

# 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.)

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

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## Office of Children and Family Services

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### EMERGENCY RULE MAKING

#### Protection of Children in Residential Facilities from Child Abuse and Neglect

**I.D. No.** CFS-31-09-00002-E

**Filing No.** 822

**Filing Date:** 2009-07-16

**Effective Date:** 2009-07-16

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

**Action taken:** Amendment of Parts 166, 180 and 182 of Title 9 NYCRR; and amendment of Parts 433 and 434 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d) and 34(3)(f); and L. 2008, ch. 23, section 19

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

**Specific reasons underlying the finding of necessity:** The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of children in residential care by implementing the provisions of Chapter 323 of the Laws of 2008, which relates to the protection of children in residential facilities from child abuse and neglect.

**Subject:** The protection of children in residential facilities from child abuse and neglect.

**Purpose:** To implement chapter 323 of the Laws of 2008.

**Substance of emergency rule:** Part 433 of Title 18 (Child Abuse and Neglect in Residential Care)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates the scope statement to include the statutory changes and implements the updated statutory definitions. The amendment also updates the obligations and procedures of the Office of Children and Family Services (OCFS), authorized agencies and residential care facilities in conformance with the statutory changes and updates outdated references to the former Department of Social Services.

Sections 434.1, 434.2, and 434.10 of Title 18 (Child Protective Services Administrative Hearing Procedure)

The amendment implements statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard. The amendment also updates outdated references to the former Department of Social Services.

Section 166-1.4 of Title 9 (Prevention and Remediation Procedures)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in OCFS-operated residential facilities in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 180.3 and 180.5 of Title 9 (Juvenile Detention Facilities Regulations)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in juvenile detention facilities in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 182-1.2 and 182-1.12 of Title 9 (Runaway and Homeless Youth Regulations for Approved Runaway Programs)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in runaway and homeless youth programs in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 182-2.2 and 182-2.11 of Title 9 (Runaway and Homeless Youth Regulations for Transitional Independent Living Support Programs)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in runaway and homeless youth programs in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

**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 October 13, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793

#### Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out its powers and duties.

Section 34(3)(f) of the SSL authorizes the commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State, both by the State and by local government units.

Chapter 436 of the Laws of 1997 transferred certain functions, powers,

duties and obligations of the former Department of Social Services and all of the functions, powers, duties and obligations of the former Division for Youth to OCFS.

Chapter 323 of the Laws of 2008 amended sections 412, 413, 415, 422, 424-a, 424-b, 424-c and 460-c of the SSL and created sections 412-a and 424-d of the SSL to clarify the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. Section 19 of Chapter 323 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provisions of the Chapter.

2. Legislative objectives:

The regulations implement Chapter 323 of the Laws of 2008 relating to the protection of children in residential facilities from child abuse and neglect. Specifically, the regulations implement the updated statutory definitions and requirements for additional determinations relating to reports of child abuse and maltreatment in residential settings that were enacted in the new sections 412-a and 424-d of the SSL. For example, residential care now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS.

The regulations also implement statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard. In addition, the regulations make technical changes, such as updating outdated references to the former Department of Social Services and the former Division for Youth.

3. Needs and benefits:

The regulations are necessary for OCFS to conform to statutory changes to the SSL relating to the protection of children in residential facilities from child abuse and neglect. Specifically, the regulations clarify and update the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. For example, residential care now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS. Additionally, the statute and regulations require an immediate law enforcement referral in the event that an investigation reveals that it is likely that a crime may have been committed against a child.

The regulations are also necessary to conform the regulations to the statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard.

The regulations will not apply to incidents that occur before January 17, 2009, which is the effective date of the statutory changes.

4. Costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

5. Local government mandates:

For local governments that operate residential facilities for children, the regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

6. Paperwork:

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

The proposed regulations are required to implement the state law, Chapter 323 of the Laws of 2008. No alternatives were considered.

9. Federal standards:

The regulations and Chapter 323 of the Laws of 2008 are consistent with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA), which does not have special requirements pertaining to children in residential care.

10. Compliance schedule:

Chapter 323 of the Laws of 2008 provides for a January 17, 2009 effective date of the changes set forth in the regulations. For purposes of transition between the former statutory and regulatory provisions and the new law, the effective date will apply to the date when the abuse or neglect was alleged to have occurred. If a report came in on or after January 17, 2009 that involves an incident or incidents that occurred before January 17, 2009, the former definitions of abuse and neglect of children in residential care will apply.

**Regulatory Flexibility Analysis**

1. Effect on small business and local governments:

The regulations will affect social services districts, voluntary authorized agencies, residential runaway and homeless youth programs and counties that contract for detention programs. There are 58 social services districts, approximately 160 voluntary authorized agencies and 83 residential runaway and homeless youth programs. There are 38 counties plus New York City that contract for detention programs.

2. Reporting, recordkeeping and compliance requirements:

The regulations are necessary to comply with state statutory requirements relating to the protection of children in residential facilities from child abuse and neglect. The regulations reflect the enactment of Chapter 323 of the Laws of 2008, which requires implementation of the statutory changes to be effective January 17, 2009.

Social services districts and voluntary authorized agencies will continue to operate under the current definitions and determination standards for incidents that occurred before January 17, 2009. The regulations reflect the statutory clarification of the definitions of abuse and neglect of a child in residential care and the process used to investigate and respond to such allegations.

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

3. Professional services:

No new or additional professional services would be required by small businesses or local governments in order to comply with the regulations.

4. Compliance costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

5. Economic and technological feasibility:

The social services districts, counties, voluntary authorized agencies and other agencies affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impact. The regulations build on existing procedures.

7. Small business and local government participation:

The regulatory changes make the changes necessary to conform the regulations to the statutory changes made by Chapter 323. In December of 2008, OCFS conducted six regional trainings for voluntary authorized agencies and facilities licensed by OCFS, OMRDD and OMH regarding the changes in state statutory provisions relating to the protection of children in residential facilities from child abuse and neglect. A statewide teleconference was held in November of 2008 regarding the changes in law and that training was recorded so that the training is available to all agencies that were not able to attend one of the regional trainings. A reminder of the statutory changes will be sent to the voluntary agencies in an informational letter in January 2009.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The regulations will affect 44 social services districts that are defined as being rural counties and the seven social services districts that include significant rural areas within their borders. In addition, there are approximately 100 voluntary authorized agencies that service rural communities that will be affected by the regulations.

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

The regulations are necessary to comply with state statutory requirements relating to the protection of children in residential facilities from child abuse and neglect. The regulations reflect the enactment of Chapter 323 of the Laws of 2008, which requires implementation of the statutory changes to be effective January 17, 2009.

Social services districts and voluntary authorized agencies will continue to operate under the current definitions and determination standards for incidents that occurred before January 17, 2009. The regulations reflect the statutory clarification of the definitions of abuse and neglect of a child in residential care and the process used to investigate and respond to such allegations.

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

3. Costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

4. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impact on rural areas. The regulations build on existing procedures.

5. Rural area participation:

The regulatory changes make the changes necessary to conform the regulations to the statutory changes made by Chapter 323. In December 2008, OCFS conducted six regional trainings for voluntary authorized agencies and facilities licensed by OCFS, OMRDD and OMH regarding the changes in state statutory provisions relating to the protection of children in residential facilities from child abuse and neglect. A Statewide teleconference was held in November of 2008 regarding the changes in law and that training was recorded so that the training is available to all agencies that were not able to attend one of the regional trainings. A reminder of the statutory changes will be sent to the voluntary agencies in an informational letter in January 2009.

**Job Impact Statement**

A full job impact statement has not been prepared for the regulations which contain new requirements imposed by Chapter 323 of the Laws of 2008. The regulations will not have an impact on jobs and employment opportunities because they will not adversely impact the number of staff authorized agencies must maintain to provide residential care for children.

(e) Notice shall be conspicuously posted by, on, or proximate to any device or system utilized pursuant to subdivision (b) of this section, advising members of the public:

(1) the amount of any service fee associated therewith;

(2) that acceptable funds mailed to an inmate in correspondence or a package will be deposited into the intended inmate's institutional fund account without the imposition of a service fee;

(3) facility policy regarding the acceptance of cash, checks, money orders, and other instruments of payment; and

(4) any other facility rule or regulation concerning inmate account deposits which, in the opinion of the chief administrative officer, should be so conveyed to the public.

**Text of proposed rule and any required statements and analyses may be obtained from:** Brian M. Callahan, New York State Commission of Correction, 80 Wolf Road, 4th Floor, Albany, New York 12205, (518) 485-2346, email: Brian.Callahan@scoc.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:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission of Correction to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional facilities in New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties. Finally, subdivision (7) of Correction Law § 500-c references "written procedures established by the commission" with regard to the receipt of prisoner funds by a sheriff.

2.) Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to set minimum standards regarding various aspects of inmate care and custody in local correctional facilities, including the maintenance of inmate institutional accounts.

3.) Needs and benefits:

Recently, the Commission has encountered, through inmate grievances and inquiries from facility administrators, a novel issue concerning inmate institutional accounts. Specifically, it appears that several county correctional facilities have contracted for the use of an electronic "kiosk." Operating similarly to an automated teller machine (ATM), the sole function of such kiosk is to accept deposits into a specified inmate's institutional account, a portion of which is often deducted to satisfy a "service fee" paid to the machine's owner and operator. Both the inmate grievances and inquiries concerned the propriety of such a fee. Current Commission regulations require only that an inmate's institutional account be supplemented by funds confiscated upon admission [9 NYCRR § 7002.4(f)], contained in incoming correspondence [9 NYCRR § 7004.6(b)(4)] or included in an incoming prisoner package [9 NYCRR § 7025.4(c)].

In 2001, Correction Law section 500-c and other statutes were amended to enhance New York State's "Son of Sam Law" (L.2001, c.62). Taken as a whole, such statutes allow a crime victim to seek legal redress from a convicted perpetrator and, upon successful conclusion, allow the victim to access money and property obtained by the criminal from any source. With specific regard to Correction Law § 500-c, a new subdivision (7) was added to require a sheriff (or commissioner) to maintain an institutional fund account on behalf of every prisoner and "for the benefit of the person make deposits into said accounts of any prisoner funds."

Correction Law § 500-c(7) goes on to define "prisoner funds" as funds in the prisoner's possession upon admission, an inmate's earnings while incarcerated, or "any other funds received by or on behalf of the prisoner and deposited with such sheriff or municipal official in accordance with the written procedures established by the [Commission of Correction]." Current Commission regulations only provide for deposits into an inmate's institutional account of all funds confiscated upon admission [9 NYCRR § 7002.4(f)], contained in incoming correspondence [9 NYCRR § 7004.6(b)(4)] or included in an incoming prisoner package [9 NYCRR § 7025.4(c)].

When funds are deposited using a kiosk or similar device, it seems evident that such funds are "received ... on behalf of the prisoner and deposited with such sheriff or municipal official." Thus constituting "prisoner funds" as defined in Correction Law § 500-c(7), it would appear that, absent Commission regulation to the contrary, the statute requires the entire amount to be deposited into the inmate's institutional account, and the deduction of any sum to satisfy a service fee would violate such obligation. For such reason, inmate grievances relating to the imposition of a fee have been upheld and the Commission has advised administra-

**State Commission of Correction**

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

**Inmate Institutional Fund Accounts**

**I.D. No.** CMC-31-09-00005-P

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

**Proposed Action:** Amendment of Part 7016 of Title 9 NYCRR.

**Statutory authority:** Correction Law, section 45(6) and (15)

**Subject:** Inmate institutional fund accounts.

**Purpose:** To allow for automated and electronic deposits to inmate institutional fund accounts in county correctional facilities.

**Text of proposed rule:** The title of Part 7016 of Title 9 is amended to read as follows:

**PART 7016. COMMISSARY AND INMATE ACCOUNTS**

A new section 7016.2 of Title 9 is added to read as follows:

§ 7016.2 Inmate accounts.

(a) As required by subdivision (7) of section 500-c of the Correction Law, an institutional fund account shall be maintained on behalf of every inmate, and deposits shall be made into such accounts of any prisoner funds received.

(b) For the purpose of receiving prisoner funds, the sheriff or chief administrative officer may utilize, or cause to be utilized, electronic kiosks, automated teller machines, or other similar devices or systems capable of allowing members of the public to deposit funds into an inmate's institutional fund account. Members of the public depositing prisoner funds in such a manner may be charged a service fee not to exceed five (\$5.00) dollars per transaction.

