm represents and advises budget planners. The draft

proposal was also shared for comment with Budget & Credit Counseling Services, Inc., an entity licensed under the New York Banking Law to conduct the business of budget planning. Representatives from both concerns were generally pleased with the proposal. To the extent that they had a few comments or suggestions, some of which sought clarity with respect to certain aspects of the rulemaking, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposal to address the suggestions and comments.

The Banking Department recently received comments from Paul Kaplan, counsel to Cambridge/Brighton Budget Planning Corp. ("Cambridge"), which is currently licensed in New York to conduct the business of budget planning. In the context of the way in which Cambridge conducts its business of budget planning, the comments focused on the following: a) the requirement that a licensee include in its contracts with its debtor clients a pro forma statement of the total fees to be charged to the debtor clients, as set forth in Section 584-a of the Banking Law; b) the prohibition against a licensee paying any bonus or other consideration to any person for the referral of a debtor to its business, as mandated in Banking Law Section 584-b; and c) New Part 402's requirement that every contract between a licensee and a debtor client be limited to a payment period not to exceed 60 months. Cambridge has certain concerns regarding its ability to comply with these requirements set forth in the newly enacted law and the proposed rule. Cambridge has asked the Banking Department to consider making changes to rule in order to resolve the issues. The Banking Department is reviewing and considering the comments and suggestions made by Cambridge.

As was previously discussed in the Legislative Objective section contained herein, the recent amendments to Article 12-C of New York's Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse their New York resident clients in contract with them for budget planning services, should payments not be properly distributed to their creditors. Additionally, the bond or assets on deposit may be used to reimburse fees determined by the superintendent to be improperly charged or collected. The requirement under the law to obtain a bond, or in the alternative, to place assets on deposit has been restated in the proposed rule. The Banking Department has been informed by a few licensees and some prospective licensees that the number of years that they have been in the budget planning business and their willingness to put up personal guarantees have presented issues in obtaining a bond from the bonding companies. While these issues exist, the requirement to obtain the bond, or place assets on deposit, is not imposed by the rule, but rather is a statutory requirement.

(b) Do not propose the rule.

If this alternative were considered, failure to propose the rule would mean that the newly proposed reporting, recordkeeping/disclosure and other compliance requirements set forth therein would be non-existent or unclear. From a regulatory and supervisory perspective, it would be irresponsible for the Superintendent of Banks, as the State financial regulator to do this. This is true, particularly since, the new reporting, recordkeeping/disclosure and other compliance requirements in the proposal were purposefully formulated in furtherance of the legislative intent to provide increased consumer protection for the clients of licensed budget planners, as reflected in recent amendments to the budget planning laws.

Additionally, if this rule is not proposed, the ability to provide a comprehensive framework to enable licensed budget planners to understand, in a clear and concise way, the scope of the activities that they are permitted to partake in, as well as those that are prohibited in addition to all of the reporting/disclosure, recordkeeping and other compliance requirements that they must adhere to, would not be realized.

9. Federal standards:

None.

10. Compliance schedule:

As was explained in the section on Costs to Regulated Entities contained herein, most of the information newly required by the proposed rule to be maintained and reported/disclosed is of the type likely to be already maintained by licensed budget planners for management and operational purposes. As such, the Banking Department anticipates that the current licensees will be able to come into compliance with these newly imposed requirements within the time frames required by the rule.

With regard to the establishment of a toll free, or a "collect" calling number, the Banking Department's outreach to current licensees has revealed that prior to the recent amendments to the budget planning laws and the proposal of this rule, they already had in place a toll free number system for client calls. The Banking Department does not anticipate that newly licensed entities coming into compliance with this requirement would take more than a day or two in order to arrange for the required telephone systems.

With respect to the requirement that licensed budget planners provide adequate budgeting, educational and counseling services to their clients, most, if not all of the current licensees already provide some type of educational services to their clients, as Type B not-for-profit corporations formed for an educational purpose under New York's Not-for-Profit Corporation Law. Recent information obtained from the current licensees indicates that all but two of the licensees already provide some educational counseling to consumers. The licensees that do not currently provide budgeting, educational and counseling services would need to do so. In this regard, it is possible that the current licensees may need a short period of time to perhaps reorganize or make some additional plans to provide the level of budgeting, educational and counseling services required by this rule, in the event that the services they currently offer in this area do not satisfy the requirement. It is possible that the same may hold true for budget planners from out-of-state who may become licensed in New York to conduct the business of budget planning, presuming that they currently offer some form of budgeting, educational and counseling services.

In the case of entities newly licensed in New York to conduct the business of budget planning and out-of-state entities now under the requirement to obtain a New York budget planning license that do not offer any budgeting, educational or counseling services, it may take several weeks to plan for, design programs, and train personnel to provide the budgeting, educational and counseling services required by the rule.

Regulatory Flexibility Analysis

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under the New York Not-For-Profit Corporation Law. Under New York's Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York. However, all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

Prior to the enactment of recent amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law relating to the business of budget planning, members of the Banking Department had a number of conversations with budget planning industry representatives regarding changes to the State's budget planning laws. In particular, in January 2002, a meeting was held with representatives of the New York State Association of Licensed Budget Planners (the "Association"), whose members represent New York State licensed budget planners. At the meeting, issues regarding the business of budget planning in New York State and elsewhere were discussed, including a proposal to amend New York's budget planning laws to require the licensing, in New York, of out-of-state entities that enter into budget planning contracts with New York residents. The Association was in favor of such licensing of out-of-state entities. By doing so, all entities that entered into budget planning contracts with New York residents, regardless of the entities' location, would be subject to New York's regulatory and supervisory standards designed to provide consumer protections for New York residents, party to budget planning contracts. Absent a licensing requirement for the out-of-state entities, New York residents contracting with such entities for budget planning services would continue to do so without the benefits of regulatory oversight.

Ultimately, when the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law, it established a more rigorous regulatory environment within which entities licensed under New York law were to engage in the business of budget planning. This was done in order to provide for increased consumer protection. The amendments included the requirement that out-of-state entities in contract with New York residents for budget planning services be licensed in New York. In addition, laws were put in place that addressed, among other things, financial and experience standards of certain employees of budget planners, contractual terms and conditions, advertising parameters and public representations made by license budget planners.

In response to the legislation, the rule was drafted to facilitate the stricter regulation of budget planning activities in furtherance of the legislative objective to provide more consumer protections for New York residents in contract for budget planning services with licensees. During

the drafting of the rule, the Banking Department asked the law firm of Traeger and Hinckley LLP to comment on the proposed rule. The firm represents and advises budget planners. The proposed rule was also shared for comment with Budget & Credit Counseling Services, Inc., and entity currently licensed in New York to conduct the business of budget planning. Representatives from both concerns were generally pleased with the proposed rule. To the extent that they had a few comments or suggestions, some of which sought clarity with respect to certain aspects of the rulemaking, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposal to address the suggestions and comments.

Based on the aforementioned policy dialogue that the Banking Department has had with the industry representatives during the legislative and proposed rulemaking process, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse economic impact on entities licensed under New York law to conduct the business of budget planning.

Rural Area Flexibility Analysis

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

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to residents in rural areas who enter into contracts with licensees for budget planning services.

Job Impact Statement

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York's Banking Law and Article 28-B of New York's General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 455 of Article 28-B of the New York General Business Law was recently amended in connection with budget planning in New York State. It now requires a person or entity, wherever located, to first obtain a license from the Superintendent of Banks before entering into contracts for budget planning with individuals then resident in New York State. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Out-of-state entities that obtain licenses in New York to conduct the business of budget planning will also have to comply with the reporting/disclosure, recordkeeping and compliance requirements set forth in the rule.

It is possible that new jobs will be created in New York State if the newly licensed out-of-state budget planners decide to establish office locations in the State in order to conduct their New York budget planning business. In particular, it is possible that persons will be newly employed at the New York locations of these licensed entities to perform tasks necessary to comply with the reporting/disclosure, recordkeeping and compliance requirements under the proposed regulation.

Department of Correctional Services

NOTICE OF ADOPTION

Inmate Telephone Calls

I.D. No. COR-42-03-00004-A
Filing No. 1408
Filing date: Dec. 19, 2003
Effective date: Jan. 7, 2004

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

Action taken: Amendment of sections 723.2, 723.3, 723.4 and 723.5 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate telephone calls.

Purpose: To insert minor textual and procedural changes.

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

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

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

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

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

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

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

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

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

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

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

(6) Inmates are prohibited from making telephone calls to inmates in other New York State, Federal, other state, county or local correctional facilities. Exception: In special situations, subject to the approval of the superintendents of the two facilities, inmate-to-inmate telephone calls be-

tween immediate family members or the parents of a child may, but need not be authorized once a month. Such telephone calls, when permitted shall be *employee assisted and* monitored.

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

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

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

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

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

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

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

(12) Inmates are prohibited from placing calls to wireless communications devices, e.g., cellular or PCS telephones, pagers, etc. except that an emergency call to such a device may be authorized under subdivision (g) below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Telephone *number registration* list.

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

(i) Each inmate shall be limited to 15 approved *names and* phone numbers which will be maintained as his/her "telephone list." Except for immediate family members, revisions to the telephone list will only be made when the inmate is due a quarterly review. Phone number changes for immediate family members already on the list will be permitted.

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

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

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in section 723.3(e).

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

Revised Regulatory Impact Statement

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

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

Needs and Benefits:

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

The U.S. Virgin Islands, Guam and Central Northern Marianna Islands have been added to the area (continental U.S., Canada and Puerto Rico) that can be called without staff assistance because the contractor providing the inmate telephone call service now has billing agreements and self-dialing capabilities extending to these areas.

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

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

Costs:

a. To State government: None.

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

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

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

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

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

c. New or additional record keeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

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

A non-substantive change has been made at section 723.3(e). The proposed new paragraph (12) has been amended by adding the phrase "except that an emergency call to such a device may be authorized under subdivision (g) below." This change allows for a staff-assisted emergency call to a wireless device under the emergency call procedure.

This change does not necessitate revision of the previously published RFA, RAFA or JIS statements.

Assessment of Public Comment

Comment:

1. The public is now able to convert home phone numbers to cell phone numbers. The proposed amendments prevent the taking advantage of prepaid collect calling options, and interfere with inmates' ability to use cell phones to keep in close and instantaneous contact with their families and to contact their lawyers through their cell phones. Since the billing addresses of the cell phones will be known, and since DOCS has the capability of monitoring and recording inmate phone calls, the denial of these advantages to inmates and their families is unduly restrictive, especially in cases of extreme emergency. DOCS position is not forward looking and requires families of to keep a telephone system that will soon be outdated.

2. The proposed amendments are abusive, racist, arbitrary and capricious because of the rates being charged, because of economic hardship among African-Americans and Hispanics from 18 NYS Assembly Districts, and because no public hearing was scheduled.

3. The call to the relay center which handles calls to hearing impaired persons is not a toll call. DOCS' emphasis that all hearing impaired calls are "collect" might make some inmates hesitant to use these services.

4. The explicit language limiting the phone registration list to 15 names and numbers has the appearance of limiting phone calls only to the people whose names appear on the list.

Response:

1. The added new paragraph (12) at section 723.3(e) reads "Inmates are prohibited from placing calls to wireless communications devices, *e.g.*, cellular or PCS telephones, pagers, etc." In the regulatory impact statement, it was explained that "The department must ensure that inmates do not have access to instantaneous communication with unknown or untraceable parties." For important security reasons, the department cannot offer inmates the privilege of instantaneous communications with persons whose location is not known or may be mobile. Accordingly, wireless communications devices must be excluded except in cases of emergency. It should be noted that calls to wireless communications devices had previously been prevented by technological limitations that prevented cellular telephone users from receiving collect telephone calls. Also, the proposed amendment does not affect rates or household budgeting in that a collect call to a wireless device or any other telephone service would still be subject to the same rate charges.

2. The proposed amendments apply equally to all inmates committed to the Department's custody, and that this rule making was conducted in accordance with the State Administrative Procedure Act.

3. The Department added the words "collect" to avoid the misperception calls to the hearing impaired were not collect calls. The call center merely represents a special operator. Since these calls are staff assisted, inmates can review the procedures before a call is placed. The Department does not believe that this amendment will have a discouraging effect of calls to hearing impaired persons.

4. The phone registration list must be carefully controlled for valid security reasons. An inmate's authorized phone listing has never been established on phone numbers alone. The registration process must identify a person who resides at the billing address of a registered phone number. The addition of name merely conforms with existing policy and procedure. The calls themselves are station-to-station calls, not person-to-person.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensed Private Schools and Registered Business Schools/Computer Training Facilities

I.D. No. EDU-01-04-00004-P

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

Proposed action: Amendment of sections 126.1(bb), 126.3(g), 126.4(j), 126.7(h), 126.9 and 126.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections, 207 (not subdivided), 5001(1), 5002(1)(b)(2) and (5); 5002(2)(d); 5002(4)(a) and (f); 5002(5)(b)(1) and (f); 5002(7); and 5005(a)

Subject: Licensed private schools and registered business schools/computer training facilities.