(c) Devices and systems utilized pursuant to subdivision (b) of this section shall comply with all applicable laws, codes, rules and regulations, including the New York State Banking Law and the rules and regulations of the New York State Banking Department.

(d) Nothing contained in this section shall otherwise relieve a facility of the requirement to receive and deposit prisoner funds, without imposition of a service fee, pursuant to sections 7002.4(f), 7004.6(b)(4) and 7025.4(c) of this Title.

tors of county correctional facilities to forgo imposing such fees until reconciliatory regulations may be adopted.

The Commission recognizes that there are inherent efficiencies related to the use of such devices, including decreased burden on staff to accept and account for such deposits, the elimination of potential issues related to the acceptance of cash by officers, the ability for the public to use debit and credit cards, and a more expedient verification and availability of such funds.

To provide such efficiencies and to recoup costs associated with the operation and maintenance of such devices, whether by the county or a contracted vendor, the Commission finds it reasonable to charge the public a nominal fee per transaction, not to exceed five (\$5.00) dollars. The limit was determined following an informal inquiry into the arrangements both proposed and agreed to between vendors and various counties throughout the State. It should be noted that nothing in the Commission's Minimum Standards and Regulations for Management of County jails and Penitentiaries requires a county correctional facility to employ the use of such an electronic kiosk, nor even accept funds from members of the public visiting the jail. Further, should a county elect to provide an electronic kiosk, it does not dispense the facility regulatory obligation to make deposits into an inmate's institutional account, at no cost to the inmate or depositor, of all funds confiscated upon admission [9 NYCRR § 7002.4(f)], contained in incoming correspondence [9 NYCRR § 7004.6(b)(4)] or included in an incoming prisoner package [9 NYCRR § 7025.4(c)]. As set forth in the proposed regulation, notice of the alternative means of deposit, together with the applicable fees charged, must be conspicuously posted by, on, or proximate to any device or system utilized for the purpose of depositing inmate funds.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The regulation allows for, but does not require, the use of electronic kiosks, automated teller machines, or other similar devices to allow members of the public to deposit funds into an inmate's institutional fund account.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), there will be no additional costs to local governments.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a county correctional facility.

5.) Local government mandates:

None.

6.) Paperwork:

This rule does not require any additional paperwork on regulated parties.

7.) Duplication:

This rule does not duplicate any existing State or Federal requirement.

8.) Alternatives:

The alternative, maintaining the current regulations relative to the handling of inmate funds, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that the absence of regulation allowing electronic or automated inmate account deposits prohibited such practice where a nominal service fee is incurred. Given the inherent efficiencies and convenience associated with such use, the Commission finds the same to be beneficial to both the facility and the inmate population.

In developing the regulation, the Commission sought input from the Counsel's Office of the New York State Sheriff's Association, a not-for-profit corporation comprised of all of the elected and appointed Sheriffs of New York State, formed in 1934 for the purpose of assisting Sheriffs in the efficient and effective delivery of Sheriffs' services to the public. Recognizing the inherent efficiencies and convenience associated with the use of such systems, there was minor dissent regarding the five dollar service fee limit proposed. While one member felt the limit was too low and should be tied to prevailing ATM rates, another member opined the limit to be excessive and would undermine counties trying to bargain a lower rate from vendors. Despite such minor dissent, the leadership of the Association indicated that that it would have no objection to the regulation as written.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

Each county correctional facility is expected to be able to achieve compliance with the proposed rule immediately.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses

or local governments. The proposed rule seeks only to allow for automated and electronic deposits to inmate institutional fund accounts in county correctional facilities. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to allow for automated and electronic deposits to inmate institutional fund accounts in county correctional facilities. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional recordkeeping, reporting, or other compliance requirements on private or public entities in rural areas.

**Job Impact Statement**

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to allow for automated and electronic deposits to inmate institutional fund accounts in county correctional facilities. As such, there will be no impact on jobs and employment opportunities.

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## Education Department

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### EMERGENCY RULE MAKING

**Museum Collections Management Policies**

**I.D. No.** EDU-01-09-00004-E

**Filing No.** 828

**Filing Date:** 2009-07-17

**Effective Date:** 2009-07-17

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

**Action taken:** Amendment of section 3.27 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided), 217(not subdivided), 233-aa(1), (2) and (5); and L. 2008, ch. 220

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(1) the item or material is not relevant to the mission of the institution;  
(2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections. The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a chartered museum or historical society by immediately clarifying the limited circumstances under which an item or material in a collection may be deaccessioned, in order to deter institutions in financial distress in the current fiscal crisis from selling or otherwise disposing of collection items and materials, in a manner inconsistent with accepted museological standards and State law, such as using the proceeds from the deaccessioning for payment of outstanding debt or operating expenses, and to prospectively limit the ability of museums and historical societies to designate a historic building as a collection item, so that institutions in financial distress will not make such designation for the purpose of justifying the sale of other items in their collections in order to pay capital expenses associated with the building.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting, and readopted as an emergency rule at the March, April and June 2009 Regents meetings. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009.

State Education Department staff have worked with the Legislature and with museum constituents to develop revised standards for museum deaccessioning that have been incorporated into recently introduced legislation (A.6959) applicable to all museums. Now that legislation has been introduced, further revisions to the proposed rule are necessary to conform to the legislation. Pursuant to the State Administrative Procedure Act, a revised rule cannot be permanently adopted until after publication of a Notice of Revised Rule Making and expiration of a 30-day public comment period. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for permanent adoption, after publication of the Notice and expiration of the 30-day public comment period, would be the September 14-15, 2009 Regents meeting. However, the emergency rule adopted at the April Regents meeting is only effective for 60 days and will expire on July 16, before the September 2009 Regents meeting. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, a fourth emergency action is necessary at the June Regents meeting to readopt the rule, effective July 17, 2009.

It is anticipated that the proposed revised rule will be presented for permanent adoption at the September 14-15, 2009 Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed for revised rule makings in the State Administrative Procedure Act.

**Subject:** Museum collections management policies.

**Purpose:** To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

**Text of emergency rule:**

1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective July 17, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed September 14, 2009:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the institution by vote conducted on or before December 19, 2008*;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective July 17, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed September 14, 2009:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, *including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision*;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision*, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, *for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section*, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

(i) *the item or material is not relevant to the mission of the institution;*

(ii) *the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;*

(iii) *the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or*

(iv) *the institution is unable to conserve the item or material in a responsible manner.*

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-01-09-00004-EP, Issue of January 7, 2009. The emergency rule will expire September 14, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Chris Moore, Office of Counsel, State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

**Regulatory Impact Statement**

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the Chief Administrative Officer of the Department, which is charged with the general management and supervision of all public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 215 authorizes the Regents, the Commissioner,

or their representatives, to visit, examine and inspect education corporations and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 216 authorizes the Board of Regents to incorporate educational institutions, including museums and other institutions for the promotion of science, literature, art, history or other department of knowledge, with such powers, privileges and duties, and subject to such limitations and restrictions, as they Regents may prescribe.

Education Law section 217 empowers the Board of Regents to grant a provisional charter to an institution, which shall be replaced by an absolute charter when the conditions for such absolute charter have been fully met.

Education Law section 233-aa, as added by Chapter 220 of the Laws of 2008, enacts provisions governing the ownership and management of properties owned by or lent to museums, requires that the acquisition of property by a museum pursuant to section 233-aa must be consistent with the mission of the museum, and specifies that proceeds derived from the sale of any property title to which was acquired by a museum pursuant to section 233-aa shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.

## 2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by clarifying criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

## 3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

## 4. COSTS:

- (a) Costs to the State: None.
- (b) Costs to local governments: None.
- (c) Costs to private, regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

## 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to museums and historical societies with collections chartered by the Board of Regents, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

## 6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds,

and does not impose any additional paperwork requirements on such institutions.

## 7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

## 8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment and none were considered.

## 9. FEDERAL STANDARDS:

There are no applicable federal standards regarding the chartering and registration of museums and historical societies by the Board of Regents.

## 10. COMPLIANCE SCHEDULE:

The proposed amendment clarifies criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

## *Regulatory Flexibility Analysis*

The proposed amendment applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

## *Rural Area Flexibility Analysis*

### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum chartering database as of November 2008), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

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

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

The proposed amendment does not impose any additional professional services requirements.

### 3. COMPLIANCE COSTS:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. The proposed amendment clarifies restrictions on

when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities, and does not impose any additional compliance requirements or costs on such institutions. Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to museum and historical society collections management, it is not feasible to impose a lesser standard on, or otherwise exempt, institutions located in rural areas.

#### 5. RURAL AREA PARTICIPATION:

The State Education Department consulted with the Museum Association of New York in the development of the proposed amendment.

In addition, the Department asked its museum and historical society constituents to comment on the proposed amendment through announcements on web sites, and copies sent to listservs and electronic mailing lists. All areas of the state, including rural areas, received the announcements.

#### **Job Impact Statement**

The proposed amendment applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### **Assessment of Public Comment**

The agency received no public comment since publication of the last assessment of public comment.

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## State Board of Elections

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### EMERGENCY RULE MAKING

#### Voting Systems Standards Amendment to Remove Under Vote Notification by Ballot Counting Scanner

**I.D. No.** SBE-31-09-00014-E

**Filing No.** 860

**Filing Date:** 2009-07-21

**Effective Date:** 2009-07-21

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

**Action taken:** Amendment of section 6209.2(a)(8) of Title 9 NYCRR.

**Statutory authority:** Election Law, sections 3-102, 7-201, 7-202, 7-203 and 7-204

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

**Specific reasons underlying the finding of necessity:** The Commissioners determined that it is necessary for the preservation of the 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. This amendment is adopted as an emergency measure because time is of the essence and to adopt the regulation in the normal course of business would be contrary to the public interest as a necessary change in the agency's regulations would not be effective for the upcoming September 15th Primary Election. The agency is under an Order of the United States District Court for the Northern District of New York in *United States of America v. State of New York et al* (06-cv-263) to implement the Help America Vote Act across the state in a Pilot Program wherein numerous counties are using optical scan voting systems in the September Primary and November General Election in 2009. The current regulation, 9 NYCRR § 6209.2(a)(8), would create serious violations of a voter's constitutional and statutory right to privacy in casting his/her vote in that it would be obvious that the voter chose not to vote in all races upon the ballot; would create delays in the voting process as the system must communicate the fact of the undervote to the voter and the voter must deal with the initial rejection of the voter's choice not to vote all races upon the ballot. In some areas of the state, Primary and Election Day are already days of long lines for voters without the unnecessary and intrusive delay the undervote notification feature would occasion, which notification is not required by any state or

federal statute. Currently only Illinois requires a notice of undervote of its voting systems.

As these issues became apparent, staff from the State Board of Elections discussed this problem with the various County Boards of Elections at the June, 2009 Elections Commissioners Association Conference. County BOE Commissioners unanimously requested that the regulation be changed to eliminate this requirement.

There is no more important function in a democracy than the act of voting and as New York moves to a new system of voting, that system of voting should not be impaired by suspect regulations which violate a voter's constitutional right to privacy when voting. If this regulation is not amended the general welfare will be seriously impaired in that voting access and privacy will be impaired. The delays and lack of privacy which this emergency regulatory amendment address can not be resolved in time for the September 15th Primary and the vendors of the new election system must know whether their final firmware and software builds should or should not include an undervote notification. Delays in implementing the new regulation will put compliance with the Court Ordered Pilot Project in jeopardy as the vendors and the counties will not have sufficient time to implement systems without the undervote notification feature and the only alternative is to conduct an election with a constitutionally suspect feature which impedes voter privacy and access to the polls.

**Subject:** Voting Systems Standards amendment to remove under vote notification by ballot counting scanner.

**Purpose:** To ensure that voters have the right to a private vote and that voting will not be unduly delayed by unnecessary requirements.

**Text of emergency rule:** (8) In a DRE voting system, the system must prevent voters from overvoting and indicate to the voter specific contests or ballot issues for which no selection or an insufficient number of selections has been made. *A ballot marking device must prevent voters from overvoting and indicate to the voter specific contests or ballot issues for which no selection or an insufficient number of selections has been made.* [In a paper-based voting system, the system] *A ballot counting scanner must indicate to the voter specific contests or ballot issues for which an overvote [or undervote] is detected.*

**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 October 18, 2009

**Text of rule and any required statements and analyses may be obtained from:** Paul M. Collins, Esq, State Board of Elections, 40 Steuben Street, Albany, New York 12207, (518) 473-5088, email: pcollins@elections.state.ny.us

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

Election Law Section 3-102(1) provides for the State Board to promulgate rules and regulations relating to the administration of the election process; and Section 7-201(3) provides for the examination of voting systems to determine if they are safe for use in elections; and, if found not to be safe, a process is provided to rescind the approval to use such voting machine or system; Section 7-202(3) provides that the State Board of elections may establish, by regulation, additional standards for voting machines or systems. Section 7-203(2) authorizes the State Board of Elections to establish the minimum number of voting machines required at each polling place. This is necessary to ensure that the voting equipment used in New York State is safe, secure, reliable and will accurately record the votes cast on them in the elections in which they are used.