Purpose: To allow nationally accredited non-degree granting licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs.

Text of proposed rule: 1. Subdivision (bb) of section 126.1 of the Regulations of the Commissioner of Education is added, effective April 15, 2004, as follows:

(bb) Non-degree granting credit hour means a unit of academic award computed according to the requirements and subject to the limitations prescribed in section 126.4(j) of this Part.

2. Subdivision (g) of section 126.3 of the Regulations of the Commissioner of Education is added, effective April 15, 2004, as follows:

(g) A school which meets the requirements of section 126.4(j)(1) of this Part may use the term "non-degree granting credit hour" in advertising, provided the school includes in any such publication or representation the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting postsecondary institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer." No school licensed or registered pursuant to section 5001 of the Education Law shall be authorized to use the terms "credit" or "credit hour" in advertising when describing or referencing a unit of academic award applicable to its course offerings and/or curricula.

3. Subdivision (j) of section 126.4 of the Regulations of the Commissioner of Education is added, effective April 15, 2004, as follows:

(j) Non-degree granting credit hours.

(1) For purposes of the calculation of Federal financial aid amounts only, a school licensed or registered pursuant to section 5001 of the Education Law, approved for participation in Federal student financial assistance programs pursuant to Title IV of the Higher Education Act, as amended, and nationally accredited, meaning accredited by a national accrediting agency, defined as an accrediting agency approved by the United States Department of Education pursuant to 20 USC 1099b, may measure a student's academic progress in an approved curriculum in non-degree granting credit hours, based upon a conversion and approval of clock hours to non-degree granting credit hours by such national accrediting agency that accredits the school, provided that the conversion formula used meets the requirements of the United States Department of Education.

(2) Such school which meets the requirements of paragraph (1) of this subdivision may use the term "non-degree granting credit hour" in advertising, catalogs, enrollment agreements, and/or student permanent records, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula, provided the school includes in any such publication or representation the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting postsecondary institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer."

(3) No school licensed or registered pursuant to section 5001 of the Education Law shall be authorized to use the terms "credit" or "credit hour" in advertising, catalogs, enrollment agreements and/or student permanent records when describing or referencing a unit of academic award applicable to its course offerings and/or curricula.

4. Subdivision (h) of section 126.7 of the Regulations of the Commissioner of Education is added, effective April 15, 2004, as follows:

(h) As required in subdivision (b) of this section, a school shall be required to state in the enrollment agreement the length of the curriculum, course and/or courses in instructional hours. A school which meets the requirements of section 126.4(j)(1) of this Part and offers the curriculum and/or course of courses subject to the enrollment agreement in non-degree granting credit hours may also use the term "non-degree granting credit hour" in such enrollment agreement, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula, provided the school includes in the enrollment agreement the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer." No school licensed or registered pursuant to section 5001 of the Education Law shall be authorized to use the terms "credit" or "credit hour" in the enrollment agreement when describing or referencing a unit of academic award applicable to its course offerings and/or curricula.

5. Section 126.9 of the Regulations of the Commissioner of Education is amended, effective April 15, 2004, as follows:

(a) Each licensed private school and registered business school/computer training facility shall publish a catalog or bulletin, which shall be furnished to each prospective or enrolled student, which shall include the following:

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .
(7) . . .
(8) . . .
(9) . . .
(10) . . .
(11) a description of each course or curriculum including program objectives, the length of the total program *in instructional hours* and, if applicable, the length *in instructional hours* and description of the individual courses within the curriculum;
(12) . . .
(13) . . .
(14) . . .
(15) . . .
(16) . . .
(17) . . .
(18) . . .
(19) . . .

(b) As required in subdivision (a) of this section, a school shall be required to include in its catalog or bulletin the length of the total program in instructional hours and, if applicable, the length in instructional hours of the individual courses within the curriculum. A school which meets the requirements of section 126.4(j)(1) of this Part may also use the term "non-degree granting credit hour" in the catalog or bulletin, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula, provided the school includes in the catalog or bulletin the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting postsecondary institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer." No school licensed or registered pursuant to section 5001 of the Education Law shall be authorized to use the terms "credit" or "credit hour" in the catalog or bulletin when describing or referencing a unit of academic award applicable to its course offerings and/or curricula.

[(b)] *(c)* . . .
[(c)] *(d)* . . .

6. Subdivision (b) of section 126.11 of the Regulations of the Commissioner of Education is amended, effective April 15, 2004, as follows:

(b) *Student permanent records. (1)* Student permanent records, compiled at the time of course or curriculum completion, discontinuance or withdrawal, shall be maintained in a single file for each student, for a period of not less than 20 years after the student completes the program, and contain the following information:

[(1)] *(i)* . . .
[(2)] *(ii)* . . .
[(3)] *(iii)* name of *the* curriculum, course or courses taken *and the length of the curriculum, course or courses taken in instructional hours;*
[(4)] *(iv)* . . .
[(5)] *(v)* . . .
[(6)] *(vi)* . . .

(2) As required in paragraph (1) of this subdivision, a school shall be required to include in student permanent records the length of the curriculum, course or courses taken in instructional hours. A school which meets the requirements of section 126.4(j)(1) of this Part may also use the term "non-degree granting credit hour" in such student permanent records, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula, provided the school includes in the record the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer." No school licensed or registered pursuant to section 5001 of the Education Law shall be authorized to use the terms "credit" or "credit hour" in student permanent records when describing or referencing a unit of academic award applicable to its course offerings and/or curricula.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 5001 of the Education Law requires private schools and computer training facilities that charge tuition or fees for instruction and are not exempted to be licensed or registered by the State Education Department.

Subparagraph (2) of paragraph (b) of subdivision (1) of section 5002 of the Education Law directs the State Education Department to establish in regulations standards and the methods of instruction at registered or licensed private schools.

Subparagraph (5) of paragraph (b) of subdivision (1) of section 5002 of the Education Law directs the State Education Department to establish in regulations the form and content of the student enrollment agreement used by licensed private schools and registered business schools/computer training facilities.

Paragraph (d) of subdivision (2) of section 5002 of the Education Law directs the State Education Department to define student permanent records at licensed private schools and registered business schools/computer training facilities.

Paragraph (a) of subdivision (4) of section 5002 of the Education Law authorizes the Commissioner of Education to establish information requirements for applications for the initial approval of curricula at licensed private schools and registered business schools/computer training facilities.

Paragraph (f) of subdivision (4) of section 5002 of the Education Law authorizes not-for-profit registered business schools that are eligible for participation in the tuition assistance program and which have national accreditation, as defined in the Commissioner's Regulations, for the purpose of calculation of Federal financial aid amounts only, to measure students' academic progress in approved curricula in non-degree granting credit hours, based upon a national accrediting agency's conversion and approval of clock hours to non-degree granting credit hours.

Subparagraph (1) of paragraph (b) of subdivision (5) of section 5002 of the Education Law authorizes the Commissioner of Education to prescribe by regulation standards for the re-approval of curricula at licensed private schools and registered business schools/computer training facilities.

Paragraph (f) of subdivision (5) of section 5002 of the Education Law establishes timeframes for the approval of enrollment agreements and catalogs of licensed private schools and registered business schools/computer training facilities.

Subdivision (7) of section 5002 of the Education Law authorizes the Commissioner of Education to establish in regulation standards for false, misleading, deceptive or fraudulent advertising by licensed private schools and registered business schools/computer training facilities, consistent with Article 22-A of the General Business Law.

Subdivision (a) of section 5005 of the Education Law requires licensed private schools and registered business schools/computer training facilities to disseminate to all prospective and enrolled students through the enrollment agreement or other document prescribed information and other items identified by the Commission of Education in regulation following consultation with the Proprietary School Advisory Council.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by establishing requirements for and limitations on the use of the term "non-degree granting credit hour" by a school licensed or registered pursuant to section 5001 of the Education Law, prohibiting the use of the term "credit" or "credit hour" by such schools, and defining the term "national accreditation" in accordance with the statutory directive in section 5002(4)(f) of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the amendment is to allow nationally accredited non-degree granting licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs to measure student progress in approved curricula in "non-degree granting credit hours" for purposes of the calculation of Federal financial aid amounts only, and to establish limitations and requirements for the use of such term. The school's national accrediting agency, defined as an accrediting agency approved by the U.S. Department of Education pursuant to 20 USC 1099b, must approve and make the conversion from clock hours to non-degree granting credit hours, provided the conversion formula meets the requirements of the U.S. Department of Education.

The proposed amendment is needed to extend authorization for using the term "non-degree granting credit hours," for Federal student aid purposes only, to all nationally accredited non-degree granting licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs. Currently there are 67 such schools. Paragraph (f) of subdivision (4) of section 5002 of the Education Law, as added by Chapter 457 of the Laws of 2003, specifically authorizes a subset of these schools, numbering 16, to use the term. These schools are nationally accredited not-for-profit registered business schools that participate in the Tuition Assistance Program. For reasons of equity and fairness, the proposed amended is needed to extend this option, with appropriate safeguards, to the other schools.

Paragraph (f) of subdivision (4) of section 5002 of the Education Law directs the State Education Department to define the term "national accreditation" for purposes of this option. The amendment defines that term as accreditation by an accrediting agency approved by the United States Department of Education pursuant to 20 USC 1099b.

The amendment is also needed to establish safeguards for the use of the term "non-degree granting credit hour," in order to avoid misleading the public in a material respect regarding the nature of the educational programs. The term "credit" is defined in section 50.1 of the Regulations of the Commissioner of Education as "a unit of academic award applicable towards a degree offered by the institution." The amendment explicitly prohibits non-degree granting licensed private schools and registered business schools/computer training facilities from using the terms "credit" or "credit hour" because these schools do not offer degree programs. However, the amendment permits schools that are approved for participation in Federal student assistance programs and nationally accredited to use the term "'non-degree granting credit hour" in advertising, catalogs, enrollment agreements, and/or student permanent records, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula. To further clarify the nature of the educational programs, these school must also include in any such publication or representation the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting postsecondary institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer."

The amendment will benefit students by permitting them to receive additional Federal financial aid or expediting their receipt of Federal aid. Based on Federal formulas, if a program is measured in credit hours, the minimum requirement for a full-time student in an academic year of at least 30 weeks is 24 credit hours (or semester hours), which equates to 720 clock hours. If a program is measured in clock hours, the minimum requirement for a full-time student in an academic year of at least 30 weeks is 900 clock hours. Federal financial aid awards are based upon completion of a full academic year of study or portion thereof. Therefore, the student currently enrolled in a 900-clock hour program would be entitled to 25 percent more Federal financial aid if the program were measured in credit hours rather than clock hours. Students will receive additional aid if they will not reach the total maximum amount for which they are eligible, or receive the aid more quickly if they will reach the total maximum amount.

The amendment will benefit non-degree granting proprietary schools by permitting them to compete on an equal basis with schools located in surrounding States. In all states except Wisconsin, such schools are permitted to measure the length of their programs in credit hours for purposes of Federal student financial aid.

4. COSTS:

(a) Cost to State Government: The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government: None.

(c) Cost to private regulated parties: None. The schools electing to have the length of their programs converted to non-degree granting credit hours

must already hold national accreditation to participate in Federal student financial assistance programs pursuant to Title IV of the Higher Education Act. Such accrediting agencies do not charge schools an additional fee for the clock hour to non-degree granting credit hour conversion.

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

5. LOCAL GOVERNMENT MANDATES:

The amendment does not impose any program, service, duty or responsibility upon local government.

6. PAPERWORK:

As stated above, the amendment permits schools that use the term "non-degree granting credit hour" in advertising, catalogs, enrollment agreements, and/or student permanent records, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula, to include the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting postsecondary institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer." The amendment also requires schools to include in student permanent records the length of the curriculum, course or courses taken in instructional hours. While not currently prescribed in regulation, all schools already include this information in student permanent records as a matter of practice.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives to the proposed amendment.

9. FEDERAL STANDARDS:

The amendment is consistent with Federal standards. The national accrediting agency must use a conversion formula that meets the requirements of the United States Department of Education.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to achieve compliance.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF THE RULE: The amendment will affect 67 non-degree granting licensed private schools and registered business schools/computer training facilities that participate in Federal student assistance programs, pursuant to Title IV of the Higher Education Act. Of these, the Department estimates that approximately 62 are small businesses.

2. COMPLIANCE REQUIREMENTS: The amendment will allow nationally accredited non-degree granting licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs to measure student progress in approved curricula in "non-degree granting credit hours" for purposes of the calculation of Federal financial aid amounts only, and to establish limitations and requirements for the use of such term. The school's national accrediting agency, defined as an accrediting agency approved by the U.S. Department of Education pursuant to 20 USC 1099b, must approve and make the conversion from clock hours to non-degree granting credit hours, provided the conversion formula meets the requirements of the U.S. Department of Education.

The proposed amendment will extend authorization for using the term "non-degree granting credit hours" for Federal student aid purposes only to all nationally accredited licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs. Currently there are 67 such schools. Paragraph (f) of subdivision (4) of section 5002 of the Education Law, as added by Chapter 457 of the Laws of 2003, specifically authorizes a subset of these schools numbering 16 to use the term. These schools are nationally accredited not-for-profit registered business schools that participate in the Tuition Assistance Program.

Paragraph (f) of subdivision (4) of section 5002 of the Education Law directs the State Education Department to define the term "national accreditation" for purposes of this option. The amendment defines that term as accreditation by an accrediting agency approved by the United States Department of Education pursuant to 20 USC 1099b.

The amendment explicitly prohibits non-degree granting licensed private schools and registered business schools/computer training facilities from using the terms "credit" or "credit hour." The amendment permits certain prescribed schools to use the term "non-degree granting credit hour" in advertising, catalogs, enrollment agreements, and/or student permanent records, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula, but requires the school to also include in any such publication or representation the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting postsecondary institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer." The amendment will also require all non-degree granting licensed private schools and registered business schools/computer training facilities, including those classified as small businesses, to include in student permanent records the length of the curriculum, course or courses taken in instructional hours.

3. PROFESSIONAL SERVICES: The proposed amendment will not require non-degree granting licensed private schools and registered business schools/computer training facilities, including those classified as small businesses, to hire professional services in order to comply with its provisions.

4. COMPLIANCE COSTS: The proposed amendment does not impose any initial capital costs or any additional annual costs on non-degree granting licensed private schools and registered business schools/computer training facilities, including those that are small businesses. The schools electing to have the length of their programs converted to non-degree granting credit hours must already hold national accreditation to participate in Federal student financial assistance programs pursuant to Title IV of the Higher Education Act. Such accrediting agencies do not charge schools an additional fee for the clock hour to non-degree granting credit hour conversion.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: The proposed amendment does not impose any additional technological requirements on schools classified as small businesses. As stated above in "Compliance Costs" the proposed amendment will not impose any costs on regulated schools. Accordingly, the amendment is economically feasible.

6. MINIMIZING ADVERSE IMPACT: The proposal makes no exception for schools that are classified as small businesses. The amendment establishes requirements for all licensed private schools, registered business schools/computer training facilities. The State Education Department has determined that the regulation should apply to all such schools that choose to have the length of the courses converted to non-degree granting credit hours, regardless of the size of the school, to ensure that Federal financial aid is available to students equitably across the State, and that safeguards are uniformly in place for the use of the term "non-degree granting credit hour," so that the public is not misled as to the nature of the programs.

7. SMALL BUSINESS PARTICIPATION: Drafts of the proposed amendment were shared with the Proprietary School Advisory Council, which includes members that own small businesses. In addition, drafts were shared with professional school associations that also represent schools that are small businesses. These organizations were asked to comment on the drafts of the proposed amendment and their comments were considered and incorporated during the development of the regulation.

(b) Local Governments:

The proposed amendment relates to the operation and supervision of licensed private schools, registered business schools and computer training facilities. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on local governments. Because it is evident from the nature of the rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The rule will apply to all rural areas in the State, including the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The amendment will affect 67 non-degree granting licensed private schools and registered business schools/computer training facilities that participate in Federal student assistance programs, pursuant to Title IV of the Higher Education Act. Of these, the Department estimates that approximately 15 are located in rural counties of the State.

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

The amendment will allow nationally accredited non-degree granting licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs to measure student progress in approved curricula in "non-degree granting credit hours" for purposes of the calculation of Federal financial aid amounts only, and to establish limitations and requirements for the use of such term The school's national accrediting agency, defined as an accrediting agency approved by the U.S. Department of Education pursuant to 20 USC 1099b, must approve and make the conversion from clock hours to non-degree granting credit hours, provided the conversion formula meets the requirements of the U.S. Department of Education.

The proposed amendment will extend authorization for using the term "non-degree granting credit hours" for Federal student aid purposes only to all nationally accredited non-degree granting licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs. Currently there are 67 such schools. Paragraph (f) of subdivision (4) of section 5002 of the Education Law, as added by Chapter 457 of the Laws of 2003, specifically authorizes a subset of these schools numbering 16 to use the term. These schools are nationally accredited not-for-profit registered business schools that participate in the Tuition Assistance Program.

Paragraph (f) of subdivision (4) of section 5002 of the Education Law directs the State Education Department to define the term "national accreditation" for purposes of this option. The amendment defines that term as accreditation by an accrediting agency approved by the United States Department of Education pursuant to 20 USC 1099b.

The amendment explicitly prohibits non-degree granting licensed private schools and registered business schools/computer training facilities from using the terms "credit" or "credit hour." The amendment permits certain prescribed schools to use the term "'non-degree granting credit hour" in advertising, catalogs, enrollment agreements, and/or student permanent records, when describing or referencing a unit of academic award applicable to its course offerings and/or curricula, but requires the schools to also include in any such publication or representation the following express disclaimer: "A non-degree granting credit hour earned at a non-degree granting school is not an equivalent unit of academic award to a credit or credit hour earned at a degree-granting postsecondary institution. Any transfer of non-degree granting credit hours is at the discretion of the institution to which the student is seeking transfer." The amendment will also require all non-degree granting licensed private schools and registered business schools/computer training facilities, including those located in rural areas of the State, to include in student permanent records the length of the curriculum, course or courses taken in instructional hours.

The amendment will not require schools to hire professional services in order to meet its requirements.

3. COSTS:

The proposed amendment does not impose any initial capital costs or any additional annual costs on licensed private schools and registered business schools/computer training facilities, or another other public or private entity located in a rural area of the State. The schools electing to have the length of their programs converted to non-degree granting credit hours must already hold national accreditation to participate in Federal student financial assistance programs, pursuant to Title IV of the Higher Education Act. Such accrediting agencies do not charge schools additional fees for the clock hour to non-degree granting credit hour conversion.

4. MINIMIZING ADVERSE IMPACT:

The proposal makes no exception for schools that are located in rural areas of the State. The amendment establishes requirements for all licensed private schools, registered business schools/computer training facilities. The State Education Department has determined that the regulation should apply to all such schools that choose to have the length of their programs converted to non-degree granting credit hours, regardless of their geographic location, to ensure that Federal financial aid is available to students equitably across the State, and that safeguards are uniformly in place for the use of the term "non-degree granting credit hour," so that the public is not misled as to the nature of the programs.

5. RURAL AREA PARTICIPATION:

Drafts of the proposed amendment were shared with the Proprietary School Advisory Council, which includes members that own schools located in rural areas of the State. In addition, drafts were shared with professional school associations that also represent schools that are located in rural areas of New York State. These organizations were asked to comment on the drafts of the proposed amendment and their comments were considered and incorporated during the development of the regulation.

Job Impact Statement

The proposed amendment will allow nationally accredited non-degree granting licensed private schools and registered business schools/computer training facilities that are approved for participation in Federal student financial assistance programs to measure student progress in approved curricula in "non-degree granting credit hours" for purposes of Federal financial aid amounts only, and to establish limitations and requirements for the use of such term. The amendment will have no impact on the number of jobs or employment opportunities at non-degree granting licensed private schools and registered business schools/computer training facilities or in any occupational field.

Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Emissions Standards for Motor Vehicles and Motor Vehicle Engines

I.D. No. ENV-01-04-00007-E
Filing No. 1413
Filing date: Dec. 23, 2003
Effective date: Dec. 23, 2003

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

Action taken: Amendment of sections 200.9, 218-4.1 and 218-4.2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

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

Specific reasons underlying the finding of necessity: New York first adopted the California Low Emission Vehicle (LEV) Program in 1990 pursuant to the provisions of section 177 of the Clean Air Act (42 USC 7507) (CAA), and has maintained the program since that time. The LEV program results in significant emission reduction benefits as compared to its Federal counterpart, and those reductions are an integral part of New York's State Implementation Plan (SIP). Failure to maintain the program would result in a need to find and implement additional emission control programs which would produce similar or greater levels of emissions reductions. New York has already implemented controls on a broad array of emissions sources, and further reductions of a magnitude similar to that available from the LEV program would be difficult and costly to implement.

New York is in nonattainment of Federal health based air quality standards for ozone. Consequently the State has implemented a wide range of emissions control programs to reduce emissions of ozone precursors to provide healthy air for our citizens. In addition, the US Environmental Protection Agency (EPA) oversees and enforces the provisions of the State's SIP. Failure to implement a program included in the State's approved SIP can result in Federal enforcement actions that can include implementation of onerous offset provisions for new stationary sources, and withholding of Federal highway funds. The potential impact of such sanctions could be as much as $3 billion per year, over the next five years.

The CAA specifies that states adopting the California motor vehicle emissions control program must, among other requirements, maintain the program as identical to California's so as not to create a "third car," and must provide two years of lead time to manufacturers. Since California has

modified the zero emission vehicle sales mandate, it is incumbent upon New York to also adopt those changes before the commencement of the next model year or be at risk of violating the CAA provisions for identicality and lead time. Such a condition could seriously impair implementation of the ZEV sales mandate New York. This would result in health and welfare effects on New Yorkers as a result of increased emissions from automobiles, and from the potential sanctions for failure to implement the approved SIP provisions.

It is necessary for the preservation of the health and general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State.

Subject: Emission standards for motor vehicles and motor vehicle engines.

Purpose: To incorporate modifications that California has made to its vehicle emission control program relating to the ZEV mandate to reduce emissions in New York State and revise New York's ZEV alternative compliance plan provisions.

Text of emergency rule: (Section 200.1 through 200.8 remains unchanged)

Section 200.9, Table 1 is amended to read as follows:

218-1.2(d)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Public Law 101-549 (1990)	**
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**
218-1.2(e)	California Health and Safety Code, Section 39003 (2000)	** ***
218-1.2(j)	California Vehicle Code, Section 165 (2000)	** ***
218-1.2(k)	California Code of Regulations, Title 13, Section 1900(b)(3) (12-22-99)	** ***
218-1.2(v)	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** ***+ ++
218-1.2(w)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)*	** ***+ ++
218-1.2(x)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***
218-1.2(ad)	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	** ***
218-1.2(ai)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** ***+ ++
218.-1.2(al)	40 CFR Section 86.1827-01 (July 1, 2000)	*
218-1.2 (aq)	California Code of Regulations, Title 13, Section 2112 (11-27-99)	** ***
218-1.2(at)	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)*	** ***+ ++
218-1.2(au)	California Code of Regulations, Title 13, Section 1900(b)(21) (12-07-01) and (5-24-02)	** ***+ ++
218-2.1(a)	California Code of Regulations, Title 13, Section 1956.8 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***
	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	** ***
	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	** ***
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (*12-19-03*)	** ***+ ++
	California Code of Regulations, Title 13, Section 1964 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 1965 (12-22-99)	** ***
	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1976 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1978 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2030 (9-25-97)	** ***
	California Code of Regulations, Title 13, Section 2031 (9-25-97)	** ***
	California Code of Regulations, Title 13, Section 2047 (5-31-88)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 2235 (9-17-91)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-2.1(a)	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Public Law 101-549 (1990)	**
218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	**
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (2000)	***
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**
218-3.1	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	***+ ++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** ***+ ++
218-3.1(a)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** ***+ ++
218-3.1(b)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** *** ++
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** ***+ ++
218-4.1	California Code of Regulations, Title 13, Section 1962[(12-07-01) and (5-24-02)] (*12-19-03*)	** ***+ [++]
218-4.2	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)*	*****+ [++]
218-5.1(a)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	**
	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2107 (11-27-99)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.1(b)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***

	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.2(a)	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 2109 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.2(b)(1)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
218-5.3(b)	California Code of Regulations, Title 13, Section 2101 (11-27-99)	** ***
218-6.2	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	**
218-7.3(a)(1)	California Code of Regulations, Title 13, Section 2221 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 2224 (8-16-90)	** ***
218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***

§ 218-4.1 ZEV percentages.

Commencing in model-year [2005] *2007*, each manufacturer's sales fleet of passenger cars and light-duty trucks, produced and delivered for sale in New York, must, at minimum, contain at least [10 percent] *the same percentage of* ZEVs subject to the same requirement set forth in California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title) using New York specific vehicle numbers.

§ 218-4.2. Voluntary alternative compliance plan (ACP).

An automobile manufacturer may implement a voluntary alternative compliance plan (ACP) to section 218-4.1 of this Subpart, provided such plan complies with the following and has been approved by the commissioner.

(a) Core credit scheme. The core vehicle credit values for the ACP shall be the same as California Code of Regulations, title 13, section 1962 (See Table 1, section 200.9 of this Title).