##### 2. Legislative Objectives:

The Election Reform and Modernization Act of 2005 (Chapter 181 of the Laws of 2005), enacted a HAVA-required overvote notification requirement and authorized the State Board of Elections to implement that legislation. In implementing that legislation, the State Board of Elections also included an undervote notification not required by either federal or state statute. Upon subsequent reflection, the State Board of Elections has determined that the undervote notification regulation set forth in 9 NYCRR 6209.2(a)(8) is not statutorily authorized, will result in long lines at polling places and violates a voter's constitutional and statutory right to cast a vote in private.

##### 3. Needs and Benefits:

The Commissioners further determined that it is necessary for the preservation of the 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. This amendment is adopted as an emergency measure because time is of the essence. The agency is under an Order of the United States District Court for the Northern District of New York in *United States of America v. State of New York et al* (06-cv-263) to implement the Help America Vote Act across the state in a Pilot Program wherein numerous counties are using optical scan voting systems in the September Pri-

mary and November General Election in 2009. The current regulation, 9 NYCRR § 6209.2(a)(8), would create serious violations of a voter's constitutional and statutory right to privacy in casting his/her vote in that it would be obvious that the voter chose not to vote in every race on the ballot; would create delays in the voting process as the system must communicate the fact of the undervote to the voter and the voter must deal with the initial rejection of the voter's choice not to vote all races upon the ballot. In some areas of the state, Primary and Election Day are already days of long lines for voters without the unnecessary and intrusive delay the undervote notification feature would occasion, which notification is not required by any state or federal statute. Currently only Illinois requires a notice of undervote of its voting systems.

As these issues became apparent, staff from the State Board of Elections discussed this problem with the various County Boards of Elections Commissioners at the June, 2009 Elections Commissioners Association Conference. County BOE Commissioners unanimously requested that the regulation be changed to eliminate this requirement.

There is no more important function in a democracy than the act of voting, and as New York moves to a new system of voting, that system of voting should not be impaired by suspect regulations which violate voters' constitutional right to privacy when voting.

#### 4. Costs:

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for county board of election commissioners and designated staff members, and to provide ongoing compliance supervision. The adoption of this regulation on an emergency basis will minimize any increased costs for both the State Board of Elections and the various counties participating in the Fall 2009 Pilot Program as most counties have not as yet begun final training of inspectors for the Fall 2009 Pilot Program and this regulatory change will simply mean one less item that the inspectors will be called upon to explain to the voters as the notice of under vote feature will not be generated by ballot scanning devices.

#### 5. Local Governmental Mandates:

The new emergency regulation creates uniform procedures that county boards of elections are mandated to follow pursuant to Election Law and these rules.

The change will simplify what the counties are called upon to implement by removing the under vote notification requirement for ballot scanning devices in the change from lever to HAVA compliant machines for the 2009 Fall Pilot Program.

#### 6. Paperwork:

The emergency regulation will not alter the paperwork burden upon the counties as established in the Election Law and other portions of 9 NYCRR Part 6209.

#### 7. Duplication:

This regulatory change does not duplicate or overlap with any other federal or state regulations and in fact simplifies existing requirements.

#### 8. Alternatives:

An alternative that was considered was make this change applicable to all election system equipment but it became apparent, after consulting with disability advocates, that there was still a need to maintain the existing requirement of under vote notification with respect to Ballot Marking Devices so those devices were exempted from the rule change. At the present time there are no DRE voting systems under certification review so the portions of the former regulation pertaining to DREs were not changed in this emergency regulation.

#### 9. Federal Standards:

There are no mandatory federal standards pertaining to undervote notification.

#### 10. Compliance Schedules:

Compliance can be achieved in conjunction with the first election conducted by the county board of elections immediately after adoption. The State Board of Elections is currently formulating and developing instructional tools and a training schedule for county board commissioners and their staff.

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

There are 58 local boards of elections which must meet these requirements. This does not have any effect on small businesses.

#### 2. Compliance Requirements:

County boards of elections and/or their election system vendors are required to remove or otherwise disable, in a manner prescribed by the State Board of Elections, the undervote notification feature of their ballot scanning equipment pursuant to this emergency regulation.

These regulations do not have any impact on small businesses.

#### 3. Professional Services:

The county boards of elections and/or their designated staff or their election system vendors will be able to remove or otherwise disable the undervote notification on ballot scanning equipment to implement this emergency regulation.

#### 4. Compliance Costs:

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for county board of election commissioners and designated staff members, and to provide ongoing compliance supervision. The adoption of this regulation on an emergency basis will minimize any increased costs for both the State Board of Elections and the various counties participating in the Fall 2009 Pilot Program as most counties have not as yet begun final training of inspectors for the Fall 2009 Pilot Program and this regulatory change will simply mean one less item that the inspectors will be called upon to explain to the voters as a notice of under vote will not be generated by ballot scanning devices.

#### 5. Economic and Technological Feasibility:

It is anticipated that no new or advanced technology is required to remove or disable the under vote notification by ballot scanning devices to implement this emergency regulation.

As such, the regulation will not be cost prohibitive.

#### 6. Minimizing Adverse Effect:

The Commissioners further determined that it is necessary for the preservation of the 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. This amendment is adopted as an emergency measure because time is of the essence. The agency is under an Order of the United States District Court for the Northern District of New York in United States of America v. State of New York et al (06-cv-263) to implement the Help America Vote Act across the state in a Pilot Program wherein numerous counties are using optical scan voting systems in the September Primary and November General Election in 2009. The current regulation, 9 NYCRR § 6209.2(a)(8), would create serious violations of a voter's constitutional and statutory right to privacy in casting his/her vote in that it would be obvious that the voter chose not to vote in all races upon the ballot; would create delays in the voting process as the system must deal with the initial rejection of the voter's choice not to vote all races upon the ballot. In some areas of the state, Primary and Election Day are already days of long lines for voters without the unnecessary and intrusive delay the undervote notification feature would occasion, which notification is not required by any state or federal statute. Currently only Illinois requires a notice of undervote of its voting systems.

An alternative that was considered was to make this change applicable to all election system equipment but it became apparent, after consulting with disability advocates, that there was still a need to maintain the existing requirement of undervote notification with respect to Ballot Marking Devices so those devices were exempted from the rule change. At the present time, there are no DRE voting systems under certification review so the portions of the former regulation pertaining to DREs was not changed in this emergency regulation.

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

As these issues became apparent, staff of the State Board of Elections discussed this problem with the various County Boards of Elections at the June, 2009 Elections Commissioners Association Conference. County BOE Commissioners unanimously requested that the regulation be changed to eliminate this requirement.

### **Rural Area Flexibility Analysis**

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

There are 44 county boards of elections from counties which meet the definition of 'rural areas' as defined in the Executive Law § 481(7).

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

The statutory and regulatory requirement to remove the undervote notification by ballot scanning devices by county boards of elections from jurisdiction(s) in rural areas of this state will be governed by this emergency regulation consistent with uniform statewide standards.

It is anticipated that such county boards of elections and/or their designated staff or their election system vendors will be able to easily implement the requirements of this regulation.

#### 3. Costs:

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for county board of election commissioners and designated staff members, and to provide ongoing compliance supervision. The adoption of this regulation on an emergency basis will minimize any increased costs for both the State Board of Elections and the various counties participating in the Fall 2009 Pilot Program as most counties have not as yet begun final training of inspectors for the Fall 2009 Pilot Program and this regulatory change will simply mean one less item that the inspectors will be called upon to explain to the voters as notice of under vote will not be generated by ballot scanning devices.

#### 4. Minimizing adverse impact:

An alternative that was considered was making this change applicable to all election system equipment but it became apparent, after consulting with disability advocates, that there was still a need to maintain the existing requirement of under vote notification with respect to Ballot Marking Devices so those devices were exempted from the rule change. At the present time there are no DRE voting systems under certification review so the portions of the former regulation pertaining to DREs was not changed in this emergency regulation. Rural counties will find it easy to comply with this emergency regulation as it removes rather than adds a mandate.

**5. Rural area participation:**

The State Board has participated in an Elections Commissioners Association session which was held in a rural county and rural county election commissioners were unanimous in their opinion that the requirement eliminated by this emergency regulation should be removed immediately so that the 2009 Pilot Program can go forward with as much ease as possible and as little burden upon rural counties as possible.

**Job Impact Statement**

It is evident from the nature and purpose of the rule that this regulation amendment neither creates nor eliminates employment positions and/or opportunities, and therefore, has no adverse impact on employment opportunities in New York State.

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## Department of Health

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### NOTICE OF ADOPTION

**Poison Control Distributions - Rollover of Unexpended Funds**

**I.D. No.** HLT-20-09-00001-A

**Filing No.** 861

**Filing Date:** 2009-07-21

**Effective Date:** 2009-08-05

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

**Action taken:** Repeal of section 68.6(e) of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 2500-d, 2807-j and 2807-l

**Subject:** Poison Control Distributions - Rollover of Unexpended Funds.

**Purpose:** Eliminates the rollover to the subsequent calendar year of unexpended HCRA Resources funds allocated for a given calendar year.

**Text or summary was published** in the May 20, 2009 issue of the Register, I.D. No. HLT-20-09-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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

**Temporary Residences and Mass Gatherings**

**I.D. No.** HLT-31-09-00003-P

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

**Proposed Action:** Amendment of Subpart 7-1 and addition of Subpart 7-4 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225(5)

**Subject:** Temporary Residences and Mass Gatherings.

**Purpose:** Amend Subpart 7-1 which includes removal of requirements for mass gatherings & relocates these requirements in new Subpart 7-4.

**Substance of proposed rule (full text is posted on the following State website: [www.health.state.ny.us](http://www.health.state.ny.us)):** The proposed code amendments contain the following major provisions:

1. Requirements pertaining to mass gatherings have been removed from

Subpart 7-1 and relocated to a newly created Subpart 7-4 entitled "Mass Gatherings".

2. Technical correction made to requirement of prohibition of employment of individuals as potential communicable disease transmitters in order to conform to current Human Rights Law.

3. Public Health Hazards, not previously defined, have been added to clearly identify those violations that can be reasonably expected to cause illness, injury or death.

4. The Uniform Fire Prevention and Building Code is now the sole standard for fire safety requirements for new construction and operation and maintenance aspects of temporary residence facilities.

5. The occupancy threshold triggering the need for a temporary residence permit has been increased from 10 persons to 11 persons to eliminate overlap with the Uniform Code applicability with regards to a Bed and Breakfast facility, and to focus the regulations on the remaining temporary residences having capacities of 11 persons or greater.

6. The list of special use facilities exempt from regulation has been expanded to include additional operations not intended to be regulated as a temporary residence.

7. The requirement that the permit-issuing official review and approve a plan for fire safety systems and equipment has been deleted, as such reviews are conducted by code enforcement officials who enforce the provisions of the Uniform Code.

8. The requirements for onsite water systems serving temporary residences have been clarified. Requirements for start-up water system disinfection procedures for water systems serving temporary residences not subject to continuous year round use have been added.

9. Reporting requirements have been added and include requirements with regard to certain injuries, illnesses and incidents involving fires, incidents associated with an on-site aquatic facility, carbon monoxide exposure, and illness suspected of being food or water-borne.

10. Instead of undertaking a duplicative review, the regulations have been changed to authorize that the permit-issuing official may request the submission of a construction compliance certificate issued by a Professional Engineer or Registered Architect pertaining to fire safety compliance for the new construction, modification or conversion of temporary residence facilities.

**Text of proposed rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: 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.

**Regulatory Impact Statement**

Statutory Authority:

The Public Health Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. Public Health Law Section 225(5) provides that the code may deal with any matter affecting the security of life and health of the people of the State of New York. PHL Sections 225(7) and 225(5)(o) require the establishment of standards and regulations for motels and hotels including provisions for living and sleeping quarters, protections from fire hazards, water and sewage facilities refuse/storage and disposal and other matters for protection and security of life or health. PHL Section 201(1)(m) provides that the functions, powers and duties of the department include that the department is to "supervise and regulate the sanitary aspects of camps, hotels...and other business and activities affecting public health."