(b) New York multiplier. After the core credit value for a vehicle is established by CARB pursuant to California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title), a New York specific multiplier will be applied to that vehicle in accordance with [the following:] *Table 1. The New York multiplier shall not be applied to type III ZEVs placed in service pursuant to the California Alternative Requirements for Large Volume Manufacturers as identified in the California Code of Regulations, title 13, section 1962(b)(2)(B).*

Table 1: Northeast Phase In Multiplier

Model Year	Requirement	PZEV Credit Multiplier	*ATPZEV Credit Multiplier*	ZEV Credit Multiplier
2002	Voluntary Early Introduction	1.5		3
2003	Voluntary Early Introduction	1.5		3
2004	[Mandatory Compliance] *Voluntary Early Introduction*	1.5	*2.25*	3
2005	Mandatory Compliance	1.3	*1.7*	2
2006	Mandatory Compliance	1.15	*1.3*	1.5
2007	[Equivalency with California program] *Mandatory Compliance*	[1] *1.15*	*1.3*	[1] *1.5*
2008	*Mandatory Compliance*	*1.15*	*1.3*	*1.5*
2009	*Equivalency with California program*	*1*	*1*	*1*

(c) Percentage requirements. An automobile manufacturer's ACP must comply with the following percentage phase-in requirements:

Table 2: Percentage Requirements for ZEVs, AT PZEVs, and PZEVs

Model Year	Minimum Percent ZEV Credit	Minimum Percent AT PZEV Credit	Maximum Percent PZEV Credit
[2004]	[0]	[0]	[10]
2005	[Combined] *0*	[1] *0*	[9] *10*
2006*	[1] *Combined*	[2] *1*	[7] *9*
2007	[2] *1*	[2] *2*	[6] *7*
2008	*1*	*2*	*7*

** In MY 2006, 1 percent of a manufacturer's sales must be ZEV, AT PZEV or some combination thereof.*

Intermediate volume manufacturers may meet the entire ZEV requirement with 100 percent PZEV credits. Small and independent low volume manufacturers are not required to meet the ZEV percentage requirements but are able to generate and trade credits.

(d) Infrastructure and transportation system projects. Automobile manufacturers may meet a total of 25 percent of their 10 percent ZEV requirement by implementing infrastructure and transportation demonstration projects in accordance with the following requirements. Manufacturers may seek credits for project that advance infrastructure to encourage full development of alternative vehicle program. Such projects may include alternative fuel refueling, fuel cells and home recharging for electric vehicles. Manufacturers may also seek credits for projects that result in the placement of advanced technology vehicles in innovative transportation systems. The commissioner shall take into account associated project costs and the relationship to supporting increased usage of advanced technology vehicles.

(e) Generation and use of credits. Credits life, banking and trading will be calculated as per California Code of Regulations, title 13, section 1962. A manufacturer who generates twice as many credits from model-year [2004] *2005* or earlier PZEVs as required for model-year [2004] *2005* has through model-year [2007] *2008* to comply with the model-year [2005] *2006* AT PZEV/ZEV requirement. A manufacturer who qualifies for the [2004] *2005* AT PZEV/ZEV carryforward and generates twice as many PZEV credits as necessary for model-year [2005] *2006* has through model-year [2008] *2009* to comply with the model-year [2006] *2007* AT PZEV/ZEV requirement.

(f) Reporting. (1) Projected compliance reports will be due by the commencement of the model year. This report will include projected vehicle sales organized by engine family, marketing plans, dealerships targeted for advanced technology vehicle sales and support, plans for infrastructure and transportation system projects and credits proposed to be earned, and manufacturer projected compliance rates including potential credits or debits.

(2) Compliance reports will be required and due with annual sales reports by March 31st (with the potential to amend, based on late sales) following the completed model year. This report will include vehicle sales organized by engine family, descriptions of infrastructure and transportation system projects, manufacturer compliance rates including credits or debits earned and the way the manufacturer plans to erase any debits.

(g) Such ACP shall include, at a minimum:

(1) a demonstration that the emissions reductions from the alternative program equal or exceed those which would result from the compliance with section 218-4.1 of this Subpart;

(2) a demonstration that the alternative compliance program will lead to full compliance with all elements of section 218-4.1 of this Subpart starting no later than model year [2007] *2009*; and

(3) actions by the manufacturers that advance the sale and use of ZEV (including PZEV) and advanced technologies beyond that which would otherwise occur as a result of the fleet average requirements in Subpart 218-3 of this Part.

(h) Such ACP shall provide that advanced technology vehicle models, including ZEV's, sold or leased in California shall be available for purchase or lease in New York *except for type III ZEVs placed in service pursuant to section 1962(b)(2)(B) of the California Code of Regulations (see Table 1, section 200.9 of this Title).*

(i) Failure to meet the terms of the approved alternative compliance program will subject a manufacturer to all applicable penalties, and will require compliance with the ZEV mandate as prescribed in section 218-4.1 of this Subpart.

(j) A manufacturer shall notify the department of its intent to file an alternative compliance program within 60 days after the effective date of this regulation.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire March 21, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Steven E. Flint, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, e-mail: seflint@gw.dec.state.ny.us

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The purpose of the rule amendment is to revise the existing Low Emission Vehicle (LEV) program to incorporate modifications that California has made to its vehicle emission control program relating to the Zero Emission Vehicle (ZEV) mandate. New York will also amend the Alternative Compliance Plan option in Part 218 to extend the expiration date of the option and to revise plan flexibilities. Adoption of these modifications is necessary to reduce emissions of air contaminants from new motor vehicles, and will also provide for continuing advancement of motor vehicle emissions control technology.

By statutory authority of, and pursuant to, Environmental Conservation Law (ECL), the Commissioner of Environmental Conservation is responsible for protecting the air resources of New York State. The Commissioner is authorized to adopt rules and regulations to enforce the ECL. The Legislature bestowed on the Department the power to formulate, adopt, promulgate, amend and repeal regulations for preventing, controlling or prohibiting air pollution.

The main purpose of enacting this program is to protect the health of New York State residents and its visitors. The revised emissions standards, developed to reduce air pollution from mobile sources, will have a positive impact by decreasing emissions of ozone precursor compounds. Exposure to motor vehicle emissions has caused or has been associated with eye, throat and bronchial irritation, headaches, nausea and light-headedness. Deterioration in the health condition of those individuals with respiratory ailments may also occur. The primary compounds emitted from vehicle exhaust, and the secondary compounds that may form, can be detrimental to human health. Several studies have found evidence to support this.

The ZEV revisions: adopt regulations identical to California's; remove all references to fuel economy; modify the 15-year, 150,000-mile Partial ZEV (PZEV) warranty required for hybrid electric vehicles; modify the compliance requirements and options in response to the current state of ZEV technology; and define three fuel cell development stages which start in 2003.

The regulations are also modified to include revisions to the Zero Emission Vehicle (ZEV) mandate which would delay the ZEV percentage requirements until 2007, but allow full use of credits earned prior to that date. For the 2007-2011 transition period, the ZEV obligation is reduced to one-half of the current level, and the remaining half can be met with AT PZEVs or hydrogen infrastructure. In addition, five types of hybrid electric vehicles are defined qualifying for additional allowances or allowances that may be used in the AT PZEV category. The ZEV calculation method has also been amended and five ZEV types are created that are the basis for the ZEV credits. Type III ZEVs placed in any state that is administering the California ZEV program (for example, New York State) pursuant to section 177 of the federal Clean Air Act count towards California's ZEV requirement, with the effect that the ZEV requirements of any section 177 state allow the counting of Type III ZEVs placed in California or other section 177 states.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. Under the ACP, manufacturers notify the Department of their intent to be governed by the ACP. The ACP requires manufacturers to meet a 10 percent ZEV level, based on a credit mechanism specified in the ACP. In addition, the ACP includes early introduction and phase in credit multipliers, which decline until the program fully matches up with the California program. The ACP requires that vehicles sold or leased in California must be available for purchase or lease in New York, and that manufacturers must identify in their proposed ACP how such vehicles will be marketed. The ACP allows manufacturers to generate up to 25 percent of their credits from infrastructure and transportation projects provided such projects are identified in their approved ACP. Credits can be applied to the vehicle category (PZEV, AT PZEV, or ZEV) which the project affects. The ACP includes specific reporting requirements, both in terms of forecasting as well as progress reports. The ACP commences with model year 2005, and ends with the end of the 2008 model year.

California has projected that the incremental cost of PZEVs relative to SULEVs is likely to be less than $100 as vehicles are optimized in the next few years. The additional cost would cover some improvement in components should manufacturers design for less than a 150,000 mile life currently, and an additional $10 for zero evaporative emission control system upgrades. Similarly, California projects that the incremental cost for an AT PZEV is $1,500 in 2007-2008, $1,200 in 2009-2011 and $700 in 2012 and beyond. For Battery EVs, it is estimated that the incremental cost for full function EVs is $17,000 from 2007-2012, and City EVs have an incremental cost of $8,000 from 2007-2012. Regarding Fuel Cell EVs, the incremental costs are estimated to be $300,000 in 2007-2008, $120,000 in 2009-2011 and $9,300 in 2012 to 2020. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

Businesses involved in manufacturing, selling, or purchasing passenger cars or trucks could be affected by the regulations. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements. The ZEV requirements are not expected to have a major cost impact on automobile dealers. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

The changes to the LEV regulations also result in no significant changes in paperwork requirements for dealers. While dealers must assure that the vehicles they sell are California certified, most manufacturers include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York State dealers.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

Many aspects of New York LEV regulations are more stringent than their federal counterpart. Examples include the zero-emission vehicle program. Because of this, adoption of all the Tier 2 standards would provide fewer emission benefits. The federal programs do not include a specific ZEV program. Thus, acceptance of the federal program could deprive New York of some or all of the advanced technology and air quality benefits associated with the ZEV program.

This regulatory amendment will take effect immediately and the ZEV mandate is effective in model year 2007. The New York ACP is a voluntary element of this regulation, and includes required actions in model year 2005.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, purchasing or repairing passenger cars or trucks.

However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

State and local governments are also consumers of vehicles that will be regulated under the LEV amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles in New York State; *i.e.*, they must purchase California certified vehicles.

The changes are a revision and extension of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to small businesses or local governments as a result.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, recordkeeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars, are required to sell or offer for sale only California certified vehicles. Also, some automobile dealerships will be selling and servicing advanced technology vehicles (ATV). These amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles, they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be $8,000. A full function ZEV cost increment is projected at $17,000. A fuel cell ZEV cost increment is projected at $300,000 in 2007-2008, $120,000 in 2009-2011, and $9,300 in 2012 and beyond. The projected incremental cost for partial ZEVs (PZEVs) is projected to be $100. Advanced Technology PZEVs are projected to have a cost increment of $500 in 2007-2008 and $200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed upon privately owned vehicles.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment. Furthermore, the LEV program is not applicable to vehicles with an odometer reading of 7,500 miles or more when sold.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

7. Economic and technological feasibility:

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The changes to the regulations modify New York State's current zero emission vehicle sales requirement. There are no requirements in the regulation which apply only to rural areas. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

The changes are revisions and extensions of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to rural areas as a result. The beneficial emissions impact of the program accrues to all areas of the state.

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

There are no specific requirements in the amended regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles and some engines are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be $8,000. A full function ZEV is projected to have an incremental cost of $17,000. A fuel cell ZEV incremental cost is projected at $300,000 in 2007-2008 and $120,000 in 2009-2011. The projected incremental cost for partial ZEVs (PZEVs) is projected to be $100. Advanced Technology PZEVs are projected to have an incremental cost of $500 in 2007-2008 and $200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas. As a result of the changes to the current ZEV requirements, rural areas may benefit by seeing an improvement in the air quality.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State

has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (DEC) is unaware of any adverse impact to jobs and employment opportunities as a result.

2. Categories and numbers affected:

The changes to this regulation may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state s requirements (either Federal or California certification standards). Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out of state, but may be able to buy complying vehicles out of state.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The ZEV requirements are not expected to have a major cost impact on automobile dealers. A principal element of the revisions is that in order for a vehicle to qualify for any of a wide range of credit multipliers, the vehicle must actually be placed in service. Thus, while dealers have historically expressed concern that manufacturers would simply "dump" ZEVs on dealerships, there is now an incentive for manufacturers and dealers to work together to ensure that the vehicles are actually placed into service. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

5. Self-employment opportunities:

None.

NOTICE OF CONTINUATION
NO HEARING(S) SCHEDULED

Stationary Combustion Installations

I.D. No. ENV-28-03-00024-C

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

The notice of proposed rule making, I.D. No. ENV-28-03-00024-P was published in the *State Register* on July 16, 2003.

Subject: Stationary combustion installations.

Purpose: To reduce emissions of oxides of nitrogen from stationary internal combustion engines.

Substance of rule: On December 16, 1999, EPA issued a proposed rule in which it proposed to conditionally approve the November 1998 One-Hour Ozone Attainment Demonstration for the NYMA/LOCMA (64 FR 70364). This conditional approval required the State to adopt sufficient measures to achieve the level of reductions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) that were identified by EPA as necessary for the State to reach attainment of the national ambient air quality standard for ozone by the year 2007. On April 18, 2000, the Department submitted a proposed State Implementation Plan (SIP) revision to EPA which described the States strategy aimed at achieving the necessary additional NO_x emissions reductions. On February 4, 2002, this enforceable commitment was approved by EPA as part of the States SIP (67 FR 5170).

The proposed amendments to the Subpart 201-3 include the reduction of the applicability threshold in the severe ozone non-attainment area for stationary internal combustion engines from 225 bhp to 200 bhp and expand the exemption provisions to include engine test cells at engine manufacturing facilities which are utilized for either research and development or reliability performance testing.

The proposed amendments to the Subpart 227-2 requirements include a reduction in the NO_x emission limits for stationary internal combustion engines; reduce the applicability threshold in the severe ozone non-attainment area for stationary internal combustion engines from 225 bhp to 200 bhp; and expand the exemption provisions to include engine test cells at engine manufacturing facilities which are utilized for either research and development or reliability performance testing. The proposed rule also contains new definitions for the terms "1990 actual baseline emissions" and "commence commercial operation." Finally, the revisions will allow increased flexibility for sources which utilize CEMS by allowing sources to use the monitoring requirements of either 40 CFR 60 or 40 CFR 75.

Changes to rule: No substantive changes.

Expiration date: August 21, 2004.

Text of proposed rule and changes, if any, may be obtained from: Michael Jennings, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8403, e-mail: mxjennin@gw.dec.state.ny.us

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Recreational Harvest and Possession of Atlantic Cod and Haddock

I.D. No. ENV-01-04-00002-P

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

Proposed action: Amendment of section 40.1(f) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-1303 and 13-0339-a

Subject: Regulation of the recreational harvest and possession of Atlantic cod and haddock in New York waters.

Purpose: To amend regulations relating to the Atlantic cod and haddock recreational fisheries in New York waters, consistent with the Federal regulations for these resources adopted by the National Marine Fisheries Service, and consistent with the needs of the resource and resource users.

Text of proposed rule: Section 40.1(f) is amended as follows:

f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	28" TL (Total Length)*	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit

Haddock	All year	[23] *21* " TL	[10] *No limit*
Atlantic cod	All year	23" TL	[10] *No limit*
Summer Flounder (fluke)	All year	17" TL	7
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	21" TL 14" Tail Length #	No limit
Weakfish	All year	16" TL 10" Fillet length+ 12" Dressed length**	6
Bluefish	All year	No minimum size limit	10
Winter Flounder	Third Saturday in March to June 30 and Sept. 15 to Nov 30	11" TL	15
Scup (porgy)	All year	10" TL	50
Black Sea Bass	Jan 1 - Sept. 1 and Sept. 16 - Nov 30	12"	25
American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum size limit	5
Large & Small Coastal Sharks ##, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Pelagic Sharks ++, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

++ Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

*** Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205-S North Bellemeade Road, East Setauket, New York, 11733.

Text of proposed rule and any required statements and analyses may be obtained from: Alice Weber, Department of Environmental Conservation, 205 N. Bellemeade Rd., East Setauket, NY 11733, (631) 444-0435, e-mail: amweber@gw.dec.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Section 11-1303 authorizes the Department of Environmental Conservation (Department) to adopt regulations establishing open seasons, size limits and catch limits for fish resources. Environmental Conservation Law Section 13-0339-a authorizes the Department to establish by regulation, open season, size, catch limits, possession and sale restrictions and manner of taking for numerous species, including Atlantic cod.

2. Legislative objectives:

It is the objective of the above-cited legislation that the Department manage marine fisheries, including Atlantic cod and haddock, to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate FMPs.

3. Needs and benefits:

The proposed regulations address the need to:

a) manage the harvest of Atlantic cod and haddock finfish resources in New York to ensure compatibility with Regional Council Plans for each species;

b) ensure that management regulations are consistent with the status and needs of marine and anadromous finfish stocks to maintain healthy and sustainable fisheries; and

c) restrict mortality on all stocks of marine and anadromous finfish, while allowing for appropriate use;

Specific major changes to the regulations include the following items:

(1) Minimum size limit. Action is necessary to lower the recreational minimum size limit for haddock from 23" TL to 21" TL, which will allow state regulations to be consistent with federal regulations for this species.

(2) Possession limit - Action is necessary to amend the existing recreational possession limits for cod and haddock. At present, there is a 10 fish possession limit for cod and a 10 fish possession limit for haddock for all fishermen. The regulations will be amended to remove these possession limits for recreational fishing.

4. Costs:

(a) Cost to State government:

The cost to state government is primarily that affecting the regulating agency, the Department of Environmental Conservation, and is described under section (d) below.

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

No substantive or minor costs to private regulated parties are expected as a result of the proposed regulations. The proposed regulations relax restrictions for recreational Atlantic cod and haddock fishermen. It is anticipated that there should be some positive economic benefit as a result of this reduction in regulatory constraints.

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

The Department of Environmental Conservation will incur costs associated with both the implementation and administration of these rules. The implementation costs will be associated with the public notice and final adoption of these regulations, and costs relating to the expense of updating informational materials and with notifying recreational harvesters of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No additional paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The following alternatives have been considered and rejected for the reasons listed below:

(a) No action:

Failing to make these changes to existing Part 40 would result in maintaining different regulations for these species in federal and state waters. This situation will result in confusion and non-compliance among recreational fishermen, with one set of rules in federal waters where most of these fish are harvested, and another set of rules in New York waters where the fish are landed. Continuing to regulate New York recreational fisheries with a more restrictive size limit will also cause negative economic impacts at those ports and areas where these fish are landed. At present, party and charter boat fishermen may legally take more than 10 haddock or cod in federal waters but are prohibited from landing or possessing these fish in New York. The more restrictive state regulations for these species limits these vessels from harvesting the allowable federal catches, which puts them at a competitive disadvantage relative to other state's party and charter industries.

This no-action option would not allow New York's recreational fishermen to take advantage of the increased harvest opportunities (and the economic benefits associated with them) that are available to them under the federal rules.

9. Federal standards:

Amendments to Part 40 will keep state regulations compatible with those in federal waters.

10. Compliance schedule:

Regulated parties will be notified by mail or through appropriate news releases and announcements of the changes to the regulations. Compliance will be required upon the effective date of the regulations.

Regulatory Flexibility Analysis

1. Effect of the regulations:

Small businesses that may be affected by the proposed regulations include currently licensed marine party and charter boat owners and operators. There were 474 licensed marine party and charter boat owners and operators during 2002. Most party and charter boat owners are self-employed. No negative impacts on employment are expected as a result of the proposed changes.

There are no local governments involved in the recreational fish harvesting business. Therefore, no local governments are affected under these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs or ongoing compliance costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Minimizing adverse impact:

The proposed regulations are expected to minimize adverse impact by implementing compatible regulations for recreational Atlantic cod and haddock fisheries in federal and state waters, increasing access to these resources for New York fishermen.

The proposed regulations will likely result in an increase in allowable catch of Atlantic cod and haddock resources for the affected parties, and should provide an increased potential for additional employment opportunities as well. The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question. Failing to implement these proposed changes could have a negative economic impact on New York's recreational fisheries for these species because New York's current regulations are more restrictive than those in federal waters, which puts New York fishermen at a disadvantage.

6. Small business and local government participation:

The development of this proposal has drawn upon input from members of New York's party and charter boat industry. There was no specific effort made to contact local governments because the rule does not affect them.

7. Economic and technological feasibility:

The changes required by this action have been determined to be economically beneficial for the majority of the affected parties. No additional technology is required for small businesses. Compliance for small businesses is both economically and technologically feasible.

This action does not apply to local governments, so economic and technological feasibility are not an issue.

Rural Area Flexibility Analysis

The proposed amendments to Part 40 will not impose an adverse impact on rural areas. The Department of Environmental Conservation has determined that there are no rural areas within the marine and coastal district. The Atlantic cod and haddock fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The Department has determined that the proposed regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

There were 474 licensed party/charter vessels operating in New York during 2002. Some of these currently licensed commercial party and charter boat owners and operators will be affected by these regulations. The proposed regulations will likely result in an increase in allowable catch of Atlantic cod and haddock resources for the affected parties, and should provide an increased potential for additional employment opportunities as well.

Based on the above and the Department's experience in adopting regulations similar to those contained in this proposal, the Department has concluded that there will not be any substantial adverse impact on jobs or employment opportunities as a consequence of these amendments. In the long term, these proposals, by conserving marine fisheries, will likely have a positive impact on employment opportunities in the commercial and recreational fishing industries.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Nonrectifiable Offenses in Adult Care Facilities

I.D. No. HLT-01-04-00003-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 486.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 460

Subject: Nonrectifiable offenses in adult care facilities.

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

Text of proposed rule: Paragraph (5) of Section 486.5(a) is repealed, and paragraphs (6) and (7) are renumbered as paragraphs (5) and (6):

[(5) For violations cited under paragraph (4) of this subdivision, demonstration by the department that a violation occurred shall be deemed to establish that a resident was endangered.]

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 is contained within Sections 460 and 461 of the Social Services Law (SSL). Chapter 436 of the Laws of 1997 transferred the responsibility for adult homes, enriched housing programs, and residences for adults ("adult care facilities" – ACFs) from the former Department of Social Services to the Department of Health.

SSL Section 460-d(7)(b)(2)(iii) provides that rectification of violations does not preclude the assessment of a civil penalty if the Department establishes at a hearing that a violation, although corrected, endangered or resulted in harm to a resident as a result of the failure in systemic practices and procedures.

Basis:

On October 23, 2002, regulations were adopted to expedite enforcement against ACFs that endanger residents. The provisions contained within ensure that ACFs are held accountable when important resident services or protections deteriorate to the point where residents are endangered or actually harmed and when facilities fail to report resident deaths, attempted suicides or felonies committed by or against a resident.

Four provisions within this regulation were subsequently challenged by the Empire State Association of Adult Homes, Inc. and 19 adult homes, on the grounds that they exceeded the Department's statutory authority, violated due process and were otherwise arbitrary and capricious and impermissibly vague. The State Supreme Court upheld three of those provisions, finding that the Department provided a reasonable and rational basis in support of the rules and that established procedures indeed afford ACFs the due process to which they are entitled.

The fourth challenged rule, in 18 NYCRR § 486.5(a)(5), provides that the infringement of one of a number of certain enumerated rules governing non-rectifiable offenses creates a presumption that the violation endangered a resident. The effect of the presumption, for an ACF seeking to avoid the imposition of non-rectifiable fines, is to shift the burden to the ACF to show that the violation did not endanger a resident. Here, in a May 16, 2003 decision (*Empire State Association of Adult Homes and Assisted Living Facilities, Inc. et al* v. *Novello;* Supreme Court, Albany County) the Court ruled that the Department's statutory authority provides that in seeking to penalize facilities for violations of non-rectifiable offenses the Department has the burden of proving at a hearing that the violation endangered or harmed a resident. The Court vacated and annulled 18 NYCRR § 486.5(a)(5).

No person is likely to object to the proposed rule because it merely repeals the provision that was vacated and annulled by the court.

Job Impact Statement

A Job Impact Statement is not included because the nature and purpose of the proposed regulation that it will not have a substantial adverse impact on jobs or employment opportunities. This regulation will not result in a reduction of staff providing necessary care.

Industrial Board of Appeals

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Form and Content of Petition

I.D. No. IBA-01-04-00009-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 66.3 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 100 and 101

Subject: Form and contents of petitions filed pursuant to Labor Law, section 101.

Purpose: To update and clarify the recommended, but not required, format and contents for petitions filed with the board, pursuant to Labor Law section, 101.

Text of proposed rule: 66.3 Form and content of petition.

The petition shall be filed by mailing or delivering the original and three conformed copies thereof to the board's Albany office. The petition [shall] should:

(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 101 of the Labor Law:	:
(state matter to be reviewed)	:
	:
-against-	:
	:
The Commissioner of Labor,	:
	:
Respondent.	:
.....	X

(b) (1) state the *correct mailing* address *and telephone number* of each petitioner;

(2) state the location of the premises or establishment affected by the rule, regulation or order sought to be reviewed, if different from petitioner's address; and

(3) state the name and address of the representative, if any, of petitioner's employees, if the petition is for review of a decision issued under section 30 or of a notice of violation and order to comply issued under section 27-a.

(c) state the facts supporting the allegation that the petitioner is a person in interest, except in cases where the petitioner has been named in and served with a compliance order upon which the petition is predicated;

(d) annex a complete copy of the order, notice or decision in issue; if a rule or regulation is in issue, set it forth or identify it with particularity;

(e) state clearly and concisely the grounds on which the matter to be reviewed is alleged to be invalid or unreasonable[, omitting conclusions of fact or law];

(f) state any other material or relevant facts;

(g) set forth with particularity the 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, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail: uscjb@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.