Legislative Objectives:

In authorizing adoption of the State Sanitary Code and in enacting PHL 225(5), 225(5)(o), 225(7) and 201(1)(m), the legislative objective was to protect public health and safety. The proposed amendments to Subpart 7-1 of the SSC reflect current technology and oversight responsibilities and, the consolidation of all requirements for mass gatherings into a separate Subpart 7-4, furthers the legislative objective of protecting health and safety of the public.

Needs and Benefits:

There have been no substantial revisions to Subpart 7-1 since January 31, 1980. Since that time, the State Uniform Fire Prevention and Building Code (Uniform Code), administered by the Department of State, has undergone several modifications including mandatory statewide applicability in 1984. The Department analyzed the fire safety requirements contained in both the existing Subpart 7-1 and the Uniform Code, and determined that the requirements of Subpart 7-1 are not consistent with the Uniform Code, and are in many aspects, duplicative of Uniform Code requirements.

The proposed amendments will eliminate duplicate requirements for

temporary residence facilities, in that the Sanitary Code will no longer prescribe standards for exits, fire alarm and extinguishing equipment or criteria relating to the containment of fires and products of combustion which are contained in the Uniform Code. The amended Sanitary Code will address basic fire safety operation and maintenance provisions, and will continue to address other aspects of the facility such as water, sewage, food service and aquatic operations to assure safety of the occupants.

Current regulations apply to a temporary residence occupied or maintained for occupancy by 10 or more persons. This occupancy threshold overlaps with the Uniform Code definition of a "Bed and Breakfast Dwelling," which is defined as an owner occupied residence providing overnight accommodations and a morning meal to not more than 10 transient lodgers. The Uniform Code contains special fire safety provisions for Bed and Breakfast Dwellings that are not consistent with the requirements associated with hotel/motel type dwellings. To eliminate the potential regulatory inconsistency, the occupancy threshold for applicability of Subpart 7-1 regulations is modified from 10 to 11 persons.

Operator reporting requirements have been included for temporary residences for: injury or illness occurring at an associated pool, beach or spray ground; illness suspected of being food or waterborne; illness related to on-site exposure to carbon monoxide; and all fires which result in a report/call to fire or police departments.

Previously, there were no incident reporting requirements in the regulation. The requirement for illness and injuries reporting provides the foundation for a surveillance system that enables the Department to insure and monitor the adequacy of operation and maintenance of the facilities.

Additionally, temporary residence operators must continue to report water sample results that are positive for Total Coliform or Escherichia Coli and all other water analysis reports, to the permit-issuing official (PIO).

The existing code specifies that the PIO reviews and approves plans for new construction pertaining to fire safety, including alterations, enlargements and improvements. The proposed amendments eliminate the review and approval of plans by the PIO since the local code enforcement official (CEO) for the Uniform Code is responsible for plan review/approval. The amended regulation only requires a certificate of occupancy from the local CEO be available for review by the PIO, who may also require submission of a construction compliance certificate, pertaining to fire safety from a New York State licensed design professional.

Of the 3,551 regulated temporary residences, there are 26 with on-site water systems that do not meet the definition of a public water system as specified in Part 5 of the SSC. The current version of 7-1 requires that these types of facilities comply with specific sections of Part 5 that deal with bacteriological, organic/inorganic, chemical and turbidity parameters. Due to changes in Part 5, previously referenced sections of the code are no longer accurate. The amended code now requires compliance as a non-community water supply, which incorporates similar compliance standards, therefore there is no substantial impact on these water systems.

Additionally, provisions for an annual start-up procedure for water supplies at temporary residences not under continuous use has been established. Due to the seasonal operation of many (419) temporary residence facilities, the water supply systems are shut down for a portion of the year that increases the potential for contamination of the water system.

Requirements for mass gatherings are currently contained in Subpart 7-1. Many sections of Subpart 7-1 are not applicable or relevant to mass gatherings. For clarity, the requirements specific to mass gatherings have been removed from Subpart 7-1 and relocated to a newly created Subpart 7-4 and minor amendments and technical corrections have been made, e.g. requirement of prohibition of employment of individuals as possible transmitter of communicable disease in order to conform to the current Human Rights Law.

#### Costs to Regulated Parties:

As noted previously, there will be a reduction in costs to existing temporary residence facilities with an occupancy of 10 persons, as these businesses will no longer be regulated and required to obtain a permit to operate with associated permit and water sample fee(s).

The exact number of temporary residence facilities with a capacity of 10 persons is unknown, but the Department estimates that there may be between 80 - 100 facilities that would no longer require a permit to operate. There will be a cost savings in associated permit fees for these facilities, ranging from \$50.00 to \$260.00 per facility, dependant on local health department jurisdiction.

Additionally, those facilities with on-site water systems will no longer be required to collect quarterly bacteriological water samples (1-4/year) at a cost of \$30.00/sample, nor an annual nitrate water sample at a cost of \$30.00/sample. The total impact cannot be determined as the exact number of temporary residence facilities with a capacity of 10 persons with on-site water systems is unknown.

Temporary Residences that maintain occupancy for 11 or more persons that undergo new construction including alterations, enlargements and

improvements, and change of occupancy may be required by the PIO to obtain a construction compliance certificate. This certificate, prepared and signed by a NYS licensed Professional Engineer or Registered Architect confirms that construction pertaining to fire safety was in conformance with the Uniform Code and approved plans. When required, this certificate may increase the cost of the construction project, as design professionals surveyed indicated that fees for the construction compliance certificate would range from 3-5% of the total project cost.

Annual start-up procedures for the 419 temporary residences with seasonally operated water supplies will result in an increased cost for these facilities. The cost associated with a typical start-up procedure that provides for adequate disinfection of the water distribution system is estimated to be between \$50.00 and \$100.00 annually per distribution system.

There will be no costs to regulated parties associated with the relocation of existing requirements for mass gatherings from Subpart 7-1 to a newly created Subpart 7-4, as no new requirements are added.

#### Costs to the Department of Health:

There will be minimal costs of approximately \$1200.00 associated with printing and distribution of the amended codes and corresponding revised inspection forms. The costs to the State Health Department offices will be the same as noted below for Local Government.

#### Costs to State and Local Government:

There may be a reduction in costs to local health departments because there will be fewer regulated facilities resulting from the revision of code applicability from 10 occupants to 11 since approximately 80 to 100 currently permitted facilities with a capacity for 10 occupants are located throughout the state. These facilities will no longer require operating permits. Savings are difficult to calculate due to the relatively small number of impacted facilities per local health department and the fact that such costs are based on staff time and travel distance for inspectional purposes, which varies.

There will be no costs associated with the relocation of existing requirements for mass gatherings from Subpart 7-1 to a new Subpart 7-4. No new requirements are added.

#### Local Government Mandates:

The proposed revisions do not impose a new program duty or responsibility upon any county, city, town village, school district, fire district, or special district.

The elimination of mandated fire safety plan review duties by the PIO for temporary residences will not impact the local building departments, as the local code enforcement officer (CEO) has the responsibility to perform plan review and construction inspections for assuring compliance with the Uniform Code, in any case. Local health department staff continue to be responsible for enforcing the simplified regulations as part of their existing program responsibilities.

#### Paperwork/Reporting:

When required by the PIO, a construction compliance certificate pertaining to fire safety must be submitted for temporary residences undergoing new construction including alterations, enlargements and improvements.

Operator reporting requirements have been included for temporary residences for: injury or illness occurring at an associated pool, beach or spray ground; illness suspected of being food or waterborne; illness related to on-site exposure to carbon monoxide; and all fires which result in a report/call to fire or police departments.

Previously, there were no incident reporting requirements in the regulation. The requirement for illness and injuries reporting provides the foundation for a surveillance system that enables the Department to insure and monitor the adequacy of operation and maintenance of the facilities.

Additionally, temporary residence operators must continue to report water sample results that are positive for Total Coliform or Escherichia Coli and all other water analysis reports, to the PIO.

There are no new requirements for mass gatherings resulting from the relocation of existing requirements from Subpart 7-1 to a new Subpart 7-4.

#### Duplication:

This regulation does not duplicate any existing federal, state or local regulation. In fact, revised fire safety plan review and other requirements for new construction at temporary residences eliminate existing redundancies in duties currently performed by the local CEO for enforcement and implementation of the Uniform Code. Although the Federal Drinking Water Standards, CFR Title 40 Chapter 1 Part 141, apply to most of the temporary residence and mass gathering drinking water supplies in New York State, the state has primacy for the implementation and enforcement of these Federal Regulations. The provisions of the Federal requirements are embodied in Part 5 of the Sanitary Code, therefore there is no duplication with these Federal standards.

#### Alternatives Considered:

One alternative for the regulation of temporary residences was to elimi-

nate all requirements for operation of temporary residences other than those addressing food service, swimming pools/beaches, and on-site water supplies. Separate permits for these operations would then be issued. This approach was rejected, since Section 225(7) of the Public Health Law specifically requires the Public Health Council to prescribe standards and regulations for certain temporary residences.

An alternative to enacting Subpart 7-4 regarding mass gatherings was to leave the requirements in Subpart 7-1. This was rejected to avoid confusion, because many sections in Subpart 7-1 are not applicable or relevant to mass gatherings.

#### Federal Standards:

Federal Standards may be applicable to certain on-site water supplies, but the proposed regulation does not exceed the Federal Drinking Water Standards entitled the Safe Drinking Water Act, CFR Title 40 Chapter 1 Part 141.

#### Compliance Schedule:

These regulations will be effective upon publication of a notice of adoption in the State Register. Most temporary residence facilities will be able to achieve immediate compliance with the revised regulation. Compliance with the annual water supply start-up requirement would occur with the operating season following adoption of the regulation. The time frame for completion of the annual start-up disinfection procedure is approximately two days in duration.

#### Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:

There are approximately three thousand-five hundred and fifty-one (3551) regulated temporary residences located throughout New York State. Approximately 80% maintain occupancies for less than 100 guests; therefore, the majority of facilities currently regulated as temporary residences are considered small businesses. These small businesses include operations commonly known as hotels, motels and cabin colonies.

The proposed changes that eliminate duplicate requirements between the State Sanitary Code (SSC) and the State Uniform Fire Prevention and Building Code (Uniform Code) will affect all regulated temporary residence facilities. The proposed amendments for annual start-up procedures for seasonally operated water supplies will affect the 419 facilities with such water systems.

There are approximately 5 mass gatherings held in the State each year which are typically promoted and sponsored by large businesses. Because the proposed changes for mass gatherings only involve the relocation of the existing requirements to a separate subpart with no new substantive requirements added, there will be no effect on small business and local government.

#### Compliance Requirements:

##### Reporting and Record Keeping:

The proposed amendments require the temporary residence operator to have available on-site: maintenance records for fire alarm systems, automatic fire suppression systems and portable fire extinguishers and fire safety and evacuation plans. For new construction, the building permit, certificate of occupancy and approved plans must be readily available for review. A fire safety construction compliance certificate prepared and signed by a professional engineer or registered architect licensed to practice in NYS must be submitted to the permit-issuing official (PIO) when required.

Operator reporting requirements have been included for temporary residences for: injury or illness occurring at an associated pool, beach or spray ground; illness suspected of being food or waterborne; illness related to on-site exposure to carbon monoxide; and all fires which result in a report/call to fire or police departments.

Previously, there were no incident reporting requirements in the regulation. The requirement for illness and injuries reporting provides the foundation for a surveillance system that enables the Department to insure and monitor the adequacy of operation and maintenance of the facilities.

Additionally, temporary residence operators must continue to report water sample results that are positive for Total Coliform or Escherichia Coli and all other water analysis reports, to the PIO.

There are no new requirements for mass gatherings resulting from the relocation of existing requirements from Subpart 7-1 to a new Subpart 7-4.

#### Other affirmative acts:

For on-site seasonally operated water supplies at temporary residences, the operator must disinfect the water supply and distribution system as an annual start-up procedure.

Temporary Residences that maintain occupancy for 11 or more persons that undergo new construction including alterations, enlargements and improvements, and change of occupancy may be required by the PIO to obtain a construction compliance certificate. This certificate, prepared and signed by a NYS licensed Professional Engineer or Registered Architect confirms that construction pertaining to fire safety was in conformance with the Uniform Code and approved plans.