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 format and contents of petitions to be filed with the board. As currently written, the rule can be interpreted to require that a very specific legal format be used in order to file a valid petition. This format is modeled after the New York Civil Practice Law and Rules (CPLR). Most petitions filed with the board are written without the assistance of legal counsel, by petitioners unfamiliar with formalized legal pleadings. The board has been able to resolve questions concerning the requirement by reference to board rule 65.1(b), (12 NYCRR Section 65.1(b)), which authorizes the board, when no substantial right is prejudiced thereby, to suspend the application of any provision of these rules in a specific proceeding, or waive compliance therewith. The remainder of the proposed changes help clarify what information should be provided in the petition to better assist the board in resolving the dispute.

It is the board's determination that by amending this rule to clarify that the format is recommended, but not required, the administrative appeals process will be more efficient, and the parties will 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 updates and clarified the recommended, but not required, contents and format for a petition filed with the board pursuant to Labor Law section 101. 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

Answers to Petitions

I.D. No. IBA-01-04-00010-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 66.5 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 100 and 101

Subject: Procedures for service and filing of answers to petitions filed pursuant to Labor Law, section 101.

Purpose: To update and clean-up this section, by removing redundant language.

Text of proposed rule: 66.5 Answer to petition; time for answer; contents of answer; service and filing of answer.

(a) The Commissioner of Labor shall, within *thirty (*30*)* days after receipt of the petition, file an answer with the board or move with respect to the petition. [If a representative of petitioner's employee is named in the petition, the commissioner shall also serve a copy of the answer upon such representative, for informational purposes.]

(b) The answer shall be so drawn as to advise the petitioner and the board of the nature of the defense, in reasonable detail. It shall contain a specific admission, denial or explanation of each of the material facts alleged in the petition. Such a denial may be upon information and belief or a denial of knowledge or information sufficient to form a belief as to the truth of the allegation. The answer must also contain a statement of any facts upon which the Commissioner of Labor relies for an affirmative defense.

(c) (1) The Commissioner of Labor shall serve by mail one copy of the answer upon each petitioner or attorney of record and shall file the original with the board, with proof of such service.

(2) If a representative of petitioner's employee is named in the petition, the commissioner shall also serve, by mail, one copy upon such representative and shall file with the board proof of such service.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail: uscjb@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.

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 and lists the procedures to be followed by the Commissioner of Labor, in serving and filing an answer to a petition filed with the board pursuant to Labor Law section 101. The section provides information concerning the timing, contents, service and filing of the Commissioner's initial pleading. This proposed change will clean up the section by removing redundant language from subdivision (a) concerning service of the answer by the Commissioner, while retaining the requirement in subdivision (c)(2), where it is more appropriate. The proposal also updates the section, by adding the worth "thirty" to the already present numerical "30", which the board has determined to be a more proper phrase.

It is the board's determination that by amending this rule to remove redundant language, the administrative appeals process will be more efficient, 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 updates and clarified the recommended, but not required, contents and format for a petition filed with the board pursuant to Labor Law section 101. 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.

Insurance Department

EMERGENCY
RULE MAKING

Healthy New York Program

I.D. No. INS-01-04-00001-E
Filing No. 1407
Filing date: Dec. 17, 2003
Effective date: Dec. 17, 2003

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

Action taken: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2 and 362-5.3 (Regulation 171) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327

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

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program's commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After several years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce cost, lesser complexity and add a second benefit package.

Substance of emergency rule: The second amendment to regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection

also provides that once enrolled in the program, any change in the selection of a benefit package may only occur at the time of annual recertification.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions as those that do not exceed an average of $50 per employee per month, and shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund to include claims paid on behalf of a covered member in excess of $5,000 and less than $75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the". This corrects a technical error.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 15, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Joanna Rose, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: jrose@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce an second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the re-certification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. De-minimus contributions are those that do not exceed an average of $50 per employee per month. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the

stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. As these revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York.

4. Costs: The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. Federal standards: The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. Compliance schedule: This rulemaking will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers 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.

2. Compliance requirements: Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. Professional services: The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. Compliance costs: The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses

and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule-making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule-making process.

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

Division of the Lottery

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Video Lottery Gaming

I.D. No. LTR-28-03-00009-C

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

The notice of proposed rule making, I.D. No. LTR-28-03-00009-P was published in the *State Register* on July 16, 2003.

Subject: Video lottery gaming.

Purpose: To allow for licensed operation of video lottery gaming.

Substance of rule: Chapter 383 of the Laws of 2001 as amended by Chapter 85 of the Laws of 2002, as amended by Chapter 62 of the Laws of 2003, codified as § 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks around New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for principles and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations.

The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

Changes to rule: No substantive changes.

Expiration date: July 15, 2004.

Text of proposed rule and changes, if any, may be obtained from: Susan E. Beaudoin, Counsel, Division of the Lottery, One Broadway Center, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: sbeaudoin@lottery.state.ny.us

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

Niagara Falls Water Board

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water and Wastewater Treatment and Distribution System

I.D. No. NFW-01-04-00008-EP
Filing No. 1414
Filing date: Dec. 22, 2003
Effective date: Dec. 22, 2003

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

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

Statutory authority: Public Authorities Law, section 1230-f

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

Specific reasons underlying the finding of necessity: The board has determined that the emergency adoption of regulations is necessary for the preservation of public health, safety and welfare of the people of Niagara Falls, New York, and the service area of the system, inasmuch as the board must be able to effectively regulate all persons who use the system after the board's acquisition of the system on Sept. 25, 2003.

Subject: Regulation of water treatment and distribution and wastewater conveyance and treatment system in Niagara Falls.

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

Substance of emergency/proposed rule (Full text is not posted on a State website): The Niagara Falls Water Board has adopted regulations in connection with the Board's acquisition of the water, wastewater and storm water facilities of the City of Niagara Falls (collectively the "System"). The Board acquired the System as of September 25, 2003.

The regulations are in two parts. Part 1950 constitutes the Board's Water Regulations and Part 1960 constitutes the Board's Wastewater Regulations (collectively the "Regulations"). Both parts establish a comprehensive set of rules and regulations with respect to the operation, maintenance and management of the System. The Regulations apply to all persons who use the System and to properties served by the System, located within and outside the City of Niagara Falls (the "Service Area"). The Regulations are substantially the same as the City's ordinances in effect before the Board's acquisition of the System.

Board Water Regulations. The Regulations provide for the beneficial use of the Board's water facilities through the regulation of connection and water use, as well as for the Board's equitable recovery of the cost of the System. Provision is made for the confidentiality of persons who use the System and the information that they provide in accordance with the Freedom of Information Law and other applicable state and federal statutes and regulations.

The Regulations generally require every dwelling, house or other building that uses water to be supplied from the water mains of the Board through a separate service. Provision is also made in these Regulations for temporary service to such properties. The Board does not guarantee to any user any fixed or constant pressure or continuous supply. The Regulations also make provision for applications for water service together with payment of fees to obtain a permit for connection to the System. No work or improvements to supply water may be performed without obtaining such permits from the Board. The Regulations contain various technical requirements for establishment of water service branches upon written application to the Board.

Except in unique circumstances, all water will be furnished to users of the System through a metered service only. The supply of water through separate service must be recorded by one meter only. If additional meters are desired, the Regulations make provisions for such additional meters. The Regulations make extensive provisions for the size and location of meters within dwelling houses and other buildings that are served by the System. Whenever a service is to interconnect in any manner with any other supply of water, other than the Board, a separate detail of such interconnection must be presented and comply with the State Sanitary Code and the Niagara County Health Department. The Board reserves the right to enter, at any reasonable time, and with reasonable notice, any premises where a water meter is installed, to test, examine, repair, remove, replace or modify such meter. All meters remain the property of the Board and the Board has the obligation to repair, excepted in limited circumstances, without cost to the property owner.

The Regulations obligate all users to pay and be liable to pay the Board for such fees, rates and other charges as the Board may establish from time to time. A schedule of such fees, rates and charges is set forth in Section 1950.20. The Service Area is divided into three districts. A schedule of billing for consumption of water in these districts is set forth in the Regulations. Charges for consumption of water by significant industrial users will be billed on a monthly basis. The Regulations provide for procedures to bill and collect unpaid water charges and for discontinuance of service upon appropriate notice to all users.

A tapping application is required for erection, construction, alteration or maintenance of any building or structure or for any other purposes that requires a temporary use of water. Provision is made for application for taps into the water mains and for recovery of real costs of the Board.

No person, other than an employee or authorized contractor of the Board, may open, close or interfere in any manner with any water main, pipe or related equipment belonging to the Board without the written permission of the Board's Director. Similarly, only persons authorized by the Board may operate any fire hydrant or attempt to modify a water meter, except the City Fire Department. The Regulations provide several rules with respect to the general use of fire hydrants, hydrant flow test and charges for fire protection.

The Regulations make cross-reference to the City's Plumbing Code and require that all plumbing work be done by a duly licensed plumber. The Regulations specify various types of attachments and materials that may be used by plumbers in connection with the System.

The Board has established a policy to protect the public water supply against actual or potential cross-connections by isolating within premises contamination that may occur because of undiscovered or unauthorized cross-connection of the premises. The Regulations make extensive provisions to prevent cross-connections and to assure the integrity of protective devices, inspection and testing at least annually. All users of the System are required to prevent cross-connections between the potable water piping system and any other piping system within the user's property. All tests for backflow prevention must be done in conformance with certified backflow prevention device testers and with the assistance of the Niagara County Health Department.

The Regulations authorize the Director of the Board to take any and all actions with respect to property owners or users receiving water service from the Board whenever any provision in the Regulations are contravened including, but not limited to, termination of water service, correction of violations within a set timeframe, disconnection, modification and/or construction of appropriate safety devices and structures, and requirement of the payment of a surcharge or fee. The Regulations provide a process for the resolution of disputes including provision for administrative orders and a hearing to determine all facts, provide a written report to the Board with a recommendation, based on evidence presented for a final determination as to enforcement action by the Board.

Any person found violating any provision of Part 1950 will be served by the Director with a written notice stating the nature of the violation. Monetary penalties are set forth in the Regulations, including a penalty in the amount of up to $5,000 per day for each violation for significant industrial users.

Board Wastewater Regulations. The Regulations provide for the maximum possible beneficial public use of the Board's publicly owned treatment works through regulation of construction, sewer use and wastewater discharges and provide criteria for equitable distribution of the cost of the Board's publicly owned treatment works. These Regulations establish provisions to prevent the introduction of pollutants which would interfere with the operation of the Board's treatment works, pass through the treatment works to waters of the State or otherwise contaminate the Board's treatment works' sludge. These Regulations govern sewer connections, control of the quantity and quality of discharges, wastewater pretreatment, criteria for distribution of costs, criteria for the use of the Board's treatment work's capacity, issuance of significant industrial user and industrial commercial user permits. The Regulations establish sewer connection standards and conditions as well as penalties and other procedures in cases of violations of the Regulations.

All persons who own any occupied building accessible to the Board treatment works are required at their own expense to connect to the System. No connection may be made to the System except by a plumber duly registered and licensed by the City. All persons are required to use such materials as are approved by the City and the Board for all connections to the System. Interceptors and separators are required to be maintained in efficient and operating condition. With several exceptions, each separate building shall be provided with an independent sewer connection to the System. Every connection requires a permit from the Board upon a written application and inspection by the Board. The Board reserves the right to do any work incident to making connections and the cost of any such work may be charged to the property owner.

The disposal of sanitary wastewater and industrial wastewater to other than the Board treatment works is prohibited, except for certain industrial waste. Industrial waste discharges require a valid SPDES discharge permit. The disposal of hauled waste into the System is also prohibited, except upon a Board permit. The Regulations make provisions for industrial discharges and for significant industrial users as to the quantity and quality of the discharge, and for pretreatment of industrial wastewater. Certain discharges are expressly prohibited and they are set forth in the Regulations with incorporation by reference to 40 CFR Part 262 and 40 CFR Part 403. The Board has established local limits in accordance with the provisions of 40 CFR Part 403. The Regulations require notice of change in volume or character of waste, and for measuring, recording and sampling devices.

Board personnel are authorized to enter upon all properties served by the Board for the purpose of inspection of the premises, observation, measurement, sampling and testing in accordance with the Regulations.

Each Significant Industrial User ("SIU") is required to install either a suitable control manhole or monitoring station. The Regulations provide for such installations and monitoring. The Regulations provide for determination of wastewater characteristics with a sampling program for all

SIUs. Each SIU is required to provide protection from slug discharges, and a plan to control slug discharges.

All proposed new industrial users are obligated to apply to the Board for a discharge permit. The Regulations establish the requirements for such applications, the issuance of permits, and for the modification, duration and termination of permits.

The Board has established categorical pretreatment standards in accordance with 40 CFR Parts 405-471. The Regulations make provision for reporting and compliance with pretreatment regulations, and authorize compliance schedules to be established for all industrial users.