#### Compliance Costs:

There will be a reduction in costs to existing temporary residence facilities with an occupancy of 10 persons, as these businesses will no longer be regulated and required to obtain a permit to operate with associated permit and water sample fee(s).

The exact number of temporary residence facilities with a capacity of 10 persons is unknown, but the Department estimates that there may be between 80 - 100 facilities that will no longer require a permit to operate. There will be a cost savings in associated permit fees for these facilities, ranging from \$50.00 to \$260.00 per facility, dependant on local health department jurisdiction.

Additionally, those facilities with on-site water systems will no longer be required to collect quarterly bacteriological water samples (1-4/year) at a cost of \$30.00/ sample, nor an annual nitrate water sample at a cost of \$30.00/sample. The total impact cannot be determined as the exact number of temporary residence facilities with a capacity of 10 persons with on-site water systems is unknown.

Temporary residences that maintain occupancy for 11 or more persons that undergo new construction including alterations, enlargements and improvements, and change of occupancy may be required by the PIO to obtain a construction compliance certificate. This certificate, prepared and signed by a NYS licensed Professional Engineer or Registered Architect confirms that construction pertaining to fire safety was in conformance with the Uniform Code and the approved plans. When required, this certificate may increase the cost of the construction project as design professionals surveyed indicated that fees for the construction compliance certificate would range from 3-5% of the total project cost.

Annual start-up procedures for the 419 temporary residences with seasonally operated water supplies will result in an increased cost for these facilities. The cost associated with a typical start-up procedure that is acceptable to the Department is estimated to be between \$50.00 and \$100.00 annually per distribution system.

There will be no costs to small business or local government as a result of the relocation of existing requirements for mass gatherings from Subpart 7-1 to a newly created Subpart 7-4. No new requirements are added.

#### Professional Services:

No additional professional services are required for existing facilities or for mass gatherings to comply with the amendments. For new construction projects at temporary residences (including alterations, enlargements, and improvements), a construction compliance certificate pertaining to fire safety, prepared by a professional engineer or registered architect licensed to practice in New York State may be required.

#### Economic and Technological Feasibility:

The proposal is technologically feasible because it only requires use of existing technology for disinfection of certain seasonal water systems at temporary residences. There are no other changes requiring use of technology.

The proposal is believed to be economically feasible because the expense to comply will be minimal for each regulated temporary residence facility.

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

For temporary residences, the proposed amendments are intended to simplify and clarify the requirements of Subpart 7-1 and to eliminate duplication of requirements contained in the Uniform Code. There should be minimal adverse impact upon small businesses. In fact, the amendments may result in a positive impact through the reduction in duplication of regulatory agency plan review and regulatory requirements.

In the event these revisions have an adverse impact on a particular temporary residence facility, a waiver allowing alternate arrangements that do not meet the specific requirements of the Subpart, but still adequately protect health and safety of the patrons and the public can be granted. Alternately, should this rule have a substantial adverse impact on a particular facility, a variance allowing additional time to comply with one or more requirements can be granted if the health and safety of the public is not prejudiced by the variance.

There will be no adverse economic impact on small businesses or local government with the relocation of existing requirements for mass gatherings from Subpart 7-1 to a newly created Subpart 7-4. No new requirements are added.

#### Rural Area Participation:

Copies of draft amendments to Subpart 7-1 were mailed to 36 county health departments for their review and comment. The comments received were evaluated and modifications were made to address comments as appropriate. A revised version of the document was then sent to the Conference of Environmental Health Directors and the small business organizations listed below for review and comment.

- NYS Hospitality and Tourism Association
- Empire State Bed and Breakfast Association
- Lake George Chamber of Commerce

- Finger Lakes Tourism and Chamber of Commerce

Three responses were received as a result of the outreach efforts. The comments received were favorable.

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

Types and Estimated Number of Rural Areas:

Temporary residences exist in all 44 counties that have populations less than 200,000 and the 9 counties identified to have townships with a population density of fewer than 150 persons or less per square mile.

The proposed changes that eliminate duplicate requirements between the State Sanitary Code (SSC) and the State Uniform Fire Prevention and Building Code (Uniform Code) will affect all regulated temporary residence facilities. The proposed amendments for annual start-up procedures for seasonally operated water supplies will affect those facilities in such rural areas with such water systems.

There are approximately 5 regulated mass gatherings held in NYS each year, all of which are held in rural areas.

Reporting, Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The proposed amendments require the temporary residence operator to have available on-site: maintenance records for fire alarm systems, automatic fire suppression systems and portable fire extinguishers and fire safety and evacuation plans. For new construction, the building permit, certificate of occupancy and approved plans must be readily available for review. A fire safety construction compliance certificate prepared and signed by a professional engineer or registered architect licensed to practice in NYS must be submitted to the permit-issuing official (PIO) when required.

Operator reporting requirements have also been included for temporary residences for: injury or illness occurring at an associated pool, beach or spray ground; illness suspected of being food or waterborne; illness related to on-site exposure to carbon monoxide; and all fires which result in a report/call to fire or police departments.

Previously, there were no incident reporting requirements in the regulation. The requirement for illness and injuries reporting provides the foundation for a surveillance system that enables the Department to insure and monitor the adequacy of operation and maintenance of the facilities.

Additionally, temporary residence operators must continue to report water sample results that are positive for Total Coliform or Escherichia Coli and all other water analysis reports, to the PIO.

There are no new requirements for mass gatherings resulting from the relocation of existing requirements from Subpart 7-1 to a new Subpart 7-4.

Other Compliance Requirements:

For on-site seasonally operated water supplies at temporary residences, the operator must disinfect the water supply and distribution system as an annual start-up procedure.

Temporary Residences that maintain occupancy for 11 or more persons that undergo new construction including alterations, enlargements and improvements, and change of occupancy may be required by the PIO to obtain a construction compliance certificate. This certificate, prepared and signed by a NYS licensed Professional Engineer or Registered Architect confirms that construction pertaining to fire safety was in conformance with the Uniform Code and approved plans.

Compliance Costs:

There will be a reduction in costs to existing temporary residence facilities with occupancy of 10 persons, as these businesses will no longer be regulated and required to obtain a permit to operate with associated permit and water sample fee(s).

The exact number of temporary residence facilities with a capacity of 10 persons is unknown, but the Department estimates that there may be between 80 - 100 facilities that will no longer require a permit to operate. There will be a cost savings in associated permit fees for these facilities, ranging from \$50.00 to \$260.00 per facility, dependent on local health department jurisdiction.

Additionally, those facilities with on-site water systems will no longer be required to collect quarterly bacteriological water samples (1-4/year) at a cost of \$30.00/ sample, nor an annual nitrate water sample at a cost of \$30.00/sample. The total impact cannot be determined as the exact number of temporary residence facilities with a capacity of 10 persons with on-site water systems in unknown.

Temporary residences that maintain occupancy for 11 or more persons that undergo new construction including alterations, enlargements and improvements, and change of occupancy may be required by the PIO to obtain a construction compliance certificate. This certificate, prepared and signed by a NYS licensed Professional Engineer or Registered Architect confirms that construction pertaining to fire safety was in conformance with the Uniform Code and approved plans. When required, this certificate may increase the cost of the construction project as design professionals surveyed indicated that fees for the construction compliance certificate would range from 3-5% of the total project cost.

Annual start-up procedures for the 419 temporary residences with seasonally operated water supplies will result in an increased cost for these facilities. The cost associated with a typical start-up procedure that is acceptable to the Department is estimated to be between \$50.00 and \$100.00 annually per distribution system.

There will be no costs to rural areas as a result of the relocation of existing requirements for mass gatherings from Subpart 7-1 to a newly created Subpart 7-4. No new requirements are added.

Professional Services:

No additional professional services are required for existing temporary residence facilities or mass gatherings to comply with the amendments. For new construction projects at temporary residences (including alterations, enlargements and improvements), a construction compliance certificate pertaining to fire safety, prepared by a professional engineer or registered architect licensed to practice in New York State may be required.

Economic and Technological Feasibility:

The proposal is technologically feasible because it only requires use of existing technology for disinfection of certain seasonal water systems at temporary residences. There are no other changes requiring use of technology.

The proposal is believed to be economically feasible because the expense to comply will be minimal for each regulated temporary residence facility.

Minimizing Adverse Economic Impact on Rural Areas:

For temporary residences, the proposed amendments are intended to simplify and clarify the requirements of Subpart 7-1, and to eliminate duplication of requirements contained in the Uniform Code. There should be minimal adverse impact upon temporary residences located in rural areas. The amended code may likely result in a positive impact through the reduction in duplication of regulatory agency plan review and regulatory requirements.

In the event these revisions have an adverse impact on a particular temporary residence facility, a waiver allowing alternate arrangements that do not meet the specific requirements of the Subpart but still adequately protect health and safety of the patrons and the public can be granted. Alternately, should this rule have a substantial adverse impact on a particular facility, a variance allowing additional time to comply with one or more requirements can be granted, if the health and safety of the public is not prejudice by the variance.

There will be no adverse economic impact on mass gatherings held in rural areas resulting from the relocation of existing requirements for mass gatherings from Subpart 7-1 to a newly created Subpart 7-4. No new requirements are added.

Rural Area Participation:

Copies of draft amendments to Subpart 7-1 were mailed to 36 county health departments for their review and comment. These local health departments represent and/or have responsibility for temporary residence facilities located in rural areas. The comments received were evaluated and modifications were made to address comments as appropriate. A revised version of the document was then sent to the Conference of Environmental Health Directors and the small business organizations listed below for review and comment.

- NYS Hospitality and Tourism Association
- Empire State Bed and Breakfast Association
- Lake George Chamber of Commerce
- Finger Lakes Tourism and Chamber of Commerce

Three responses were received as a result of the outreach efforts, and the comments received were favorable.

#### **Job Impact Statement**

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunity because new reporting and start-up supply requirements will be minimal and can adequately be addressed by existing facility staff.

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

### **Rate Methodology for Non-public Hospitals to Ensure Access for All Medicaid Patients Requiring Language Assistance**

**I.D. No.** HLT-31-09-00013-P

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

**Proposed Action:** This is a consensus rule making to add section 86-1.11(v) to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2807-c(1)(k)

**Subject:** Rate methodology for non-public hospitals to ensure access for all Medicaid patients requiring language assistance.

**Purpose:** Rate methodology for non-public hospitals to ensure access for all Medicaid patients requiring language assistance.

**Text of proposed rule:** Proposed new subdivision (v) of Section 86-1.11:

(v) *Within amounts made available pursuant to paragraph (k) of subdivision 1 of section 2807-c of the public health law, for rate periods on and after April 1, 2008, payment rates for non-public general hospitals located in a city with a population of more than one million persons shall be adjusted for the purpose of ensuring and enhancing access to hospital services for Medicaid patients requiring language assistance in accordance with the following:*

(1) *70% of total available funds shall be distributed in accordance with the following:*

(i) *50% of such funding will be allocated proportionally to such hospitals based on the relative number of each hospital's general clinic Medicaid visits as reflected in the facility's most recently available institutional cost report data as submitted to the department; and*

(ii) *50% of such funding shall be allocated proportionally based on the relative number of each hospital's Medicaid inpatient discharges as reflected in the facility's most recently available institutional cost report data as submitted to the department.*

(2) *30% of total available funds shall be allocated proportionally based on the number of foreign languages, as certified to by each hospital an annual basis, spoken by one percent or more of the persons residing within each hospital's service area. Such certifications shall be submitted in a form and at such times as designated by the commissioner. The commissioner is authorized to audit the basis of such certifications and may recoup any funds determined to have been allocated based on inaccurate or unsubstantiated certifications.*

(3) *General hospitals which have their rates adjusted pursuant to this subdivision shall use such funds solely for the purpose of providing language assistance and are prohibited from using such funds for any other purpose. Each such general hospital shall submit, at a time and in a manner to be determined by the commissioner, a written certification attesting that such funds will be used solely for such purpose and the commissioner is authorized to audit each such general hospital to confirm compliance with such certification and shall recoup any funds determined to have been used for other purposes. Such recoupment shall be in addition to any other applicable penalties under sections twelve and twelve-b of this chapter.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: 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.

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

#### Consensus Rule Making Determination

Statutory Authority:

The statutory authority for these regulations is contained in Section 2807-c of the Public Health Law, which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health. The proposed regulation establishes the methodology for determining the language assistance rate adjustment as required by Public Health Law Section 2807-c(1)(k)(ii).

Basis:

Chapter 58 of the Laws of 2007 created a new paragraph (k) to subdivision 1 of Section 2807-c that authorized an adjustment to inpatient rates of payment for non-public general hospitals located in a city with a population greater than one million persons to provide funding for Medicaid patients who require language assistance. Subparagraph (ii) of the statute requires the Commissioner to promulgate regulations detailing the methodology to be used for determining the rate adjustment amount for rate periods on and after April 1, 2008. The statute further requires that the rate adjustment methodology include a provision that up to thirty percent of such available funds be allocated based on the number of foreign languages utilized by one or more percent of the residents in the eligible hospital's service area.

The proposed regulation provides the methodology for determining the language assistance rate adjustment wherein seventy percent of available funds shall be distributed proportionally to eligible hospitals based on the relative number of each such hospital's general clinic Medicaid visits and Medicaid inpatient discharges, as reflected in the facility's most recently

available cost report data as submitted to the Department. The remaining thirty percent shall be allocated based on the number of foreign languages spoken by one percent or more of persons living in the hospital's service area, as certified to by each hospital on an annual basis. The regulation incorporates a provision that such funds be used solely for the purpose of providing language assistance. This requirement will ensure that the funds are being applied specifically to enhance access to hospital services for Medicaid patients requiring language assistance, as intended by the statute.

#### Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The proposed regulation establishes the language assistance rate adjustment methodology, as required under PHL Section 2807-c(1)(k)(ii) which was added by Chapter 58 of the Laws of 2007. The language assistance rate adjustment is intended to provide funding to eligible non-public hospitals for the purpose of ensuring access to provided services and reasonable accommodation for all Medicaid patients who require language assistance.

## Commission of Judicial Nomination

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

#### Procedures of the Commission on Judicial Nomination

I.D. No. JDN-31-09-00004-P

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

**Proposed Action:** Amendment of Parts 7100 and 7101 of Title 22 NYCRR.

**Statutory authority:** Judiciary Law, section 65

**Subject:** Procedures of the Commission on Judicial Nomination.

**Purpose:** To update the Commission's procedures to best implement the Commission's constitutional and statutory mandates.

**Substance of proposed rule (Full text is posted at the following State website:** <http://www.nysegov.com/cjn>): Section 7100.0. Preamble.

This new section of the Commission's rules sets out the Commission's understanding of its constitutional and statutory mandates - i.e., to fill vacancies on the Court of Appeals, the Commission will vigorously seek out, carefully evaluate, and then nominate to the Governor well-qualified candidates from the extraordinary, diverse community of lawyers admitted to practice in New York State.

Section 7101.1. Chairperson.

This section of the Commission's rules has been amended to provide that if the Commission's chairperson is unable to fulfill the duties of office, or if the position of chairperson becomes vacant, the longest-serving commissioner able to fulfill the duties of chairperson will act as chairperson. This section of the Commission's rules has also been amended to provide that the chairperson may designate another member of the Commission or the Commission's counsel as spokesperson.

This section of the Commission's rules has also been edited for stylistic clarity.

7100.2. Counsel.

This section of the Commission's rules has been amended, consistent with Section 64(6) of the Judiciary Law, to provide explicitly that the Commission may appoint, remove, and fix the compensation of its counsel and staff at the Commission's pleasure.

This section of the Commission's rules has also been edited for stylistic clarity.

7100.3. Commission Vacancies.

This new section of the Commission's rules provides that, 30 days prior to the occurrence of an expected vacancy on the Commission, the Commission shall notify the public, press, and appropriate appointing authority of such imminent vacancy, together with a statement that the ultimate objectives of wide diversity and broad outreach in the nomination of well-qualified candidates for the Court of Appeals are best served by a Commission that itself reflects the diversity of New York's communities.

7100.4. Meetings.

This section of the Commission's rules has been amended to allow the Commission to call a meeting through the use of electronic notice. This

section of the Commission's rules has also been amended to repeal a provision allowing for a meeting of the Commission to be held without notice whenever the Commission, at a previous meeting, has designated the time and place for the meeting.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.5. Quorum for meetings.

This section of the Commission's rules has been renumbered and edited for stylistic clarity.

7100.6. Solicitation of candidates.

This section of the Commission's rules has been amended to formalize the Commission's protocol for making broad outreach across the legal profession in order to enable the Commission to identify qualified candidates from a wide range of New York's diverse communities. Such amendments include:

(a) dissemination of the procedure to be followed by the public to bring qualified candidates to the attention of the Commission;

(b) requesting a meeting between the Commission and the Governor or Governor-elect to discuss upcoming vacancies and efforts to recruit candidates;

(c) requiring Commissioners to disclose to the full Commission that they have recruited particular candidates under consideration;

(d) allowing the Chairperson to appoint a search committee to solicit recommendations from the legal community to enhance candidate outreach;

(e) dissemination of notices of vacancy through certain specified channels, including the media, bar associations, deans of New York law schools, members of the public, the Commission's website, and relevant political actors, including the Governor, Unified Court System, Attorney General, Speaker of the New York State Assembly and the President Pro Tempore of the New York State Senate;

(f) posting the applicant questionnaire on the Commission's website; and

(g) conducting at the Commission's discretion informational meetings in the State's four Judicial Departments to discuss the requirements for Court of Appeals and the Commission's procedures and rules for submitting recommendations of qualified candidates for vacancies, at which time, the public may be heard about community needs, the general qualifications for judicial office and the nominating process.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.7. Investigation of candidates.

This section of the Commission's rules has been renumbered and edited for stylistic clarity.

7100.8. Consideration of candidates.

(a) This subdivision of the Commission's rules has been amended to set forth the commissioners' duty of impartiality in the consideration of candidates, and to provide that no Commissioner may individually communicate with an applicant to the Commission about the application or the nomination process, from the time the application is submitted until completion of the Commission's final vote on the nominations.

(b) This subdivision of the Commission's rules has been amended to provide for a two-step initial application process, wherein a candidate for the Court may first submit a short-form questionnaire, resume, and statement of interest, and only after the Commission has determined whether that candidate merits an interview must the candidate complete the Commission's full application questionnaire.

(c) This subdivision of the Commission's rules has been amended to set forth the objectives of the Commission's nomination procedure - i.e., (i) to ensure that the commission thoroughly considers and evaluates each candidate; (ii) to ensure that the commission is impartial in its deliberations; (iii) to promote consensus in the selection of nominees; and (iv) to ensure that each nominee receives at least eight affirmative votes from the commissioners, as required by Section 63(3) of the Judiciary Law.

(d) This new subdivision of the Commission's rules sets forth the Commission's non-discrimination policy.

(e) This new subdivision of the Commission's rules sets forth the Commission's commitment to diversity.

The portion of this section of the Commission's rules that details the voting procedures to be used by the Commission for consideration of candidates has been relocated to Appendix I to Section 7100 of Title 22, N.Y.C.R.R., and further edited, as below.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.9. Report to the Governor.

This section of the Commission's rules has also been amended to require that the Commission's report to the Governor will set forth (a) the relevant accomplishments of each nominee, and include major legal matters in which the nominee participated, as well as other notable professional qualities that the Commission considered important in determining

that each was well-qualified and fit to serve as the Chief Judge or an Associate Judge of the Court of Appeals, as the case may be; and (b) the efforts made by the Commission and counsel to publicize each vacancy and to solicit applications from the broadest group of well qualified candidates, provided that the report will not compromise the confidentiality of Commission proceedings, as mandated by Section 66 of the Judiciary Law.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.10. Amendment or waiver of rules.

This section of the Commission's rules has been renumbered and edited for stylistic clarity.

7100.11. Website.

This new section of the Commission's rules establishes a protocol for the Commission's website, to be used to communicate with the public and to aid in soliciting candidates.

Part 7100 Appendix I. Voting procedures.

This section of the Commission's rules, formerly a portion of Section 7100.7 of Title 22, N.Y.C.R.R., has been amended to provide that the default number of candidates to be ranked by the Commissioners when voting on candidates - assuming no nominations have been made by consensus - will be 15. The voting process will henceforth be conducted such that candidates to be nominated must be a candidate receiving the greatest number of "points," as well as the affirmative votes of eight Commissioners, as required by Section 63(3) of the Judiciary Law.

This section of the Commission's rules has also been edited for stylistic clarity.

Section 7101.4. Rules for public access to records of the State of New York Commission on Judicial Nomination: Location.

This section of the Commission's rules has been amended to provide that the Commission's point of contact for all information requests pursuant to the State Freedom of Information Law will be the office of the Commission's current Counsel.

**Text of proposed rule and any required statements and analyses may be obtained from:** Stephen P. Younger, Counsel, Commission on Judicial Nomination, 1133 Avenue of the Americas, New York, New York 10036, (212) 336-2685, email: spyounger@pbwt.com

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

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

**Regulatory Impact Statement**

(1) Statutory authority:

Section 65 of the Judiciary Law authorizes the Commission on Judicial Nomination to adopt and amend written rules of procedure not inconsistent with law.

(2) Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the commission to promulgate rules for its internal procedures in keeping with the overall mandate of the New York State Constitution and Article 3-A of the Judiciary Law - i.e., to fill vacancies on the Court of Appeals, the Commission will vigorously seek out, carefully evaluate, and then nominate to the Governor well-qualified candidates for from the extraordinary, diverse community of lawyers admitted to practice in New York State.

(3) Needs and benefits:

The Commission is releasing rule revisions that reflect the experience of the Commission gathered over the last 30 years as well as valuable input from the Governor, Legislators, the Judiciary, and the Attorney General, as well as various individuals and organizations, including the New York State Bar Association, the City Bar Association, the New York County Lawyers' Association, and The Fund for Modern Courts. These new rules are the result of the Commission's work to incorporate this collected wisdom in a manner that is faithful to its overarching constitutional and statutory mandate.

(4) Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The Commission's rules apply only to the Commission, not to any extra-governmental actors.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: Minimal. The Commission's rules impose additional costs on the Commission's operations only to the extent of requiring potentially greater (1) postage costs, so as to more broadly disseminate notice of vacancies on the Court of Appeals; and/or (2) travel expenses, so as to conduct informational meetings in the four Judicial Departments of New York State at the time of any such vacancies. The Commission's new rules do not impose any costs on local governments.

(c) This statement detailing the projected costs of the rules is based upon the Commission's oversight and experience regarding the process of nominating candidates for the Court of Appeals.

## (5) Local government mandates:

These rules do not impose a duty on any local government or agency thereof.

## (6) Paperwork:

These rules do not require any additional paperwork on regulated parties. These rules impose minimal additional reporting requirements on the Commission for purposes of the Commission's reports to the Governor.

## (7) Duplication:

These rules do not duplicate any existing State or Federal requirement.

## (8) Alternatives:

The alternative, leaving in place the current rules governing the Commission's internal procedures, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that updating the Commission's procedures would best implement the Commission's constitutional and statutory mandates.

## (9) Federal standards:

There are no applicable minimum standards of the federal government.

## (10) Compliance schedule:

The Commission is expected to achieve compliance with the proposed rules immediately.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an economic impact on small businesses or local governments. The proposed amendments and additions to the rules governing the Commission on Judicial Nomination seek only to implement the overarching constitutional and statutory mandate that the Commission vigorously seek out, carefully evaluate and then nominate to the Governor well-qualified candidates for the Court of Appeals, and to promulgate the Commission's commitment to discharge this duty with diligence and transparency, in a manner consistent with the confidentiality provisions of the Judiciary Law. Accordingly, they will not have an adverse impact on small businesses or local governments, nor impose any additional reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed amendments and additions to the rules governing the Commission on Judicial Nomination seek only to implement the overarching constitutional and statutory mandate that the Commission vigorously seek out, carefully evaluate and then nominate to the Governor well-qualified candidates for the Court of Appeals, and to promulgate the Commission's commitment to discharge this duty with diligence and transparency, in a manner consistent with the confidentiality provisions of the Judiciary Law. Accordingly, they will not impose an adverse economic impact on rural areas, nor impose any additional recordkeeping, reporting, or other compliance requirements on private or public entities in rural areas.

**Job Impact Statement**

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed amendments and additions to the rules governing the Commission on Judicial Nomination seek only to implement the overarching constitutional and statutory mandate that the Commission vigorously seek out, carefully evaluate and then nominate to the Governor well-qualified candidates for the Court of Appeals, and to promulgate the Commission's commitment to discharge this duty with diligence and transparency, in a manner consistent with the confidentiality provisions.