All users are obligated to pay the Board such fees, rates and other charges as the Board may establish. The schedule of fees, rates and charges for wastewater services is also contained in Section 1950.20 as well as throughout Part 1960. Board wastewater users are divided into three classes: SIU, Commercial/Small Industrial/Residential and Hauled Waste. The Regulations make provision for the billing and collection of fees, rates and charges with respect to each class of user.

The Board Director is given authority to issue permits as well as to initiate courses of action with respect to users who violate the Regulations, permits, and as determined by the Director including, rejection of waste, requirement of pretreatment program, establishment of control over quantities and rates of discharge, payment of surcharges, requirements for surveillance and monitoring of discharges and reporting as well as for termination of wastewater service. The Regulations make provision for administrative orders as well as for dispute resolution including a hearing with a final determination by the Board based upon recommendations by a hearing officer or the Director.

Provision is made for penalties that may be imposed on all users who violate the Regulations, permits or orders in an amount not exceeding $10,000 per day per violation.

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 February 19, 2004.

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

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

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

Regulatory Impact Statement

1. Statutory Authority: New York State Public Authorities Law Section 1230-f (7) authorizes the Niagara Falls Water Board (the "Board"), to make and amend rules and Regulations (the "Regulations") governing the exercise and enforcement of its powers and the fulfillment of the purposes of the Niagara Falls Public Water Authority Act, Title 10-B of the Public Authorities Law (the "Act").

2. Legislative Objectives: The legislature has granted the Board jurisdiction, control, possession, supervision and use of the water, wastewater and storm water facilities located in the City of Niagara Falls and related service area (collectively referred to as the "System"). Promulgation of these Regulations are in furtherance of such legislative grant and provide the means whereby the Board can deliver services to persons served by the System, and enables the Board to keep the System in good repair and working order. In addition, promulgation of these Regulations enables the Board to comply with applicable laws of the United States, and the State of New York (the "State") and the rules, regulations, permits and orders of their regulatory agencies.

3. Needs and Benefits: The Board operates, maintains and manages the System. It provides potable water, and receives and treats discharges of wastewater for approximately 55,000 persons who reside or work in the City of Niagara Falls and the adjacent areas served by the System. The Board's Regulations establish a comprehensive program to enable the Board to operate, maintain, repair and manage the System to ensure the uninterrupted delivery of such water and wastewater services.

The Board Water Regulations at Part 1950 provide for the beneficial use of the Board's water facilities through the regulation of connections and water use, as well as for the Board's equitable recovery of the cost of the System. The Regulations generally require every dwelling, house or other building that uses water to be supplied from the water mains of the Board through a separate service. The Board regulates all connections to the System to ensure that only qualified personnel, typically licensed plumbers or qualified employees of the Board, make such connections. In addition, no work or improvements to supply water may be performed without obtaining a permit from the Board.

Except in unique circumstances, all water is furnished to users of the System through a metered service only. The Regulations make provisions for the size and location of the meters within dwelling houses and other buildings that are served by the System. All meters remain the property of the Board and the Board has the obligation to repair, except in limited circumstances, such meters without cost to the property owner. All persons who use the System for potable water and for wastewater are charged, except in certain circumstances, based upon the metered usage of water.

The Board has established a policy to protect the public water supply against actual and potential contamination that may occur because of unauthorized cross-connection of plumbing systems. Also, the Regulations are designed to work in coordination with the Niagara County Health Department and the State Sanitary Code.

The Board Wastewater Regulations at Part 1960 provide for the maximum possible beneficial use of the Board's publicly owned treatment works through the regulation of construction, sewer use and wastewater discharges, and provide criteria for equitable distribution of the cost of the Board's publicly owned treatment works. The Regulations establish provisions to prevent the introduction of pollutants which may interfere with the operation of the Board's treatment works, pass through the treatment works to waters of the State or otherwise contaminate the Board's treatment works' sludge. The Regulations also govern sewer connections, control of quantity and quality of discharges, wastewater pretreatment, establish criteria for the use of the Board's treatment works capacity, and for the issuance of discharge permits to significant industrial users and industrial commercial users.

The Regulations also regulate industrial discharges and significant industrial users as to the quantity and quality of their discharges and for the pretreatment of industrial wastewater. Certain discharges are expressly prohibited, and are set forth in the Regulations with incorporation by reference to federal Regulations established by the United States Environmental Protection Agency. In addition, the Board has established local limits in accordance with the provisions of 40 C.F.R. Part 403.

The Board also has authorization pursuant to the Act Section 1230-g to engage in special enforcement powers with respect to its wastewater facilities and to otherwise undertake enforcement activity for persons who violate the Regulations with administrative and civil penalties.

4. Costs to Regulated Persons: The Regulations obligate all users of the System to pay and be liable to pay the Board for such fees, rates and other charges as the Board may establish from time to time. A schedule of such fees, rates and charges is set forth in Section 1950.20 and also in several provisions of Part 1960. These rates, fees and other charges include a range from initial tapping and permit application fees, to consumption charges for each calendar quarter, termination fees and other usage fees. Each year, the Board, with the assistance of Black & Veatch New York, LLP, as rate consultant, establishes a budget based on its projected expenses, including, among other things, labor, property maintenance, equipment purchases and maintenance, supplies, capital improvements and debt service. The schedule that the Board develops is designed to enable the Board to pay for these expenses as well as to maintain various covenants with its bondholders.

Rates for water usage and wastewater discharges are based on several factors and are set forth in Section 1950.20. Rates are established based on cubic feet of water consumed for each three months (calendar quarter), with a progressive rate so that the rate decreases per 100 cubic feet for increased consumption. For example, in 2003, consumption of the first 20,000 cubic feet was charged at $1.95 per 100 cubic feet, while the next succeeding 60,000 cubic feet in the same three month period would be charged $1.70 per 100 cubic feet, the next succeeding 120,000 cubic feet in the same three month period would be charged $1.43 per 100 cubic feet and any usage in excess of 200,000 cubic feet for the same three month period would be charged $1.19 per 100 cubic feet. The minimum charge for water consumed in any premises within the City for any calendar quarter, or portion thereof is $25.35. These rates increase for persons and properties located outside of the City of Niagara Falls based on the additional cost that is incurred in the pumping and maintenance of the System beyond the City line.

In addition, sewer rates for Commercial/Small Industrial/Residential Users (CSIRU) and Significant Industrial Users (SIU) are also determined by total metered consumption in each quarter. These rates are set forth in Part 1950.20. Sewer rates for the SIU class of users in each quarter are based on measured quantities of actual discharge parameters: flow, suspended solids and soluble organic carbon. The Regulations authorize the Board to make determinations as to these parameters and provide for five representative 24 hour composite samples taken quarterly, at locations that

are adequate for and accessible to the Board representatives. A separate schedule of charges is established for conventional pollutant parameters and for SIUs with discharges that contain substances of concern as set forth in Schedule III of Section 1950.20. In addition to its analysis of the budget to operate and maintain the System, the Board will also seek to recover its real costs which mean the total direct and indirect costs of labor, material, equipment and handling, including overhead costs that it incurs in delivery of special services to individual users.

Costs to the Board, the State and Local Governments: The implementation and continuation of the Regulations should not impose any costs upon the State. The Board will continue to work with the City of Niagara Falls and use various employees of the City for, among other things, billing and collection of the rates, charges and fees. In addition, the Board has reserved the right to use the office of the corporation counsel to assist in the enforcement of any Regulations, permits or orders that have been violated by users of the System. The Board has provided for such expenses in its budget and has sought to recover such expenses as part of its rate structure referenced above. The Board will reimburse the City of Niagara Falls for the use of any employees and equipment to undertake such activities. Also the Board will continue employment of approximately 9.4 persons (measured in person hours) to administer the Board's wastewater pretreatment program.

Cost Methodology: The Board has retained the services of Black & Veatch New York LLP as its rate consultant. Periodically, and at least annually, Black & Veatch will perform a rate study to ensure that the Board rates, fees and other charges will be sufficient to provide for a balanced budget in light of anticipated and estimated expenses as referenced above. Black & Veatch is a recognized expert rate consultant which serves several municipalities and other agencies in the State that provide water and wastewater services to the public.

5. Local Government Mandates: The Regulations will not impose any new program, services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district. The Niagara County Health Department will continue to assist the Board, as it has previously assisted the City, with respect to certain certifications for back flow prevention and compliance with the County Health Law and the State Sanitary Code.

6. Paperwork: The Regulations continue the existing regulatory program that was previously employed by the City of Niagara Falls. No additional or new reporting requirements or paperwork requirements are established for persons regulated by the Board. The Regulations continue to employ application forms for water and wastewater discharge permits, tapping application and the like. In addition, CSIRU's and SIU's will continue to provide monitoring reports, and when served with notices of violations, or administrative orders, such users will be required to provide additional documentation to correct and otherwise address such violations and orders.

7. Duplication: The City of Niagara Falls continues to have on its records, Water Ordinances and Wastewater Ordinances as part of its City Code upon which the Board Regulations are modeled. The Regulations have been established in substantial conformance with such ordinances. It is anticipated that the City will, in the coming year, cancel such ordinances.

8. Alternatives: The Board did not give any consideration to other alternative proposals to the Regulations before deciding to promulgate them.

9. Federal Standards: The Regulations do not exceed any minimum standards of the federal government for the same or similar subject area. The wastewater pretreatment Regulations embodied in 40 C.F.R. Part 403 authorize the Board to establish local limits that may be different than those prescribed generally by these federal regulations. The local limits are set forth in Part 1960.5.

10. Compliance Schedule: The Board has promulgated the Regulations in substantial conformance to the Water and Wastewater Ordinances that have been previously in effect by the City of Niagara Falls for all persons who are served by the System. The Board has not adopted any significant changes and, therefore, it does not anticipate any additional time necessary to require regulated persons to achieve compliance with the Regulations.

Regulatory Flexibility Analysis

1. Effect of Rule: When the Board acquired the System on September 25, 2003 it established by emergency procedure the Regulations in substantial conformance with the Water and Wastewater Ordinances that were previously in effect in the City of Niagara Falls. Accordingly, the Board continued the same regulatory program that was in effect, previously administered by the City, prior to the Board's takeover of the System as of such acquisition date. No new regulation or requirements were established as part of the Board's adoption of the Regulations. Based on the disclosures by the City to the Board as part of the acquisition, the System serves a population of approximately 55,000 persons according to the 2000 census. This includes approximately 19,220 residential, industrial, commercial and governmental accounts. Water consumption and wastewater discharges can be classified pursuant to consumption of water as follows: residential/commercial users, 18,894; industrial users, 272; significant industrial users, 26; and non-resident users, 28. Of these accounts, approximately 275 constitute small businesses within the definition of the State Administrative Procedure Act ("SAPA"). In addition, the System serves the public buildings of the City of Niagara Falls and the Niagara Falls School District and several public buildings of Niagara County. It also provides wastewater services through mutual service agreements to limited portions of the Town of Niagara.

2. Compliance Requirement: No new reporting, record keeping or other affirmative acts are required by small business or local governments as a result of the Board's adoption of the Regulations. The same reporting, record keeping and actions that were previously required of small businesses and local governments prior to the Board's adoption continue after the Board's adoption of these Regulations. These requirements have included completion of application forms for contractors who need or desire to tap into the System for purposes of construction, repair or rehabilitation of water and wastewater pipes and other appurtenances, and applications for discharge permits into the wastewater System. Significant industrial users and other commercial and industrial users that are subject to the pretreatment requirements of the Regulations are required to continue to produce monitoring reports, and as necessary pursuant to administrative orders, provide specific periodic monitoring reports including laboratory analyses of their wastewater discharges.

3. Professional Services: No new professional services are required of small businesses or local governments by virtue of the Board's adoption of the Regulations. Again, as in the ordinances that have been in effect in the City of Niagara Falls, industrial users and significant industrial users may need the assistance of consulting engineers, or experts in water and wastewater Systems with respect to the repair, replacement and monitoring of their facilities and discharges.

4. Compliance Costs: No initial or new capital costs will be incurred by regulated businesses, industry or local governments to comply with these Regulations. The Board has adopted the Regulations that have been in effect as ordinances in the City of Niagara Falls. It is difficult to estimate the annual cost for continuing compliance with the Regulations for small business. The compliance cost may vary depending upon the type and/or size of such business and the complexity of its discharges. Moreover, the costs for the Board's pretreatment program are factored into the sewer rates the Board charges all industrial and commercial users and are set forth in Part 1950.20. It is not anticipated that any changes will occur in the compliance cost for local governments as a result of the Board's Regulations. The Regulations continue the same compliance requirements that were in effect before the Board acquired the System on September 25, 2003.

5. Economic and Technological Feasibility:

There is no change in the economic and technological feasibility of compliance required for small businesses and local governments by virtue of the Board's adoption of these Regulations. There is no additional technology required for small businesses.