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## Department of Labor

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### EMERGENCY RULE MAKING

#### Restrictions on the Consecutive Hours of Work for Nurses As Enacted in Section 167 of the Labor Law

**I.D. No.** LAB-31-09-00001-E

**Filing No.** 820

**Filing Date:** 2009-07-15

**Effective Date:** 2009-07-15

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

**Action taken:** Addition of Part 177 to Title 12 NYCRR.

**Statutory authority:** Labor Law, section 21

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

**Specific reasons underlying the finding of necessity:** Section 167 of the Labor Law is effective July 1, 2009. However, Section 167 does not provide sufficient details with regard to what is expected of health care providers so as to avoid mandatory overtime for nurses, except in emergency situations. Section 167 was enacted to improve the health care environment for patients and the working environment for nurses.

**Subject:** Restrictions on the consecutive hours of work for nurses as enacted in Section 167 of the Labor Law.

**Purpose:** To clarify the emergency circumstances under which an employer may require mandatory overtime for nurses.

**Substance of emergency rule:** By L.2008, Ch. 493, § 1, the New York State Legislature created Section 167 of the Labor Law with the title "Restrictions on consecutive hours of work for nurses."

The proposed rule creates a new part of regulations designated as 12 NYCRR Part 177 entitled "Restrictions on Consecutive Hours of Work for Nurses."

Subpart 177.1, entitled "Application," sets forth that Part 177 applies to the hours of work for all nurses by health care employers.

Subpart 177.2, entitled "Definitions," sets forth the definitions, for the purposes of Part 177, of the following terms: "emergency," "health care disaster," "health care employer," "nurse," "on call," "overtime," "patient care emergency," and "regularly scheduled work hours."

Subpart 177.3, entitled "Mandatory Overtime Prohibition," provides that a health care employer is prohibited from requiring a nurse to work overtime. Subpart B sets forth the exceptions to that prohibition, which are entitled: "Health Care Disaster," "Government Declaration of Emergency," "Patient Care Emergency," and "Ongoing Medical or Surgical Procedure." Subpart B provides that the Part 177 does not prohibit a nurse from voluntarily working overtime.

Subpart 177.4, entitled "Nurse Coverage Plans," provides that health care employers are required to prepare and implement a "Nurse Coverage Plan" within ninety days of the effective date of this part and also sets forth the requirements for such a plan.

Subpart 177.5, entitled "Report of Violations," provides the Department of Labor shall establish a procedure to file a complaint of a violation of Part 177.

Subpart 177.6, entitled "Conflicts of Law and Regulation; Collective Bargaining Rights Not Diminished," provides that the provisions of Part 177 shall not be construed to diminish or waive the rights of nurses.

Subpart 177.7, entitled "Waiver of Rights Prohibited," provides that a health care employer may not utilize employee waivers as an alternative to compliance with Labor Law Section 167 or Part 177.

**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 October 12, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Thomas McGovern, New York State Department of Labor, Counsel's Office State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcgovern@labor.state.ny.us

**Regulatory Impact Statement**

## 1. Statutory authority:

Section 21 of the Labor Law provides the Commissioner with authority to issue regulations governing any provision of the Labor Law as she finds

necessary and proper. This rule is proposed pursuant to Section 167 of the Labor Law enacted by chapter 493 of the Laws of 2008. The effective date of the law is July 1, 2009.

#### 2. Legislative objectives:

Legislation passed during the last legislative session (Chapter 493 of the Laws of 2008) recognizes the physical and emotional toll that mandatory overtime can take on nurses and on patient care. In response to these concerns, the legislation requires that health care employers take steps to prudently plan for adequate nursing staff coverage in their facilities so as to avoid the need to require mandatory overtime of nurses in most instances.

The rule improves the health care environment for patients and the working environment for nurses by clarifying the emergency circumstances under which an employer may require mandatory overtime. The Legislature's intent in enacting Section 167 was to encourage employers to attract and retain nurses in the profession during this period of shortage.

#### 3. Needs and benefits:

Nurses work in a demanding and stressful environment where sound decision-making is a matter of life and death for patients. Limitations on mandatory overtime avoid successive work shifts which take a physical and mental toll on nurse's performance and can impact the quality of patient care. Labor Law Article 6, section 167 places restrictions on consecutive hours of work for nurses, except in emergency situations, while not prohibiting a nurse from voluntarily working overtime and allows an employer who experiences an unanticipated staffing emergency that does not regularly occur, to require overtime to ensure patient safety.

The enabling legislation does not provide sufficient details with regard to what is expected of health care employers so as to avoid mandatory overtime, except in emergency situations. The rule addresses these statutory gaps by requiring that covered employers develop a Nurse Coverage Plan (the Plan), by setting forth the minimum elements to be addressed in the Plan, and by requiring that the Plan be posted and made available to the Commissioner, to nursing staff and their employee representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will allow health care employers to use mandatory overtime to cover nurse staffing needs.

Finally, the rule will improve overall patient care by allowing patients to be cared for by nurses who can exercise sound decision-making because they have had the proper rest needed to perform their duties. In sum, the reduction of the use of mandatory overtime should help employers attract and retain adequate numbers of nurses to ensure patient safety.

#### 4. Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime of current staff. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff. At the other end of the spectrum, facilities with a very small staff, few resources or in underserved or remote locations may not be able to compete to fill vacancies. At the time this legislation was before the Governor for action, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - will be offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the one year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through use of a Plan that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

#### 5. Paperwork:

The employer will be required to develop and post the Nurse Coverage Plan discussed above, along with all necessary paperwork to log the efforts to obtain staff coverage in compliance with the Plan. Additionally, the Nurse Coverage Plan may require the drafting of contracts with alternative staffing providers such as per diem agencies and the posting of a list of nurses seeking voluntary overtime.

#### 6. Local government mandates:

This rule will have an impact on any county, city, town, village, school district, fire district or other special district that employ nurses. The impact will depend on the size of the facility and nursing staff and the degree to which mandatory, unscheduled overtime is currently being used on a routine basis.

#### 7. Duplication:

This rule does not duplicate any state or federal regulations.

#### 8. Alternatives:

One alternative is to draft regulations which allow the employers to have full discretion to make determinations regarding the existence of an emergency on an ad hoc basis. However, such discretion is inconsistent with the letter and spirit of the statute. Clearly, certain levels of absenteeism based upon sick leave, bereavement, leaves of absences, and breaks during shifts will always exist in all employment settings, including health care facilities. A health care employer must plan for these expected staffing issues, based upon patterns that have emerged from operating a facility and must have staffing options that address the need to provide appropriate nursing care. Accordingly, the Commissioner must retain the right to cite an employer whose declaration of an emergency situation is not supported by the facts or is intended to evade the restrictions imposed by the law or limit the protections afforded nurses under the law.

The Department of Labor circulated draft regulations for comment to State Agencies and other employer groups, and to various employee representative groups. In some instances, changes to the regulations were made in response to such concerns. For example, the Department of Corrections (DOCS) requested clarification regarding examples of health care disasters set forth in Section 177.3 of the regulations. Specifically, DOCS requested that the regulations include language that a health care disaster included the occurrence of a riot, disturbance, or other serious event within an institution that increases the level of nursing care needed. The regulations were revised to include such language.

The Department received comments from one employer group, the Healthcare Association of New York State, that the regulations should provide alternatives to healthcare employers regarding the conspicuous posting of the Nurse Coverage Plans. It was suggested that the regulations authorize employers to utilize other means to make the Nurse Coverage Plans available to nursing staff such as the employer's intranet. The Department considered this comment and revised the regulations to allow for the use of other means to make the Nurse Coverage Plan available to nursing staff.

The Department also received a comment from employee representatives about requiring the filing of all Nurse Coverage Plans with the Commissioner of Labor. The Department considered such a filing requirement but decided it was unnecessary since the Commissioner will request such Plans once a complaint has been received about an employer. Moreover, since employees or their representatives are entitled to receive the Plan on request or otherwise have access to the plan, they can take immediate steps to ensure that the Plan has been prepared and notify the Commissioner if it has not.

Finally, the Department heard from representatives of public sector nurses that the definition of regularly scheduled work hours should include a reference to regulations governing such typical work hours. The language in relevant sections of the rule has been changed in response to this request.

In other instances, the Department has not made changes in response to comments received, so that comments from other regulated parties, nurses, and their representatives could be obtained during the rulemaking process and considered along with some comments before final action is taken.

#### 9. Federal standards:

There are no federal standards with like requirements.

#### 10. Compliance schedule:

The rule would be effective on the same date as the statute: July 1, 2009. However, the Nurse Coverage Plans required by Section 177.4 of the regulations are to be prepared within ninety days of the effective date of the regulations. This gives employers ample time to develop and implement these Nurse Coverage Plans.

#### *Regulatory Flexibility Analysis*

##### 1. Effect of rule:

This rule will apply to all health care employers which include any indi-

vidual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services in a facility licensed or operated pursuant to Article 28 of the Public Health Law, including any facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction Law or in a facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction Law, operated or licensed pursuant to the Mental Hygiene Law, the Education Law, or the Correction Law. Accordingly, small businesses and local governments may be impacted if they provide health care services in a facility noted above. The Department's Division of Research and Statistics estimates that there are 4,175 health care facilities in the State with fewer than 100 employees. Of these 4,175 employers, 4,143 are private employers and 32 are public employers.

#### 2. Compliance requirements:

The record and reporting requirements contained in the proposed rule are minimal. Healthcare employers must prepare a Nurse Coverage Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. Additionally, the health care employer must make the Nurse Coverage Plan available to: nursing staff by posting the Plan or making it available to nursing staff by the intranet, employee representatives and to the Commissioner upon request. The health care employer must also maintain a log of efforts to obtain staff coverage in compliance with the Plan.

#### 3. Professional services:

Legal services may be required to negotiate, draft and review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

The rule will require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employers will be seeking professional nursing services which would have otherwise been performed by their current nursing staff on a mandatory basis.

#### 4. Compliance costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. The cost for individual health care employers will depend upon the extent to which the nurse staffing plan relies on these contract workers and the degree of coverage that the health care facility will need. For example, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff because of the need to fill such vacancies with nurses having the same specialized training. At the other end of the spectrum, facilities with very a small staff may find it equally difficult to fill vacancies without having to utilize outside staffing service providers. At the time this legislation was before the Governor for action, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - will be offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the one year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Nurse Coverage Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through the use of a Plan that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

#### 5. Economic and technological feasibility:

The proposed rule does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

#### 6. Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid, to the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

#### 7. Small business and local government participation:

The Department solicited input on these regulations from various employer representatives. These employer representatives have members from small businesses and local governments.

#### *Rural Area Flexibility Analysis*

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

Any rural area where nurses are employed will be affected. The type of affect will depend on the degree to which those areas are currently relying on unscheduled, mandatory overtime to fill staffing requirements.

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

The reporting, recordkeeping and compliance requirements contained in the proposed rule are minimal. The employer will be required to develop a Nurse Coverage Plan which identifies and describes as many alternative staffing methods as are available to the health care employer to ensure adequate staffing through means other than use of overtime, including, but not limited to, contracts with per diem nurses, contracts with nurse registries and employment agencies for nursing services, arrangements for assignment of nursing floats, requesting an additional day of work from off-duty employees, and development and posting of a list of nurses seeking voluntary overtime. The healthcare employer must log all good faith attempts to seek alternative staffing through the methods identified in the health care employers' Nurse Coverage Plan. The Plan must be in writing, and be provided to the nursing staff, to any collective bargaining representative representing nurses at the health care facility and to the Commissioner of Labor upon request.

The rule will also require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employers will be seeking professional nursing services which would have otherwise been performed by their current nursing staff on a mandatory basis. This may necessitate the drafting of contracts with alternative staffing providers such as per diem agencies.

##### 3. Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime of current staff. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff. At the other end of the spectrum, facilities with a very small staff, few resources or in underserved or remote locations may not be able to compete to fill vacancies. At the time this legislation was before the Governor for action, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - will be offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the one year period from when Section 167 was enacted into law,

employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through the use of a Plan in place that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

#### 4. Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid, to the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

#### 5. Rural area participation:

The Department sought input on these regulations from various employee representative groups which represent rural area employees. Additionally, the Department received input from various employer representative groups which also represent rural area employers.

#### Job Impact Statement

Health care employers covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. At the time Section 167 of the Labor Law (the statutory authority for this rule) was before the Governor for signature, the Division of the Budget estimated compliance would cost approximately \$13 million in its first year, which was attributable to the hiring of per diem nurses to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime. Accordingly, this rule would not have a substantial adverse impact on jobs; in fact it will create more jobs.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### Defer Incurred Site Investigation and Remediation Costs

**I.D. No.** PSC-48-08-00016-A

**Filing Date:** 2009-07-17

**Effective Date:** 2009-07-17

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

**Action taken:** On July 16, 2009, the PSC adopted an order approving, with conditions, National Fuel Gas Distribution Corporation's petition to

extend deferral accounting for all site investigation and remediation costs, including the costs at 126 East Niagara Street.

**Statutory authority:** Public Service Law, section 66

**Subject:** Defer incurred site investigation and remediation costs.

**Purpose:** To approve with conditions, the deferral of incurred site investigation and remediation costs.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving, with conditions, National Fuel Gas Distribution Corporation's petition to extend deferral accounting for all site investigation and remediation costs, including the costs at 126 East Niagara Street, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(08-G-1315SA1)

### NOTICE OF ADOPTION

#### Allocation of a Property Tax Refund

**I.D. No.** PSC-02-09-00013-A

**Filing Date:** 2009-07-16

**Effective Date:** 2009-07-16

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

**Action taken:** On 7/16/09, the PSC adopted an order approving the Joint Proposal of Department of Public Service Staff and Nassau County for the allocation of a \$3,421,367.50 property tax refund that Long Island Water Corporation d/b/a Long Island Am received in 2008.

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

**Subject:** Allocation of a property tax refund.

**Purpose:** To approve the allocation of a property tax refund.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving the Joint Proposal of Department of Public Service Staff and Nassau County for the allocation of a \$3,421,367.50 property tax refund that Long Island Water Corporation d/b/a Long Island Am received in 2008 from Nassau County, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(08-W-1251SA1)

### NOTICE OF ADOPTION

#### Termination of a Guarantee Agreement

**I.D. No.** PSC-17-09-00009-A

**Filing Date:** 2009-07-21

**Effective Date:** 2009-07-21

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

**Action taken:** On July 16, 2009, the PSC adopted an order approving the petition of National Grid plc and KeySpan Corporation to release KeySpan from providing security for the funding of decommissioning of Unit 40 at the Ravenswood Generating site in Queens County.

**Statutory authority:** Public Service Law, sections 160, 161, 162 and 168

**Subject:** Termination of a guarantee agreement.

**Purpose:** To approve the termination of a guarantee agreement.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving the petition of National Grid plc and KeySpan Corporation to release KeySpan from providing security for the funding of decommissioning of Unit 40 at the Ravenswood Generating Station (Ravenswood) site in Queens County. The facility has been sold to TransCanada Facility, which has assumed responsibility for decommissioning, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(09-F-0317SA1)

**NOTICE OF ADOPTION**

**Con Edison's 2008 Performance Under the Electric Service Reliability Performance Mechanism (RPM)**

**I.D. No.** PSC-18-09-00010-A

**Filing Date:** 2009-07-20

**Effective Date:** 2009-07-20

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

**Action taken:** On 7/16/09, the PSC adopted an order directing Consolidated Edison Company of New York, Inc. (Con Edison) to defer on its books from shareholder funds a ratepayer credit of \$5 million for not meeting its reliability goal for 2008.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** Con Edison's 2008 performance under the Electric Service Reliability Performance Mechanism (RPM).

**Purpose:** To direct Con Edison to defer on its books from shareholder funds a ratepayer credit of \$5 million for not meeting its 2008 RPM.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order directing Consolidated Edison Company of New York, Inc. to defer on its books from shareholder funds a ratepayer credit of \$5 million for not meeting its reliability goal for 2008 under the terms of its Reliability Performance Mechanism, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(07-E-0523SA6)

**NOTICE OF ADOPTION**

**Waiver of 16 NYCRR sections 894.1 Through 894.4 and 894.4(b)(2)**

**I.D. No.** PSC-18-09-00018-A

**Filing Date:** 2009-07-17

**Effective Date:** 2009-07-17

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

**Action taken:** On 7/16/09, the PSC adopted an order approving the peti-

tion of the Town of Niles, Cayuga County, for a waiver of certain provisions of 16 NYCRR Part 894 of the Commission's Rules to expedite cable television service with Time Warner Cable.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Waiver of 16 NYCRR sections 894.1 through 894.4 and 894.4(b)(2).

**Purpose:** To approve the Town of Niles, Cayuga County, and Time Warner Cable to expedite the cable television franchising process.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving the petition of the Town of Niles, Cayuga County, for a waiver of certain provisions of 16 NYCRR Part 894.1 through 894.4 of the Commission's Rules to expedite the cable television franchising process with Time Warner Cable, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(09-V-0324SA1)

**NOTICE OF ADOPTION**

**Transfer of Real Property**

**I.D. No.** PSC-19-09-00003-A

**Filing Date:** 2009-07-21

**Effective Date:** 2009-07-21

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

**Action taken:** On 7/16/09, the PSC adopted an order approving the Petition of Caithness Long Island LLC for the transfer of real property at the generation plant site, consisting of a waste water re-charge basin & extension to an existing road, to the Town of Brookhaven.

**Statutory authority:** Public Service Law, section 70

**Subject:** Transfer of real property.

**Purpose:** To approve the transfer of real property from Caithness Long Island LLC to the Town of Brookhaven.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving the Petition of Caithness Long Island LLC for the transfer of real property located at the generation plant site in the Town of Brookhaven, consisting of a waste water re-charge basin and an extension to an existing road, to the Town of Brookhaven, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(09-E-0348SA1)

**NOTICE OF ADOPTION**

**Agreement for the Provision of Water Service and Waiver of Certain Tariff Provisions**

**I.D. No.** PSC-20-09-00012-A

**Filing Date:** 2009-07-16

**Effective Date:** 2009-07-16

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

**Action taken:** On 7/16/09, the PSC adopted an order approving the amended petition of Saratoga Water Services, Inc. and Visionary Park, LLC, for an Agreement for the provision of water service and waiver of the tariff provisions for main extension.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 89-b and 89-c(1)

**Subject:** Agreement for the provision of water service and waiver of certain tariff provisions.

**Purpose:** To approve an agreement for the provision of water service and waiver of certain tariff provisions.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving the amended petition of Saratoga Water Services, Inc. and Visionary Park, LLC for an Agreement for the provision of water service to the proposed real estate development known as Visionary Office Park and waiver of the company's tariff provisions regarding main extensions, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(07-W-0886SA1)

### NOTICE OF ADOPTION

#### Agreement for the Provision of Water Service and Waiver of Certain Tariff Provisions

**I.D. No.** PSC-20-09-00014-A

**Filing Date:** 2009-07-16

**Effective Date:** 2009-07-16

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

**Action taken:** On 7/16/09, the PSC adopted an order approving the amended petition of Saratoga Water Services, Inc. & the Luther Forest Technology Campus-EDC, for an Agreement for the provision of water service & waiver of the tariff provisions for main extension.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 89-b and 89-c(1)

**Subject:** Agreement for the provision of water service and waiver of certain tariff provisions.

**Purpose:** To approve an agreement for the provision of water service and waiver of certain tariff provisions.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving the amended petition of Saratoga Water Services, Inc. and the Luther Forest Technology Campus-EDC, for an Agreement for the provision of water service to the proposed real estate development known as Luther Forest POD 10 and waiver of the company's tariff provisions regarding main extensions, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(06-W-0943SA1)

### NOTICE OF ADOPTION

#### Waiver of 16 NYCRR sections 894.1 Through 894.4 and 894.4(b)(2)

**I.D. No.** PSC-20-09-00018-A

**Filing Date:** 2009-07-17

**Effective Date:** 2009-07-17

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

**Action taken:** On 7/16/09, the PSC adopted an order approving the petition of the Town of Sempronius, Cayuga County, for a waiver of certain provisions of 16 NYCRR Part 894 of the Commission's Rules to expedite cable television service with Time Warner Cable.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Waiver of 16 NYCRR sections 894.1 through 894.4 and 894.4(b)(2).

**Purpose:** To approve the Town of Sempronius, Cayuga County, and Time Warner Cable to expedite the cable television franchising process.

**Substance of final rule:** The Commission, on July 16, 2009, adopted an order approving the petition of the Town of Sempronius, Cayuga County, for a waiver of certain provisions of 16 NYCRR Part 894.1 through 894.4 of the Commission's Rules to expedite the cable television franchising process with Time Warner Cable, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(09-V-0356SA1)

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

#### Interconnection of the Networks between Verizon and DigitalIPvoice, Inc. for Local Exchange Service and Exchange Access

**I.D. No.** PSC-31-09-00006-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with digitalIPvoice, Inc., executed on May 29, 2009.

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

**Subject:** Interconnection of the networks between Verizon and digitalIPvoice, Inc. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon and digitalIPvoice, Inc.

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

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaelyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New

York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us  
**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**  
 Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (09-01178SP1)

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

**Interconnection of the Networks between Verizon and Invision Telecom, Inc. for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-31-09-00007-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with Invision Telecom, Inc., executed on July 6, 2009.

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

**Subject:** Interconnection of the networks between Verizon and Invision Telecom, Inc. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon and Invision Telecom, Inc.

**Substance of proposed rule:** Verizon New York Inc. and Invision Telecom, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Invision Telecom, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 5, 2011, or as extended.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(09-01319SP1)

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

**New Service Classification (SC)**

**I.D. No.** PSC-31-09-00008-P

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

**Proposed Action:** The Commission is considering a proposed filing by the Village of Arcade to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 1 — Electricity.

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

**Subject:** New Service Classification (SC).

**Purpose:** To establish a new SC No. 6 - Supplemental Service for Wholesale Electric Generation.

**Substance of proposed rule:** The Commission is considering whether to

approve, modify or reject, in whole or in part, a proposed filing by the Village of Arcade to establish a new Service Classification No. 6 - Supplemental Service for Wholesale Electric Generation. The proposed filing has an effective date of October 17, 2009.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(09-E-0547SP1)

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

**Gross Receipts Taxes**

**I.D. No.** PSC-31-09-00009-P

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

**Proposed Action:** The Commission is considering a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 220 — Electricity.

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

**Subject:** Gross receipts taxes.

**Purpose:** To recover Municipal and Village gross receipts taxes from customers purchasing electric supply from an energy marketer.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid to recover Municipal and Village gross receipt taxes from customers purchasing electric supply from an energy marketer. The proposed filing has an effective date of November 1, 2009.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(09-E-0548SP1)

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

**Uniform System of Accounts - Request for Recovery of Deferral Amortization**

**I.D. No.** PSC-31-09-00010-P

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

**Proposed Action:** The Commission is considering a petition filed by the City of Jamestown Board of Public Utilities seeking approval to recover two deferral amortizations of maintenance costs from the dismantling fund set aside in Case 04-E-1485.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1), and 66(1), (5), (9) and (12)

**Subject:** Uniform System of Accounts - request for recovery of deferral amortization.

**Purpose:** To consider a petition to recover two deferral amortizations.

**Substance of proposed rule:** The Public Service Commission is considering a petition by the City of Jamestown Board of Public Utilities seeking approval to recover two deferral amortizations of maintenance costs, as approved in the Commission's March 21, 2007 Order in Case 06-E-1577, and as approved in the Commission's June 25, 2008 Order in Case 08-E-0210, from the dismantling fund set aside in the Commission's September 29, 2005 Order in Case 04-E-1485. The Commission may accept, reject, or modify, in whole or in part, the recovery requested.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(09-E-0553SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Gross Receipts Taxes

**I.D. No.** PSC-31-09-00011-P

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

**Proposed Action:** The Commission is considering a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service, P.S.C. No. 219 — Gas.

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

**Subject:** Gross receipts taxes.

**Purpose:** To recover Municipal and Village gross receipts taxes from customers purchasing gas supply from an energy marketer.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid to recover Municipal and Village gross receipt taxes from customers purchasing gas supply from an energy marketer. The proposed filing has an effective date of November 1, 2009.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(09-G-0549SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Waiver of 16 NYCRR sections 894.1, through 894.4 and 894.4(b)(2)**

**I.D. No.** PSC-31-09-00012-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Junius (Seneca County), for a waiver of 16 NYCRR sections 894.1, through 894.4(b)(2) pertaining to the franchising process.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Waiver of 16 NYCRR sections 894.1, through 894.4 and 894.4(b)(2).

**Purpose:** To allow the Town of Junius and Time Warner Cable to expedite the cable television franchising process.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Junius (Seneca County) for a waiver of Section 894.1 through 894.4 and 894.4(b)(2) in order to expedite the cable television franchising process.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(09-V-0542SP1)