6. Minimizing Adverse Impact: The Regulations provide for the beneficial use of the Board's water and wastewater facilities for all users of the System through the regulation of connection, water use and wastewater discharges as well as for the Board's equitable recovery of costs of the operation, maintenance and management of the System. Provision is made for the confidentiality of persons who use the System and the information that they provide in accordance with the Freedom of Information Law and other applicable state and federal statutes and regulations. Generally, the Board's main function is to make sure that the users receive potable water and that wastewater discharges are conveyed and treated in a manner that protects and preserves the public health, safety and welfare and minimizes the contamination of the waters of the State. The Regulations establish compliance and reporting requirements only as necessary to comply with the Safe Drinking Water Act, the Clean Water Act and other federal and state mandates with respect to water and wastewater. Such mandates do not provide any particular exemptions or accommodations for small businesses and local governments.

7. Small Business and Local Government Participation: The Regulations were adopted by the Board on an emergency basis as authorized by SAPA. The Board is publishing the Regulations at this time with a request

for comment by the general public and by persons served by the System. The Board will take into account any comments that it receives in accordance with the requirements of SAPA. The Board has conducted two public hearings with respect to its schedule of rates, fees and other charges upon public notice in accordance with the Public Authorities Law. The Board has made the Regulations available for public inspection and comment at the Board's office and at the Office of the City Clerk of Niagara Falls. It has published public notices of the availability of the Regulations for review and comment. In addition, the Board has conducted several public meetings prior to and after its acquisition of the System and has regularly provided opportunity to the public to comment on any aspects of the Board's activities, including the Regulations.

Rural Area Flexibility Analysis

The System and the Board do not serve any rural areas as defined by Subdivision 7 of Section 481 of the Executive Law. The Board serves the City of Niagara Falls and select urban areas adjacent to or near the City of Niagara Falls. Since no rural areas will be affected by the Regulations, a rural flexibility analysis is not required.

Job Impact Statement

The Regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The City of Niagara Falls, prior to the Board's acquisition of the System, has lost a number of its largest water and wastewater customers in recent years. In 2002, the water System's three largest customers underwent significant changes. DuPont has reduced its demand for water due to the elimination of certain industrial processes. Both SGL Carbon and Carbon Graphite have shut down, the latter having filed for bankruptcy protection.

The population of the City of Niagara Falls has declined in recent years. In 1980 the population in the City was 71,384. In 1990 the population was 61,840, and in 2000 the population was 55,593 persons according to the U.S. Bureau of the Census. In addition, the annual average unemployment rate in the City in 2002 was 11.2% and in the County of Niagara the unemployment rate was 7.5% pursuant to information available from the New York State Labor Department.

Despite the customer and population losses, the City has experienced a recent positive development. In late 2002, the Seneca Indian Nation and the State entered into a compact that provides for the tribe to develop approximately 55 acres of land in the City's downtown area. The long-term plans call for a gaming casino, hotels, a retail complex, restaurants, an entertainment complex and a variety of other attractions. A temporary casino opened December 31, 2002 and currently has approximately 2,200 employees and an average of 20,000 daily visitors on the weekends.

In response to the decline in the industrial sector and the associated revenue loss, several cost saving measures have been established with regard to the System's facilities, operations and maintenance. One such measure deals with staffing. The water facilities have reduced staff levels by 24% since 2000. The 2003 budget eliminated 17 additional jobs within the water and wastewater facilities. A second measure features stringent budget cost controls that have yielded significant expenditure reductions over the last three years. On the revenue side, the Board has assumed from the City nine cellular antenna lease agreements for installation of cell towers at elevated water storage tanks. This currently generates revenue of approximately $168,000 per year in an effort to reduce the reliance on water rates and charges on users.

The Board also intends to conduct a comprehensive rate study for both the water System and the wastewater System. In addition to reviewing the current rate structure and the cost allocations for each customer class, the study should recognize the steady decline of the industrial user class and propose a rate structure to accommodate the changing customer base. In addition, the Board will continue to actively market its hauled waste services to expand its services to businesses that may haul wastewater to the System. The System has capacity to treat more wastewater than is currently discharged by users located in the City of Niagara Falls.

Public Service Commission

NOTICE OF ADOPTION

Over-Recovery of USF Receipts by Champlain Telephone Company

I.D. No. PSC-41-01-00004-A
Filing date: Dec. 22, 2003
Effective date: Dec. 22, 2003

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

Action taken: The commission, on Dec. 17, 2002, adopted an order in Case 94-C-0095 approving in part Champlain Telephone Company's (Champlain) request for reconsideration and clarification of the commission's Aug. 7, 2001 order.

Statutory authority: Public Service Law, section 22

Subject: Over-recovery of universal service fund receipts.

Purpose: To bring Champlain into compliance with certain Public Service Law provisions.

Substance of final rule: The Commission granted in part and denied in part a request by Champlain Telephone Company for reconsideration and clarification of the Commission's Order issued August 7, 2001, concerning issues related to the continuing provision of Universal Service, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(94-C-0095SA24)

NOTICE OF ADOPTION

Request for Approval of Instrument Transformers by General Electric Company

I.D. No. PSC-34-03-00015-A
Filing date: Dec. 19, 2003
Effective date: Dec. 19, 2003

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

Action taken: The commission, on Dec. 17, 2003, adopted an order in Case 03-E-1080, allowing General Electric Company to use the following series of GE instrument current transformers: JKM-3C, JKM-4C, JKM-5C.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of instrument current transformers.

Purpose: To provide an accurate input source for billing electric measurement devices.

Substance of final rule: The Commission approved a request by General Electric Company to utilize GE Instrument Transformer Models: JKM-3C, JKM-4C and JKM-5C for revenue metering and billing applications in New York State.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-1080SA1)

NOTICE OF ADOPTION

Small Commercial Direct Load Control Pilot Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-39-03-00012-A
Filing date: Dec. 19, 2003
Effective date: Dec. 19, 2003

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

Action taken: The commission, on Dec. 17, 2003, adopted an order in Case 00-E-2054, allowing Consolidated Edison Company of New York, Inc. to implement a small business Direct Load Control Pilot Program.

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

Subject: Direct Load Control Pilot Program.

Purpose: To offer small business customers in Brooklyn and Queens direct load control technology for central air conditioning.

Substance of final rule: The Commission approved, with modification, a petition by Consolidated Edison Company of New York, Inc. to implement a pilot program to provide small business customers in Brooklyn and Queens with direct load control technology for central air conditioning.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(00-E-2054SA31)

NOTICE OF ADOPTION

Refunded Over-Charges for Imported Power by the Village of Freeport

I.D. No. PSC-40-03-00011-A
Filing date: Dec. 19, 2003
Effective date: Dec. 19, 2003

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

Action taken: The commission, on Dec. 17, 2003, adopted an order in Case 03-E-1289, directing the Village of Freeport Electric Department to use a portion of a New York Power Authority refund to pay interest expenses.

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

Subject: Allocation of a refund.

Purpose: To determine allocation of a $4 million settlement.

Substance of final rule: The Commission authorized the Village of Freeport Electric Department to use $496,604 of the New York Power Authority (NYPA) refund proceeds to pay interest due on its Bond Anticipation Notes and allowed the Village of Freeport Electric Department to recover $163,799 of litigation costs incurred in connection with the NYPA refund, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-1289SA1)

NOTICE OF ADOPTION

Alleged Violation of the Public Service Law by Champlain Telephone Company

I.D. No. PSC-41-03-00006-A
Filing date: Dec. 22, 2003
Effective date: Dec. 22, 2003

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

Action taken: The commission, on Dec. 17, 2002, adopted an Order, in Case 94-C-0095, requiring Champlain Telephone Company's (Champlain) to comply with the Public Service Law, sections 107 section 110.

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

Subject: Violation of the Public Service Law sections 107 and 110.

Purpose: To bring Champlain into compliance with certain Public Service Law provisions.

Substance of final rule: The Commission directed Champlain Telephone Company to comply with Commission rules and regulations regarding cost allocation and other matters relating to the continuing provision of Universal Service, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(94-C-0095SA25)

NOTICE OF ADOPTION

Economic Development by Consolidated Edison Company of New York, Inc.

I.D. No. PSCA-41-03-00009-A
Filing date: Dec. 17, 2003
Effective date: Dec. 17, 2003

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

Action taken: The commission, adopted on Dec. 17, 2003, in Case 03-E-1378, revisions to Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff schedules, P.S.C. No. 9—Electricity, EDDS No. 2 and PASNY No. 4.

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

Subject: Modifications to Con Edison's economic development program.

Purpose: To allow the addition of a new service classification No. 15-RA to Con Edison's P.S.C. No. 2—retail access schedule.

Substance of final rule: The Commission authorized Consolidated Edison Company of New York, Inc. to implement additional economic development service to government agencies and to make modifications in the Minimum Monthly Charge and Rider Y High Load Density Service.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-1378SA1)

NOTICE OF ADOPTION

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

I.D. No. PSC-42-03-00012-A
Filing date: Dec. 19, 2003
Effective date: Dec. 19, 2003

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

Action taken: The commission, on Dec. 17, 2003, adopted an order in Case 03-M-1403, allowing National Grid Communications, Inc. to attach wireless facilities on Niagara Mohawk Power Corporation's transmission facilities.

Statutory authority: Public Service Law, section 70

Subject: Attachment of wireless facilities.

Purpose: To provide safe and reliable electric service.

Substance of final rule: The Commission approved the joint petition of Niagara Mohawk Power Corporation (Niagara Mohawk) and National Grid Communications, Inc. (Gridcom) authorizing GridCom to connect wireless attachments owned by AT&T Wireless PCS, LLC on Niagara Mohawk's transmission facilities in the Town of DeWitt, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-M-1403SA1)

NOTICE OF ADOPTION

Gas Manufacturing Incentive Rate by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-43-03-00035-A
Filing date: Dec. 17, 2003
Effective date: Dec. 17, 2003

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

Action taken: The commission, adopted on Dec. 17, 2003, in Case 03-G-1461, amendments to Consolidated Edison Company of New York, Inc.'s (Con Edison) schedule for gas service—P.S.C. No. 9.

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

Subject: Revisions to tariff schedule.

Purpose: To establish a gas manufacturing incentive rate for non-governmental manufacturing customers.

Substance of final rule: The Commission authorized Consolidated Edison Company of New York, Inc. to implement a new Rider 1 - Gas Manufacturing Incentive Rate in gas tariff schedule P.S.C. No. 9, which will be applicable to non-governmental manufacturing customers either taking service or eligible to take service under its S.C. No. 2 - General Firm Sales Service and S.C. No. 9 - Transportation Service.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-G-1461SA1)

NOTICE OF ADOPTION

Transfer of Assets by Brettview Water Co., Inc.

I.D. No. PSC-43-03-00042-A
Filing date: Dec. 23, 2003
Effective date: Dec. 23, 2003

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

Action taken: The commission, on Dec. 17, 2003, adopted an order in Case 03-W-1456, approving the transfer of Brettview Water Co., Inc.'s (Brettview) water supply assets to the Town of East Fishkill (Town).

Statutory authority: Public Service Law, section 89-f

Subject: Transfer of water assets.

Purpose: To approve the transfer of assets from Brettview Water Co., Inc. to the Town of East Fishkill.

Substance of final rule: The Commission approved a joint petition of Brettview Water Co., Inc. (Brettview) and the Town of East Fishkill (Town) authorizing the transfer of all Brettview's water supply assets to the Town, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-W-1456SA1)

Office of Temporary and Disability Assistance

NOTICE OF CONTINUATION
NO HEARING(S) SCHEDULED

Eligibility of Refugees, Asylees and Aliens for Public Assistance

I.D. No. TDA-28-03-00008-C

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

The notice of proposed rule making, I.D. No. TDA-28-03-00008-P was published in the *State Register* on July 16, 2003.

Subject: Eligibility of refugees, asylees and aliens for public assistance.

Purpose: To implement changes to the public assistance eligibility requirements.

Substance of rule: The changes to 18 NYCRR 349.3 relating to citizenship and alien status, and 18 NYCRR 352.33 relating to deeming of a sponsor's income and resources, are required in order to implement provisions in Chapter 214 of the Laws of 1998. That Chapter contains technical corrections to the Welfare Reform Act of 1997. The changes incorporate federal clarification of: (i) the definition of Cuban and Haitian parolees; (ii) qualifying quarters of work to enable an alien to receive certain forms of assistance; (iii) veteran status; (iv) residency and time requirements for "qualified aliens"; and (v) the meaning of the term "unlawfully present" with respect to reporting aliens to the Immigration and Naturalization Service (INS). The proposed amendments also increase from five years to seven years the period that certain "special qualified aliens" are entitled to public assistance. The proposed amendments also delete provisions that bar certain aliens and refugees from receiving food stamps.

The proposed regulations also are consistent with federal policy clarifications concerning eligibility of aliens for public assistance, food stamp program rules and the resource policy changes that were made necessary as a result of the Welfare Reform Act of 1997.

Changes to rule: No substantive changes.
Expiration date: July 15, 2004.
Text of proposed rule and changes, if any, may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573
Data, views or arguments may be submitted to: Same as above.